

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4404 OF 2016

Jamadar Sabheen Altaf Husain Petitioner
V/s.

The Divisional Caste Scrutiny Committee No.1,
Solapur & Anr. Respondents

Mr. Shrishail Sakhare, i/by Ms. Tejal Payekar, for
the Petitioner.

Mrs. M.P. Thakur, A.G.P., for the Respondent-State.

CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 13TH APRIL 2016.

P.C. :

1. By this Petition, filed under Article 226 of the Constitution of India, the Petitioner has challenged the order dated 26th November 2014 of Respondent No.1-Divisional Caste Scrutiny Committee, by which it invalidated the caste claim of the Petitioner as belonging to the 'Julah' Caste' under OBC Category. On the basis of the Caste Certificate issued to the Petitioner on 11th February 2010 by the Deputy Collector and Competent Authority that she belongs to the 'Julah Caste' under OBC Category, the Petitioner took admission to the B.A.M.S. Course in Seth Govind Raoji Ayurvedic Mahavidyalaya, Solapur in the year 2011 under the OBC reservation seat. After securing admission, the Petitioner's Caste Certificate was sent to Respondent No.1 for deciding its validity. As stated above, by the impugned order, the Petitioner's claim that she belongs to

the 'Julah' Caste' under OBC Category is rejected and the said Seth Govind Raoji Ayurvedic Mahavidyalaya, Solapur, is directed to withdraw the benefits given to the Petitioner.

2. The B.A.M.S. Course comprises of three years. Petitioner has already completed two years and now appearing for the 3rd year examination. In view of the order impugned in this Petition, the College Authorities refused to accept Petitioner's examination form. Petitioner, therefore, has filed separate Petition being Writ Petition No.4403 of 2016.

3. The main ground on which the impugned order is assailed is that Respondent No.1, while invalidating the Petitioner's Caste Certificate, took into consideration the Vigilance Cell Report. However, the Vigilance Cell has failed to examine the parents or guardians of the Petitioner. The learned counsel for the Petitioner, in this regard, has relied upon the decision of the Division Bench of this Court in ***Heera d/o Shalikram Mundharikar Vs. Scheduled Tribe Caste Certificate Scrutiny Committee and Ors., 2010 (6) Mh.L.J. 274.***

4. Mrs. Thakur, the learned A.G.P., vehemently opposes this Petition. She submits that the Petition should be dismissed on the ground of delay and laches. She submits that all the documents produced by the Petitioner have been duly considered by Respondent No.1 and thereafter conclusion has been drawn that the Petitioner does not belong to the caste 'Julah' under OBC Category.

5. We have gone through the impugned order. We have also gone through the Vigilance Cell Report and the decisions cited at bar. The

impugned order does reveal that Respondent No.1, while rejecting the Petitioner's claim, has taken into consideration the Vigilance Cell Report. Perusal of the Vigilance Cell Report does not disclose that Vigilance Cell had examined parents or guardians of the Petitioner.

6. Sub-rule (5) of Rule 12 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, reads as follows :-

“(5) The Vigilance Cell shall also examine the parents or guardian or the applicant for the purpose of verification of their Tribe, of the applicant.”

7. The question similar to the one involved in the present Petition fell for consideration before the Division Bench of this Court in **Heera d/o Shalikram Mundharikar (Supra)**. The Division Bench, after considering the provisions of sub-rule (5) of Rule 12 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, made following observations in para 4 of the said Judgment.

*“4.
We find that the order of the Scrutiny Committee is vitiated due to non compliance of sub-rule (5) of Rule 12. The Rule requires the Vigilance Cell to examine the parents or guardians of the applicant. The word “parents” implies both the father and the mother. The need for examining the father as well as the mother cannot be undermined in a case of this nature. It is*

well-known that in a patriarchal society, caste is determined by the caste of the father. An enquiry into the candidate's caste can be best made by examining the father or others on the paternal side, such as uncles. We do not see how it is possible to produce a correct result in scrutiny without examining the father or such other relatives on the paternal side as are available. We accordingly hold that sub-rule (5) of Rule 12 which requires the Vigilance Cell to submit a report only after examining both the parents is mandatory. We, therefore, hold that the Vigilance Cell has acted contrary to the Rules in holding the enquiry and submitting the report. The order of the Caste Scrutiny Committee rests on such a report and is, therefore, vitiated.”

8. In the present case, there is nothing on record to show that the Vigilance Cell had examined the Petitioner's parents or guardians or the Petitioner herself. Rule 12(5) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, is held to be mandatory by the Division Bench. Since the Vigilance Report is not complying with the provisions of Rule 12(5) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, the said Vigilance Cell Report is vitiated. The impugned order is partly based on the Vigilance Cell Report and, therefore, the same is also vitiated.

9. So far as the delay and laches are concerned, we find that the

Petitioner has made following averments in para (8) of the Petition, which reads as under :-

“8. The Petitioner respectfully submits that, since beginning she did not get proper advice to get justice about her caste claim. The Petitioner did not get any sufficient opportunity to prove her caste claim before Respondent No.1-Caste Scrutiny Committee. She does not know to approach the proper Court authority against the order of Caste Scrutiny Committee about invalidation of her caste certificate. The Petitioner's lower Courts Advocate did not advised her properly. Therefore, she could not approach this Hon'ble Court against the order of Caste Scrutiny Committee in time. The Petitioner submits that, after rejection of her suit by the Civil Court and after the refusal of her examination form for 3rd year B.A.M.S. by the University by its order dated 1/4/2016, she came to know to approach to the High Court against the order of Caste Scrutiny Committee first time in the first week of April 2016 from her friend whose caste claim was also rejected by the Caste Scrutiny.”

10. In the light of above averments and, especially, in the circumstances that the Petitioner is appearing for the third and final year examination of the B.A.M.S. course, we are inclined to entertain this Petition by condoning the delay.

11. In the light of above, we dispose of this Petition by passing following order :-

“ORDER”

- (i) The impugned order dated 26th November 2014 passed by Respondent No.1-Divisional Caste Scrutiny Committee, invalidating the Petitioner's Caste Certificate as belonging to the 'Julah' Caste under OBC Category is quashed and set aside and the matter is remanded back to Respondent No.1-Divisional Cast Scrutiny Committee for considering it afresh.
- (ii) Respondent No.1-Divisional Caste Scrutiny Committee shall decide the validity of the Petitioner's Caste Certificate afresh in the light of the observations made here-in-above, after calling for fresh Report from the Vigilance Cell in accordance with the said Rules and upon hearing both the parties.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]