

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1057 OF 2014**

Horilal Shriram Jaiswar)
of Mumbai, Indian Inhabitant)
residing at Shravan Nagar)
Chawl No.B-2, Room No.17,)
(Nekar Nagar) Datta Mandir Road)
Dhanukawadi, Kandivali(West),)
Mumbai - 400 067)Petitioner.

V/s

1. State of Maharashtra)
(Through its Secretary Social)
Welfare Department))
Mantralaya, Nariman Point,)
Mumbai 400 032)
)
2. Divisional Caste Certificate)
Scrutiny Committee No.3,)
Administrative Building, 5th floor,)
Mumbai Suburban District)
Bandra (East), Mumbai 400 051)
)
3. Bombay Suburban Electric Supply)
Through the General Manager)
BEST Bhavan, BEST Marg, P.O.Box)
No.192, Mumbai - 400 039.)
)
4. Depot Manager,)
Dindoshi Bus Depot)
Gen Vaidya Marg, Film City Road,)
Goregaon (East),)
Mumbai 400 097.) Respondents.

Mrs. N.V. Sanglikar for the Petitioner.
Mr. S.J. Saluja, AGP for Respondent Nos.1 & 2.
Mr. R.L. Singh i/b M/s M.V. Kini & Co. for Respondent No.3.

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

**Judgment reserved on : 14/01/2015
Judgment pronounced on : 13/02/2015**

JUDGMENT: (Per V.M. Kanade, J.)

1. Rule. Rule is made returnable forthwith. Respondents waive service. By consent of the parties, Petition is taken up for final hearing.

2. By this Petition which is filed under Article 226 of the Constitution of India, Petitioner is challenging the order dated 05/07/2013 passed by Respondent No.2 - Caste Scrutiny Committee. By the said order, the Caste Scrutiny Committee came to the conclusion that though the Petitioner belonged to Scheduled Caste Chambhar/Chamar, his application for caste validity certificate was rejected on the ground that he was not domiciled in the State of Maharashtra before 10/08/1950. Petitioner is also challenging the order dated 26/12/2013 passed by Respondent No.3 - BSES, who, on the basis of order passed by the Caste Scrutiny Committee, dismissed the Petitioner from service with effect from 26/12/2013. Petitioner is also seeking consequential reliefs.

3. Brief facts are as under:-

4. Petitioner belongs to the Hindu Chamar caste which is notified as Scheduled Caste under the Constitutional (Scheduled Caste) Order, 1950 and Presidential Notification dated 10/8/1950. Petitioner was appointed as a Badli Bus Conductor on 22/07/1996 and his name was entered into badli bus conductors register with effect from 22/07/1996. Thereafter, on 02/04/1997, Petitioner was absorbed in the establishment of Respondent No.4 and kept on probation for a period of six months. Petitioner was confirmed on 01/10/1997 on the post of conductor.

5. During the course of his employment, Petitioner was awarded certificate of appreciation for displaying honesty and integrity in his work. Petitioner was also awarded medal for his excellent work in the years 2010, 2011 and 2012. Petitioner became eligible for promotion and on 30/07/2009, the Senior Administrative Officer (Transport) informed the Petitioner that he was on waiting list and it was necessary for the Petitioner to get his caste certificate verified. The matter was referred to Caste Scrutiny Committee and the Petitioner submitted his documents in support of his application for caste verification.

6. In the meantime, Vigilance Cell sent notices to the Petitioner for producing the documents to prove his residence in Mumbai prior to 1950. According to the

Petitioner, he did not receive the said letters in time though thereafter he did attend the Office of the Vigilance Cell and showed all the documents which he possessed. The Vigilance Officer thereafter submitted a report to the Caste Scrutiny Committee, stating therein that the Petitioner had failed to submit documents relating to his caste for the year 1950 or prior thereto and therefore gave an opinion that the Petitioner was not interested in getting his caste certificate verified. The Caste Scrutiny Committee asked the Petitioner to submit his explanation and, accordingly, the Petitioner submitted his clarification on 03/05/2012. Petitioner informed the Caste Scrutiny Committee that his father was residing in Mumbai and he was an employee of the Bombay Dyeing and Spinning Mills from the year 1957.

7. The Caste Scrutiny Committee, however, by its order dated 05/07/2013 dismissed the application of the Petitioner and observed that since the Petitioner had not produced any documentary proof of residence of his father in Mumbai prior to 1950, the Petitioner was not entitled to get caste verification certificate and, therefore, invalidated the caste certificate issued by the Executive Magistrate dated 06/01/1993. After the copy of the said order was communicated to Respondent No.3 - BSES, Respondent No.3 issued notice dated 04/12/2013 to the Petitioner asking him to show cause within ten days why his services should not be

terminated under section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance of verification of) Caste Certificate Act, 2000 (for short "the Act"). Petitioner gave his reply to the said show cause notice and stated therein that in his appointment letter dated 02/04/1996, there was no mention that he was appointed in the post reserved for scheduled caste. He also stated that he has not taken any benefits of reservation during his service period. Respondent No.4 - Depot Manager, Dindoshi Bus Depot, however, terminated the services of the Petitioner by issuing him letter dated 26/12/2013.

8. Petitioner made various representations to all the authorities. However, his representations were not considered favourably by all the authorities. Being aggrieved by the aforesaid order, Petitioner has approached this Court by invoking its writ jurisdiction under Article 226 of the Constitution of India.

9. Mrs Sanglikar, the learned Counsel appearing on behalf of the Petitioner submitted that it was incumbent upon the Caste Scrutiny Committee to consider not only the documentary evidence but also the oral evidence which was adduced by the Petitioner. It was submitted that even the

Vigilance Cell had erred in giving an opinion that the Petitioner was not interested in getting his caste certificate verified. She submitted that the Petitioner's father had come to Mumbai before 1950 and there was definite documentary evidence to show that he was employed in the Bombay Dyeing and Spinning Mills from the year 1957. She submitted that, in a give case, where documentary evidence is not available, it was the duty of the Vigilance Cell and the Caste Scrutiny Committee to consider the oral evidence on record.

10. The learned Counsel for the Petitioner further submitted that the caste certificate of the Petitioner had been cancelled after almost 20 years and after the Petitioner had worked with Respondent No.3 for about 13 years and was issued a certificate of appreciation of his work from time to time. He submitted that it was not in dispute that the Petitioner belonged to Scheduled Caste (Chambhar/Chamar) category and the only ground on which the Petitioner's caste certificate was invalidated was that he was not ordinarily residing in Mumbai prior to 1950.

11. On the other hand, the learned Counsel appearing for the Respondents/State justified the order passed by the Caste Scrutiny Committee and submitted that it was the duty of the Petitioner to have adduced proper evidence

before the Vigilance Cell and before the Caste Scrutiny Committee and in the absence of documentary evidence on record, the Caste Scrutiny Committee had no other option but to set aside the caste certificate issued by the Executive Magistrate.

12. We have perused the impugned orders and also the report given by the Vigilance Cell. The Apex Court in its recent judgment in *Anand vs. Committee for Scrutiny & Verification of Tribe Claims & Ors*¹ has held that it is the duty of the Caste Verification Committee to consider not only the documentary evidence but also the oral evidence on record. Apex Court has observed that the Committee should arrive at a decision on the basis of preponderance of probabilities after taking into consideration the documentary as well as the oral evidence on record. Where reliance could be placed on the oral as well as documentary evidence produced by the applicant, the Apex Court has observed in paras 17 and 18(i) of its judgment in *Anand* (supra) as under:-

“17. Rule 11(2) enumerates a list of documents to be filed along with the application to the Caste Scrutiny Committee. Rule 12 prescribes the procedure to be followed by the Caste Scrutiny Committee on receipt of such application in the prescribed format. It provides that if the Caste Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it shall forward the application to the

1 AIR 2012 SC 314

Vigilance Cell for conducting the school, home and other enquiry. Sub-rule (3) of Rule 12 requires the Vigilance Officer to visit the local place of residence and the original place from where the applicant hails and usually resides. The rules further stipulate that the Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or guardians, as the case may be. He is also required to examine the parents or the guardians or the applicant for the purpose of verification of their tribe. It is evident that the scope of enquiry by the Vigilance Officer is broad-based and is not confined only to the verification of documents filed by the applicant with the application or the disclosures made therein. Obviously, the enquiry, supposed to be conducted by the Vigilance Officer, would include the affinity test of the applicant to a particular tribe to which he claims to belong. In other words, an enquiry into the kinship and affinity of the applicant to a particular Scheduled Tribe is not alien to the scheme of the Act and the Rules. In fact, it is relevant and germane to the determination of social status of an applicant. We are of the view that for the purpose of examining the caste claim under the Rules, the following observations of this Court in *Kumari Mdhuri Patil (AIR 1995 SC 94)* (supra), still hold the field:-

“....The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the

social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.”

“18. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes

difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant."

13. In the present case, the Vigilance Cell has given a report that the Petitioner was not interested in getting his caste verified. The said observation, in our view, was not warranted, particularly because the Petitioner had approached the Vigilance Cell and submitted all the documentary evidence which was in his possession. According to the Petitioner, notices sent to the Petitioner on 23/11/2009, 18/07/2011 and 15/02/2012 were not received by him. He has stated that there is only one letter box in the entire Chawl and these letters were received by him late after several days. He has, however, stated that after receipt of the letters he had attended the Office of the Vigilance Cell. The explanation given by the Petitioner, in our view, appears to be plausible explanation and therefore the Vigilance Cell, in our view, clearly erred in coming to the conclusion that the Petitioner was not interested in getting his caste verified. The Vigilance Cell ought to have recorded statements of some other persons for the purpose of finding

out whether the father of the Petitioner was in Mumbai prior to 1950. No such efforts were taken by the Vigilance Cell and a perfunctory opinion was given by the Vigilance Cell. The Vigilance Cell is under statutory obligation to apply its mind and give proper certificate since that helps the Scrutiny Committee to come to a proper conclusion whether the applicant is entitled to get benefits which are conferred on Scheduled Caste and Scheduled Tribe persons by the Constitution of India and by a Presidential Order and, therefore, the Vigilance Cell is not expected to function in a casual and cavalier manner. It is equally important to see that the persons who do not belong to the reserved categories or are not entitled to get benefits which are specifically earmarked for reserved categories of persons get benefits on the basis of false and fabricated documents. It is for this purpose section 10 has been incorporated under the new Act which contemplates penal action for production of false and fabricated documents. At the same time, citizens who belong to the reserved categories are entitled to get the benefits conferred on them by the Constitution of India and they should not be denied those benefits on flimsy grounds. In the instant case, we are satisfied that the Vigilance Cell has not carried out its duty cast on them by the Act and the Rules and by Government Circulars and by the directions given by the Supreme Court right from the case of *Kum. Madhuri Patil and another vs. Additional*

*Commissioner, Tribal Development*¹ and other judgments.

14. In our view, therefore, it would be appropriate if the Vigilance Cell is directed to again hold a fresh inquiry and also record the statements of persons so that the Petitioner can establish by oral evidence that his father was residing in Mumbai prior to 1950. So far as the order passed by the Caste Scrutiny Committee is concerned, the Caste Scrutiny Committee also, unfortunately, has observed that there is no documentary evidence to show that the Petitioner's father was residing in Mumbai prior to 1950. The Caste Scrutiny Committee has merely observed that since the Petitioner has not submitted any old evidence regarding subject of his caste, Chambhar (scheduled caste), caste claim is not proved. The only reason why the committee rejected the Petitioner's application was that he was not domiciled in the State of Maharashtra before 10/08/1950. In our view, ratio of the judgment in *Anand vs. Committee for Scrutiny & Verification of Tribe Claims & Ors*² would squarely apply to the facts of the present case. It was the duty of the Caste Scrutiny Committee to have considered the oral statement made by the Petitioner, unless there was any material which would have falsified his oral evidence and, therefore, his oral evidence should not have been disregarded by the Caste Scrutiny Committee. The Constitution of India has conferred

1 AIR 1995 SC 94

2 AIR 2012 SC 314

these benefits on the persons belonging to the reserved categories in order to ensure that they get these benefits so that in due course of time they can compete with other upper caste citizens.

15. For the reasons stated hereinabove, we are of the opinion that, both, Caste Scrutiny Committee and the Vigilance Cell, have failed in their statutory obligation in processing the Caste Certificate produced by the Petitioner in its proper perspective. We have, therefore, no other alternative but to set aside the order dated 05/07/2013 passed by Respondent No.2 - Caste Scrutiny Committee. The Vigilance Cell is directed to again give a fresh opportunity to the Petitioner to lead oral evidence apart from documentary evidence already produced by the Petitioner. Petitioner may file affidavits of persons who knew that the Petitioner's father was residing in Mumai prior to 1950 and on such affidavits being filed, Vigilance Cell may either record the statements of such persons and make verification if necessary by going to the place where the Petitioner's father was born and brought up and, thereafter, submit their report to the Caste Scrutiny Committee.

16. The Caste Scrutiny committee after the said report is submitted shall take into consideration the oral evidence adduced by the Petitioner and the documentary evidence

produced by him on record and decide his application for caste verification on merits and in accordance with law.

17. Since we have set aside the impugned order dated 05/07/2013 passed by the Respondent No.2 - Caste Scrutiny Committee, the impugned order of termination of the Petitioner which was passed by Respondent No. 3 - BSES dated 26/12/2013 is also set aside.

18. We direct Respondent Nos. 3 and 4 to reinstate the Petitioner with back wages. The Vigilance Cell shall complete its investigation within a period of 12 weeks and thereafter the Caste Scrutiny Committee shall expeditiously decide the application of the Petitioner on merits and in accordance with law.

19. Petition is allowed in the aforesaid terms and the Rule is made absolute accordingly.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)