

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9960 OF 2015**

Shahrukh Babasaheb Jamadar	...Petitioner
<i>Versus</i>	
State of Maharashtra & Ors.	...Respondents

Mr. Manoj A. Patil, *for the Petitioner.*
Ms. Sushma Bhende, AGP, *for the Respondents Nos. 1 and 2-State.*

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**
DATED: 29th January 2016

PC:-

1. The contention raised on the earlier occasion and reiterated before us today is that the Committee while scrutinising and considering the claim of the Petitioner as belonging to 'Momin', which is notified as Other Backward Class ("**OBC**") for Muslim Religion has omitted from consideration two vital documents.

2. Our attention is invited once again to the family tree and it is submitted that the ancestor of the Petitioner was one Zairuddin Abdul Jamadar. He had two sons, Babasaheb and Badshah. The Petitioner is the son of Babasaheb. His first cousin Wasim and another cousin sister Reshma are both children of the real brother of the Petitioner's father, namely, Badshah. Thus, Badshah is the

real brother of the Petitioner's father serving as a teacher in a school at Jaysingpur. His children Wasim and Reshma are certified as belonging to Musalman Momin, Other Backward Class and in the case of Reshma, the certificate to this effect has been validated by the Office of the Caste Scrutiny Committee on 20th May 2012. The certified true copy of this was placed before the Committee, together with the family tree.

3. Equally, Wasim Badshah Jamadar has studied in the same school as Reshma. In his school leaving certificate the entry against the column Caste with sub-Caste is Muslalaman Momin (इतर मागासवर्गीय/OBC). Once these documents are omitted from consideration on a specious plea that when the Caste Validity Certificate in favour of Reshma was issued, the order to that effect passed by the Scrutiny Committee does not reflect application of mind and whether any documents or certificates relevant to the claim of Reshma were produced and considered by the said Committee at any time is not clear from the Committee's order. Further, whether the Vigilance Cell report was placed and whether at all any inquiry through the Vigilance Cell was ordered has not been clarified and explained.

4. Mr. Patil, on the earlier occasion and even today, assailed this finding of the Committee by inviting our attention to the Act and the Rules. He would submit that the Rules under the Act were notified in the year 2012. Therefore, when the Committee scrutinized and verified Reshma's claim as belonging to Musalman Momin (OBC), whether there was any requirement of calling for a report from the Vigilance Cell is not clarified by the Committee in

the impugned order. There could not have been one according to Mr. Patil. The second submission is that when the Act was promulgated and brought into force the entire machinery was not made functional so as to assist the Committee with any report and independently submitted on a field inquiry.

5. It is on these contentions and which we also noted in our earlier order passed on 14th January 2016 that we called upon the learned AGP to produce the records of the Committee.

6. The original records have now been perused after production by the learned AGP. We find in the original records a copy of letter addressed by the Petitioner to the Committee requesting it to consider the documents. The Committee indeed had on its file this request in writing. The request was accompanied by several documents including photocopies/certified true copies of the certificates in favour of Reshma and Wasim. Further, reliance is placed on a Government Resolution dated 22nd August 2007 which states that certain guidelines would have to be issued so as to enable the Scrutiny Committee to scrutinize and validate the caste claim. The reference thereto is made so as to support the argument that the Caste Validity Certificates issued to blood relations are extremely germane for the purpose of scrutiny of other relatives' claim. Ordinarily, therefore, such certificates should be respected as they are issued by a competent committee and to the members of the same family, particularly blood relations.

7. We do not, therefore, subscribe to the attempt made by the learned AGP to support the impugned order. In that regard, our

attention is invited to the portion at running page 62 of the impugned order. That makes reference to several documents produced but with regard to the subject documents there is a cryptic finding and which we have adverted to already herein above.

8. Once this Committee was obliged to consider the request of the Petitioner in terms of the Act, the Rules and the guidelines referred above, then, it was incumbent upon it to have rendered a reasoned and conclusive finding on the genuineness and authenticity of the certificates produced and in relation to first cousin of the Petitioner, namely, Reshma. It was also necessary for the Committee to have satisfied itself as to whether the School Leaving Certificate indicating Wasim's caste/sub caste as Musalman Momin (OBC) has indeed been issued and by the School where the said Wasim was admitted and which he left on appearance at the 10th standard examination. We are mindful of the fact that the Scrutiny Committee is not necessarily and always bound by such documents but for discarding them, cogent and satisfactory reasons have to be assigned. The reasons must reflect application of mind by the Committee. The Committee cannot by a general or sweeping observation reject all the Caste Validity Certificates issued to blood relations. In the present case, it is apparent that there is no application of mind. Once the Act was brought in but the mechanism thereunder was put in place not immediately but much later on and there were guidelines issued from time to time by the State not to reject the claims, particularly in Muslim religion merely because the caste or sub caste is not specifically indicated or mentioned in the Certificate then all the more the Committee's responsibility is clear. It is set up in order to

verify and scrutinize the claims for their genuineness. If the claims are genuine and bona fide and supported by material which cannot be discarded, then, we do not see any reason for the Committee to refuse to validate the caste claim. This approach of the Committee has generated further litigation. Since the photocopies and true copies of the certificates in this case would have to be scrutinized for their genuineness and authenticity then we are compelled to remand the case back to the Committee.

9. We are constrained to observe that in such factual aspects, this Court in its writ jurisdiction has to involve itself simply because the Committee's orders fall short of the required standards set in law. The Orders of the Committee on most occasions are cryptic and virtually unreasoned. The orders do not reflect any application of mind. They are perverse when they reject and discard such documents which have strong evidentiary value. It is only a mechanical and routine exercise which is on most occasion stand carried out by the Committee and that is why a Applicant has to carry the matter to higher Courts. That involves expenses to the litigant and wastage of prestigious judicial time of the higher Courts. Therefore, in future we would after setting aside the Committee's order and if the exercise carried out suffers from patent non-application of mind or some deliberate and intentional omission, saddle the Committee's members individually with payment of costs. Let the Committee and its members not invite such an order from this Court hereinafter.

10. The Writ Petition is allowed by setting aside and quashing the impugned order. The matter stands remanded to the Scrutiny

Committee for passing a fresh order after considering all the above material. The Committee shall pass a fresh order assigning reasons meaning thereby a speaking order within a period of three months from today. We will not grant any extension of time and any application requesting for extension of time citing the routine causes and reasons filed mechanically would equally be rejected with heavy costs and imposed individually on the members of the Committee. While passing the fresh order the Committee shall not be influenced by its earlier order.

(G. S. PATEL, J.)

(S. C. DHARMADHIKARI, J.)