

(2014) 02 BOM CK 0326
In the Bombay High Court
Case No : W.P. No. 8044 of 2013

Imram A. Ajij Shaikh

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 6 ALLMR 656 : (2015) 4 MhLj 901

Hon'ble Judges : Anoop V. Mohta, J;A.A. Sayed, J

Bench : Division Bench

Advocate : R.K. Mendadkar and Helen Koli-Mandlik instructed by H.D. Mulla, Advocate for the Appellant; A.I. Patel, Assistant Government Pleader, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.

1. Rule, returnable forthwith.

Learned Asstt. Govt. Pleader waives service for the respondents.

Heard finally by consent of parties.

The petitioner has challenged impugned order dated 29 May, 2013 passed by respondent No. 2, Divisional Caste Certificate Scrutiny Committee No. 1, Solapur, and also prayed to set aside order of termination dated 17 July, 2013 passed by respondent No. 3.

2. The petitioner belongs to "Muslim Julaha" caste which is recognised as O.B.C. in the State of Maharashtra. On his application, the Deputy Collector, Solapur, granted a Caste Certificate to the petitioner after confirming the genuineness of the documents produced on 30 July, 2009. The petitioner based on the same applied for the post of Constable in the Department of Police from the reserved category of O.B.C. After passing all the tests, the petitioner was recruited as

Constable. Respondent No. 3, the Commissioner of Police, Solapur, referred the Caste Certificate of the petitioner to the Divisional Caste Scrutiny Committee No. 1, Solapur i.e. Respondent No. 2. As per the requisite procedure, the Police Inspector of Vigilance Cell conducted an inquiry and recorded the statements of reputed persons from the local place of residence/community of the petitioner. They supported the petitioner's case by deposing that the petitioner and his family carry all the traits and traditions of "Muslim Julaha". The Vigilance inquiry report dated 30 March, 2012 was submitted in favour of the petitioner in all respects. Respondent No. 2 accordingly submitted copy of the report to the petitioner and called upon him for hearing. The petitioner filed supporting reply. According to the petitioner, respondent No. 2 by overlooking the reasoned report and without applying its mind to the facts and the provisions of law, by impugned order dated 29 May, 2013, invalidated the Caste Certificate of the petitioner.

3. The Apex Court in *Dayaram Vs. Sudhir Batham and Others*, reiterated the law in this regard by referring to *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, and thereby has recognised the importance of vigilance report in such matter and directed to decide the caste case by following the guidelines so provided. The purpose and object of establishing such Vigilance Cell and its practice and procedure have been further elaborated in paragraphs 34 and 35 of the judgment as under:

"34. Each Scrutiny Committee has a vigilance cell which acts as the investigating wing of the committee. The core function of the Scrutiny Committee, in verification of caste certificates, is the investigation carried on by its vigilance cell. When an application for verification of the caste certificate is received by the Scrutiny Committee, its vigilance cell investigates into the claim, collects the facts, examines the records, examines the relations or friend and persons who have knowledge about the social status of the candidate and submits a report to the committee. If the report supports the claim for caste status, there is no hearing and the caste claim is confirmed. If the report of the vigilance cell discloses that the claim for the social status claimed by the candidate was doubtful or not genuine, a show-cause notice is issued by the committee to the candidate. After giving due opportunity to the candidate to place any material in support of his claim, and after making such enquiry as it deems expedient, the Scrutiny Committee considers the claim for caste status and the vigilance cell report, as also any objections that may be raised by any opponent to the claim of the candidate for caste status, and passes appropriate orders.

35. The Scrutiny Committee is not an adjudicating authority like a Court or tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. Like any other decisions of administrative authorities, the orders of the Scrutiny Committee are also open to challenge in proceedings under Article 226 of the Constitution."

(emphasis supplied)

4. In the present case, after hearing both the parties even considering the impugned order, we have noted that the respondent-Committee failed to consider the facts and circumstances of the present case specifically when it refers to matters that the petitioner belongs to "Muslim Julaha" caste. The requirement of documents of the community in question as insisted, in our view, is uncalled for. The very Vigilance Cell report, so prepared based on the material collected by the concerned Officer, at the relevant time, by recording reasons and/or statements of the people of the locality as well as community, unless a case of fraud and/or mis-representation is made out, can only be required to be interfered with. There is no such reason and/or justification given. The justification given is by overlooking the findings of the Committee's report as recorded above. It is quite settled in Madhuri Patil's case (supra) that once the report is in favour of candidate found to be genuine and true, no further action needs be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained or serious doubts are raised.

5. 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).

6. 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.

7. At present, as we are inclined to quash and set aside the order or direction to respondent No. 2 Committee to consider the same by re-hearing the matter, as early as possible, preferably within eight weeks. We are not inclined to quash and set aside the order of termination dated 17 July, 2012. However, this is also with liberty for the parties to apply for appropriate order in case the order is passed in favour of and/or against the petitioner.

8. In the result, impugned order dated 29 May, 2013 passed by the respondent

No. 2 Committee is quashed and set aside and the matter is remanded for re-consideration. However, it is directed to dispose of the petitioner's claim/case as early as possible preferably within eight weeks by giving opportunities to all the parties. The Petition is accordingly disposed of with liberty. Rule is made absolute in the aforesaid terms. No costs.