

(2020) 03 BOM CK 0014

In the Bombay High Court

Case No : Civil Writ Petition No. 12387 Of 2015

Haseena Babu Sanadi

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 04-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 03 BOM CK 0014

Hon'ble Judges : S.S. Shinde, J;V.G. Bisht, J

Bench : Division Bench

Advocate : Ramchandra K Mendadkar, B.V. Samant

Final Decision : Allowed

Judgement

S.S. Shinde, J

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2. By way of this Petition filed under Article 226 of the Constitution of India, the Petitioner has challenged the order dated 29/05/2015 passed by

Respondent No.2 herein i.e. the Divisional Caste Certificate Scrutiny Committee, Solapur by which order Respondent No.2 - The Committee has

invalidated the caste claim of the Petitioner as belonging to Kasab Caste. The Petitioner seeks further direction to Respondent No.2 - The Committee

to issue certificate of validity in respect of caste certificate dated 30/10/1999 issued by the competent authority of jurisdiction.

3. The factual matrix involved in this Petition, can in brief be stated thus:-

The Petitioner claims to be belonging to Kasab Caste which is recognized as Other Backward Class in the State of Maharashtra. It is the case of the

Petitioner that on 30/10/1999 the competent authority of jurisdiction has granted caste certificate to the Petitioner as belonging to Kasab, OBC. On the basis of the said caste certificate the Petitioner came to be appointed on post of primary teacher at the hands of Respondent No.3 Zilla Parishad under reserved category of OBC. The Petitioner joined the services on 16/06/2000 and presently attached to the Zilla Praishad primary School, Kandalgaon, Tal. South Solapur, Dist. Solapur. After completing about 13 years of service, the caste certificate of the Petitioner along with required documents was forwarded to Respondent No.2 "The Committee by Respondent No.3 "Zilla Parishad for verification on 31/07/2013. Thereafter on 18/01/2014 Respondent No.2 - The Committee conducted home enquiry through its vigilance cell. It is further the case of the Petitioner that the vigilance cell submitted its report to Respondent No.2 - The Committee in favour of the Petitioner. Thereafter Respondent No.2 - The Committee issued show cause notices to the Petitioner and directed the Petitioner to file her reply. Accordingly the Petitioner filed her reply on 16/09/2015 and pointed out to Respondent No.2 - The Committee that the report of vigilance cell is in her favour. However, upon hearing the Petitioner, Respondent No.2 - The Committee without considering the enquiry report invalidated the caste certificate of the Petitioner by the impugned order dated 29/05/2015, which was communicated to the Petitioner by a letter dated 23/11/2015. Hence this Petition.

4. We have heard the learned counsel for the Petitioner, Shri Mendadkar, and the learned Assistant Government Pleader Shri B V Samant, for the Respondents. With their able assistance, we have perused the pleadings and grounds taken in the Petition and annexures thereto.

5. The learned counsel for the Petitioner Shri Mendadkar submits that the Petitioner is professing Islam religion and therefore her school records do not show her caste or caste of her forefathers as belonging to Kasab Caste. Relying upon the judgment of this Court in Civil Writ Petition No.8044 of

2013 in the case of Imram A Ajij Shaikh v/s. State of Maharashtra & ors (Coram Anop V Mohta & A A Sayed, JJ) dated 27/02/2014, he submits that

the Committee could not have rejected the caste claim of the Petitioner as the vigilance cell report is in her favour. He further submits that the

traditional occupation of the Petitioner is Kasab which has been revealed in the home enquiry conducted by the vigilance cell of Respondent No.2 -

The Committee. It is also submitted that in muslim community, there are few cases in which the caste is recorded regularly and/or properly in

government record, and therefore, the documents produced by the Petitioner before Respondent No.2 - The Committee do not disclose caste

â??Kasabâ?. It is submitted that the Petitioner has completed 13 years unblemished and uninterrupted service and therefore, Respondent No.2 - The

Committee discarding the documents only on the ground that they do not disclose caste of relatives of Petitioner is contrary to the law laid down in the

case of Imram Ajiz Shaikh (supra). He submits that Respondent No.2 - The Committee has not considered the material produced before it in proper

perspective. He further submits that the affinity test of the Petitioner was not conducted by Respondent No.2 - The Committee which was necessary

in the facts of the present case. In support of his submissions, the learned counsel appearing for the Petitioner sought to rely upon the judgment of this

Court in the case of Munaf Abu Dasurkar v/s. State of Maharashtra & ors 2018(1) ALL MR 389. He lastly submits that on the touch-stone of

judgment in Imram Ajiz Shaikh (supra), this Petition may be allowed.

6. The learned Assistant Government Pleader appearing for the Respondents/ State supports the impugned order passed by Respondent No.2 - The

Committee. It is submitted that Respondent No.2 - The Committee found that documents submitted by the Petitioner do not disclose the caste of

relatives of the Petitioner. There is no material on record to show that the ancestors of the Petitioner were belonging to Kasab Caste. He further

submits that the impugned order is a well reasoned order. The learned AGP lastly submits that the Petition may be rejected.

7. We have given anxious consideration to the submissions made by the learned counsel for the parties.

8. It is true that the caste certificate dated 30/10/1999 issued by the competent authority in favour of the Petitioner mentions the caste of Petitioner as

â??Kasabâ?, however, the documents produced by the Petitioner before Respondent No.2 - The Committee do not disclose the caste â??Kasabâ?.

It is required to be noted that though in the impugned order Respondent No.2 - The Committee has specifically recorded that the documents produced

by the Petitioner do not disclose the caste of the Petitioner as â??Kasabâ?, and therefore, Respondent No.2 - The Committee invalidated the caste

claim of the Petitioner. It appears that during home enquiry conducted by the Police Inspector, Vigilance Cell, Solapur, he found that Mulla-Mulani

Kasab Sanghatana has issued certificates in favour of the Petitioner and her father as they belonging to Kasab Caste. The inquiry report itself

supports the claim of the Petitioner based on the traits, traditions, characteristics, and customs of her caste. There is nothing on record to disbelieve the said inquiry report. It appears that Respondent No.2 - The Committee invalidated the caste claim of the Petitioner only on the ground that the

caste mentioned in the documents produced by the Petitioner is Musalman. Respondent No.2 - The Committee did not consider the vigilance cell

report, and solely relied upon the documents produced by the Petitioner before it, which according to Respondent No.2 - The Committee could not

have established the caste claim of the Petitioner as belonging to 'Kasab'. According to the Petitioner, Respondent No.2 by overlooking the

vigilance cell report and without applying its mind invalidated the caste claim of the Petitioner.

9. In support of his submission that there is no reason for Respondent No.2 - The Committee to disbelieve the vigilance cell report which is in favour

of the Petitioner, the learned counsel for the Petitioner sought to rely upon the judgment of the this Court in the case of Imram A Ajij Shaikh (supra).

Paragraphs 6 and 7 of the said Report are relevant and the same are reproduced herein under for ready reference:-

'6 There is nothing on record to show any contra material and/or any objection by any one on record. The inquiry report itself supports the case of

the Petitioner based on all the traits, traditions, characteristics and customs of his caste. There is nothing to disbelieve the inquiry conducted by the

Vigilance Cell. Respondent no.2 wrongly rejected the documents placed by the Petitioner as caste is mentioned only as Musalman. In the Muslim

community, there are few cases in which the caste is recorded regularly and/or properly in any Government record. Therefore, the Committee ought

to have considered the Vigilance Cell report instead of relying solely upon the documents placed on record by treating it to be unreliable. The

Committee must consider in such situation that unless contrary material is placed on record and other documents are not clear as not available in the

particular community, the Vigilance Cell report needs to be respected. There is no question of discarding the Vigilance Cell report, the purpose for

which is well reconsidered and even recorded by the Apex Court in Madhuri Patil's case and Dayaram's case (supra).

7. Therefore, taking an overall view of the matter, we are inclined to set aside impugned order dated 29 May 2013 with direction to re-consider the

same, in accordance with law, in view of the above observations, including the Supreme Court judgments referred to above. It also means that the

concerned Respondents, in case the caste is validated in favour of the Petitioner, to pass consequential order at the earliest.â??

10. In that view of the matter, the impugned order dated 29/05/2015 passed by Respondent No.2 herein i.e. the Divisional Caste Certificate Scrutiny

Committee, Solapur by which order Respondent No.2 - The Committee invalidating the caste claim of the Petitioner as belonging to Kasab Caste is

quashed and set aside and the matter is remanded back to Respondent No.2 â?" The Committee for a de-novo consideration in terms of the directions

as contained herein below;-

A] The caste claim of the Petitioner as belonging to Kasab caste is remanded back to Respondent No.2 for a de-novo consideration.

B] On remand, Respondent No.2 is directed to dispose of the claim/case of the Petitioner as expeditiously as possible and preferably within a period of

three months from today by giving opportunities to all the parties.

C] The parties to appear before Respondent No.2 on 16/03/2020. Thereafter the caste claim of the Petitioner shall be adjudicated latest by

31/05/2020.

D] It is seen that this Court by order dated 15/12/2015 restrained the Respondents from taking any coercive steps against the Petitioner on the basis of

the impugned order passed by Respondent No.2. The said ad-interim relief granted earlier vide order dated 15th December 2015 would continue to

operate till the caste claim of the Petitioner is adjudicated upon by Respondent No.2.

E] The above Writ Petition is accordingly allowed. Rule is accordingly made absolute to the aforesaid extent with parties to bear their respective costs

of the Petition. The Writ Petition is accordingly disposed of.