

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.175 of 2013

(Imran s/o. Usman Sheikh .vs. State, through Department of Social Welfare, Secretary
and anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.Bodalkar, Adv. for the petitioner.
Mr.A.S.Fulzele, A.G.P. for respondent nos. 1 and 2.

CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.

DATE : 12th JANUARY, 2015.

Heard.

Early hearing is sought by the petitioner who
wants to contest the election. Last date for submission of
nomination is 13.1.2015.

Claim is that the petitioner belongs to Momin
which is recognized as the Other Backward Class.

Mr.Bodalkar, learned Counsel for the
petitioner submits that the Vigilance Report
dt.19.12.2011 is in favour of the petitioner and when
the petitioner was called for hearing, the petitioner
submitted additional documents. Ignoring those
documents and favourable Vigilance report, on an
unsustainable ground the caste claim of the petitioner
has been invalidated.

The petitioner did not get previous

opportunity to meet those grounds. It is submitted that 'Musalman' is not a caste, but it is a religion and as such, the impugned order is unsustainable.

Learned A.G.P. submits that the Caste Scrutiny Committee has conducted scrutiny in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Act No.23 of 2001) and after giving the petitioner full opportunity, the order is passed. There is no jurisdictional error or perversity.

We find that the report of the Vigilance Cell is in favour of the petitioner. The said report is signed by the Police Inspector as also the Research Officer. After this report, the petitioner was called for hearing and during hearing, the petitioner accepted that report. The Committee has recorded that, as relationship with the persons, whose documents were placed on record, could not be seen, the show cause notice was issued to the petitioner on 9.2.2012 and he was called for hearing on 21.2.2012. The petitioner did not submit any reply to that notice on 21.2.2012. The matter was adjourned to 28.2.2012. The petitioner, on that day, submitted his reply, but did not produce any document. He was, therefore, called for hearing on 2.3.2012 and on that day, he submitted an affidavit on the stamp paper of

Rs.100/-.

The reasons recorded by the Caste Scrutiny Committee in paragraph 4 show that it has looked into the documents where - against the column meant for recording caste - word 'musalman' or 'muslim' or 'musalman (momin)' has been used. Finding of not establishing relationship is recorded only in relation to one document i.e. 1.7.2008. Similar finding is recorded in relation to the document wherein son by name Usman is shown to have born on 7.9.1928 to Abdulla Chaudhari Hiraji.

It is apparent that, on relationship, the Caste Scrutiny Committee has given a show cause notice to the petitioner. On the manner of recording of caste in documents or appreciation thereof, the Caste Scrutiny Committee did not extend opportunity of hearing to him. The report of Vigilance Cell cannot be said to be against the petitioner in the present facts.

We, therefore, find that the interest of justice can be met with by giving the petitioner one opportunity to place on record the documents which reveal his relationship with the persons mentioned in the documents and also his say on the caste as recorded as effort of the learned Counsel for the petitioner before this Court was to demonstrate that the word 'musalman' or 'muslim' only means religion and it is not a caste.

To enable the Caste Scrutiny Committee to consider these aspects, we set aside the order

dt.2.3.2012 passed by the Caste Scrutiny Committee.

The matter be placed back before the Caste Scrutiny Committee. The petitioner to appear before the Committee on 2.2.2015 and to abide by its further instructions in the matter. The Committee shall attempt to complete verification in accordance with law within next six months.

The petition is, thus, partly allowed and disposed of. No costs.

JUDGE

JUDGE