

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3182 OF 2012

Mr.R.K.Mendadkar a/w Ms Helan Koli-Mandlik for the
Petitioner
Mr.A.A.Kumbhakoni, Senior Advocate a/w Mr.Vaibhav
Gaikwad i/b Mr.A.M.Kulkarni for the respondent No.4

ORAL JUDGMENT: (A.S.OKA, J.)

2 By this petition under Article 226 of the Constitution of India, the petitioner has challenged the Judgment and Order dated 25th January 2012 passed by the Caste Scrutiny Committee (second respondent). By the said Judgment and Order, the caste claim of the respondent No.4 that he belongs to caste 'Momin' which is notified as 'Other Backward Class' was upheld. By the said order, the caste certificate dated 5th October 2011 issued by the Competent Authority to the said respondent has been validated.

3 The learned counsel for the petitioner relied upon the Judgment and order dated 4th May 2012 passed by this Court in Writ Petition No.853 of 2012 and other connected matters. He urged that the constitution of the second respondent-Caste Scrutiny Committee is itself illegal.

4 Secondly, he invited our attention to the report of the Vigilance Cell dated 31st December 2011. He also invited our attention to the information sought by the petitioner under Right to Information Act, 2005. The contention of the learned counsel for the petitioner is that the Vigilance Cell has purported to verify the School Leaving Certificate issued to the father and uncle of the respondent No.4 by the school in District Allahabad without actually visiting the school. His submission is that the Vigilance Cell Officer has purported to hold an enquiry sitting in Mumbai without verification of the original record of the school. The learned senior counsel for the respondent No.4 supported the impugned Judgment and order. He urged that as far as Judgment and Order dated 4th May 2012 in Writ Petition No.853 of 2012 is concerned, the stay granted by this Court to the Judgment has been continued by the Apex Court and the same continues to operate as of today.

5 We have given careful consideration to the submissions. We have perused the impugned order. In the impugned order, the Caste Scrutiny Committee has relied upon the entries of father and uncle of the

respondent No.4 in the school record of a school in District Allahabad in Uttar Pradesh. The Committee has relied upon the said entries which show that the caste of both of them is "Momin Islam". We have perused the Vigilance Cell report. The Vigilance Cell report refers to the school Leaving Certificates of the father and the uncle of the respondent No.4 issued by a school in District Allahabad in Uttar Pradesh. Perusal of the report shows that the Vigilance Cell has relied upon only the information furnished by the Head Master of the concerned school and the original record of the school has not been verified by any Officer of the Vigilance Cell. The Vigilance Cell report itself does not record that by visiting the concerned school, any verification was made by the Vigilance Cell Officer. The information furnished to the petitioner under the Right to Information Act, 2005 shows that the Vigilance Cell Officer did not visit the concerned school for verification of the school record. Even the report of the Vigilance Cell does not record that any of its Officer personally verified the record of the school. The learned counsel for the petitioner relied upon the Judgment and order dated 15th October 2012 of this Court in Writ Petition No.2025 of 2012. Paragraph 6 of the said Judgment and order reads thus:

"6 The fact that the Vigilance Cell did not physically verify the register containing entry in Form 14 is not in serious dispute. The inaction by the Vigilance Cell is in

teeth of the decision of the Apex Court in Kumari Madhuri Patil and another vs. Addl. Commissioner, Tribal Department & Others (1994) 6 SCC 241, paragraph 12 clause 5 thereof, which requires the Vigilance Cell to personally inspect all the records, much less, the disputed and doubtful entries and enquire into those matters before giving any opinion to the Scrutiny Committee. That has not been done in the present case. As the opinion of the Scrutiny Committee is founded on such infirm Vigilance Cell Report, we have no manner of doubt that the conclusion so reached by the Scrutiny Committee cannot stand."

(Underline supplied)

6 We find from the impugned order dated 25th January 2012 that the Caste Scrutiny Committee while passing the impugned order has relied upon the report of the Vigilance Cell. That is how the impugned order is vitiated and, therefore, by setting aside the impugned order, the matter will have to be remanded to the appropriate Caste Scrutiny Committee. The learned counsel for the petitioner states that now the proper Caste Scrutiny Committee is the Divisional Caste Scrutiny Committee No.3, Mumbai Suburban District having its office at Bandra (E), Mumbai.

7 Hence, we pass the following order:

- (I) The impugned order dated 25th January 2012 is hereby quashed and set aside and the matter is remanded to the Divisional Caste Scrutiny Committee No.3, Bandra, Mumbai;
- (II) We direct the petitioner and the respondent No.4 to appear before the said Committee on Monday 5th October 2015 at 11.00 a.m for fixing the schedule of hearing;
- (III) In view of what is held in this Judgment, the Caste Scrutiny Committee shall order a fresh Vigilance Cell Enquiry in accordance with law;
- (IV) The Caste Scrutiny Committee shall endeavour to decide the caste claim of the respondent No.4 as expeditiously as possible and preferably before 31st March 2015;
- (V) We make it clear that no adjudication has been made on merits of the caste claim of the respondent No.4;
- (VI) Rule is partly made absolute on above terms with no order as to costs;
- (VII) All concerned to act upon an authenticated copy of this Judgment and order.

(V.L.ACHLIYA, J.)

(A.S.OKA, J.)

CERTIFICATE

Certified to be true and correct copy of original
signed Judgment/Order.