

(2016) 09 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 5698 of 2016

Sachin Shripati Patil

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Scheduled Castes, Denotified Tribes (Vimukta Jatis) Nomadic Tribes,
Other Backward Classes and Special Backward Category (Regulation of Issuance and
Verification of) Caste Certificate

Citation : (2016) 6 ALLMR 499 : (2016) 5 BCR 802

Hon'ble Judges : Shantanu S. Kemkar and M.S. Karnik, JJ.

Bench : Division Bench

Advocate : Mr. A.V. Anturkar, Senior Advocate i/b. Mr. Tanaji Mhatugade,
Advocates, for the Petitioner; Mr. A. B. Vagyan, Government Pleader a/w Ms.
M.P. Thakur, AGP a/w Ms. Tintina Hazarika, AGP, for the Respondents No. 1, 2 &
4; Mr. G.S. Godbole, Advocate i/b. Pa

Final Decision : Disposed Off

Judgement

M.S. Karnik, J.—The Petitioner is challenging the order dated 9th May, 2016 passed by Respondent No.2 Divisional Caste Scrutiny Committee No.2, Kolhapur thereby invalidating the caste claim of the Petitioner as Hindu-Kunbi which is a Scheduled Caste.

2. The Petitioner is also challenging the consequential disqualification order dated 9th May, 2016 passed by the Municipal Commissioner, Kolhapur Municipal Corporation viz., the Respondent No.3.

3. The Petitioner was elected from reserved Ward No.34 as the Councilor of the Kolhapur Municipal Corporation. The Petitioner's caste claim was referred for verification to Respondent No.2 Committee. The Respondent No.2 forwarded the Petitioner's case for local inquiry to the Vigilance Cell. The Vigilance Cell after conducting the local inquiry submitted the report which is in favour of the

Petitioner.

4. It is the submission of the Petitioner that the Petitioner's Cousin Vaibhav's caste certificate was validated by the Caste Certificate Scrutiny Committee, Konkan Bhuvan, Mumbai Division by an order dated 2nd March, 2015 and declared him as belonging to the "Kunbi" caste. According to the Petitioner once a blood relation of the Petitioner has got his caste certificate validated, then unless the said certificate is cancelled or the Respondent No.2 Committee comes to the conclusion that the blood relation of the Petitioner obtained the caste certificate fraudulently the said certificate has to be accepted and the Petitioner ought to have been granted the caste validity certificate. The Petitioner relied upon various decisions of this Court in Writ Petition No. 2376 of 2015, Writ Petition No. 4224 of 2014, (2010) 6 Mh.L.J. 401 in support of his proposition, but the Committee did not even refer to the decision.

5. According to the learned Counsel for the Petitioner there were several documents on record, which go to show that he belongs to Hindu-Kunbi and the same have not been properly appreciated by the Scrutiny Committee. Learned Counsel for the Petitioner also submits that though the Vigilance Cell Report is in favour of the Petitioner no reasons have been given by the Respondent No.2 Committee for discarding the said report.

6. Learned Counsel for the Respondents on the other hand supported the order passed by the Scrutiny Committee. According to the Respondents the Committee has taken into consideration each and every document and given cogent reasons while discarding the same. According to the Respondents the findings recorded by the Vigilance Committee are not binding on the Scrutiny Committee as Vigilance Cell inquiry is meant only for internal assistance to the Scrutiny Committee, which can never be used as evidence in support of the claim.

7. Mr. Godbole, learned Counsel on behalf of Respondent No.5 has submitted various documents in support of his submission that the Petitioner does not belong to the Hindu Kunbi caste and hence, submitted that the order passed by the Respondent No.2 does not call for any interference.

8. Having gone through the impugned order we find that except for the Respondent No.2 mentioning in the order that it is not in agreement with the Vigilance cell Report there is nothing to suggest that the reasons are given for the discarding the report of the Vigilance Cell. Similar issue had arisen in Writ Petition No. 5699 of 2016 wherein we have spelt out the necessity for the Committee to give reasons before discarding the Vigilance Report.

9. We find that the Respondent No.2 Committee has not at all adverted to the report of the Vigilance Cell. We, therefore, quash and set aside the impugned order and remand the matter back to respondent No.2 ? Committee for a fresh consideration of the caste claim. The Committee may pass a fresh order on its own merits after complying with the provisions of the Sub-Rule 7 of Rule 17 of the Maharashtra Scheduled Castes, Denotified Tribes (Vimukta Jatis), Nomadic

Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012. The Committee may also take into consideration cast validity certificate issued to the Petitioner's cousin Vaibhav and consider the claim of the Petitioner in the light of the law laid down by this Court in the case of Apoorva d/o Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee, 2010 (6) Mh. L.J. 401. The Committee will decide the matter afresh on its own merits in accordance with law.

ORDER

1. The impugned order dated 3rd May, 2016 passed by respondent No.2 is quashed and set aside.
2. The matter is remanded back to respondent No.2 for passing a fresh order in accordance with law and after hearing the petitioner within a period of 6 weeks from today.
3. The consequential order of disqualification is set aside.
4. No order as to costs.
5. Writ Petition is accordingly disposed of.