

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1094 OF 2016

Vijay Ramchandra Harpale
R/o. Mauje Fursungi, Taluka Haveli,
Dist. Pune.

... Petitioner

V/s

1. State of Maharashtra
(Through Principal Secretary,
Social Justice & Special Assistance
Department, Mantralaya,
Mumbai – 400032.
2. Member Secretary,
Divisional Caste Scrutiny Committee No.3,
office at Jail Road, Behind Commar Zone,
IT Park, Yervada, Pune-6.
3. The Collector, Pune,
office at Collectorate, Pune.
4. Dy. Collector (Land Acquisition No.4)
Sub Divisional Officer,
office at Pune, Dist. Pune.
5. Shri Dattatray Gulab Kamthe,
R/o Mauje Fursungi, Taluka Haveli,
Dist. Pune.
6. Shri Sandeep Namdeo Harpale,
R/o. Mauje Fursungi, Taluka Haveli,
Dist. Pune.

... Respondents

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Mr.Y. S. Jahagirdar, Senior Advocate i/b. Mr. J. G. Reddy for the petitioner.

Mr. V. M. Mali, Asstt. Govt.Pleader for respondent nos.1 to 4.

Mr.Uday Warunjikar a/w. Mr. Satyavrat Joshi i/b. Mr. Laxmikant Shrimangale for respondent nos.5 & 6.

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**CORAM : SHANTANU S. KEMKAR &
PRAKASH D. NAIK, JJ.**

RESERVED ON : 24 NOVEMBER, 2016

PRONOUNCED ON : 13 DECEMBER, 2016

P.C. : (per Prakash D. Naik, J.)

. Rule. Rule made returnable forthwith.

2. Mr. V. M. Mali, Asstt. Govt. Pleader waives service for respondent nos.1 to 4. Mr. Satyavrat Joshi waives service for respondent nos.5 & 6. By consent of counsel for the respective parties, the matter is taken up for final disposal forthwith.

3. The petitioner has invoked the writ jurisdiction of this court under Article 226 of Constitution of India and sought to challenge the order dated 20 January, 2016 passed by the Divisional Caste Scrutiny Committee No.3, Pune, thereby invalidating the Caste Certificate of the petitioner dated 9 January, 2015 issued by respondent no.4 (Deputy Collector (Land acquisition No.4), Sub Divisional Officer, Pune)).

4. The factual matrix of the issues which are required to be adjudicated in the present petition is as follows;

i) The petitioner claims to be a person belonging to Kunbi caste which is recognized as Other Backward Class (“OBC” for short). On the basis of caste claim made by the petitioner, respondent no.4 had issued Caste Certificate dated 9 January, 2015 certifying that the petitioner belongs to Kunbi Caste which is recognized as OBC under Government Resolution dated 13 October, 1967. Respondent no.4 while issuing the said certificate had placed reliance upon several documents put forth by the petitioner. While issuing the said certificate, respondent no.4 had assigned reasons by placing reliance upon the said documents.

ii) The petitioner had contested election at Village Panchayat of Village Fursungi from the Ward reserved for OBC category and he was declared elected on 6 August, 2015 as Village Panchayat Member of Village Fursungi, Taluka Haveli, Dist. Pune. In pursuant to the said election, the caste certificate of the petitioner was sent to the Divisional Caste Scrutiny Committee – respondent no.2 for verification of his caste claim.

iii) The petitioner submitted before the aforesaid Authority the documents viz. school leaving certificate, the school leaving certificate of his father, extract of Birth and Death Register maintained in Village Fursungi in respect of Gulab Shivaj Harpale who is cousin grandfather of the petitioner showing his caste as Kunbi and date of his death as 9

May 1914, extract of Birth and Death register maintained by Fursungi Gram Panchayat in respect of Sahu daughter of Shivram Harpale who was sister of petitioner cousin grandfather. He also placed reliance upon 7/12 extract in respect of ancestral property of the petitioner bearing survey no.29, Village Fursungi which was partitioned amongst the ancestors’.

iv) Respondent no.6 submitted a complaint before respondent no.2 alleging that the petitioner does not belong to Kunbi (OBC caste). The complainant sought to rely upon certain documents to falsify the claim of the petitioner and to disapprove the documents of relatives relied upon by the petitioner.

v) The petitioner further submitted documents to counter the objections of respondent no.6. The respondent no.2 forwarded the matter to Vigilance Cell. Pursuant to that the Vigilance Cell conducted thorough enquiry and after going through the documents and record the Vigilance Cell submitted its report to the Committee on 20 October, 2015 confirming the caste claim of the petitioner.

vi) The respondent no.2, issued a show cause notice dated 1 December, 2015 to the petitioner stating that the school records of the petitioner and his father show that the caste of the petitioner as “Hindu Maratha” . The said show cause notice was served upon the petitioner on 6 December, 2015. He was called for an enquiry by respondent no.2 on 15 December, 2015.

vii) The petitioner submitted his written reply to the aforesaid show cause notice and tendered detailed explanation in respect to the objections raised in show cause notice. The said reply was tendered on 29 December, 2015. Alongwith reply the petitioner also submitted certain documents in support of his claim. The matter was kept for hearing on 4 January, 2016 before the Committee. On that day, respondent no.6 tendered documents before the Committee. He also tendered written submissions.

viii) Considering the voluminous documents filed by respondent no.6 before the Committee. The petitioner sought time to go through the documents submitted by respondent no.6 for giving appropriate clarification / reply. The committee did not grant time to the petitioner to peruse the documents and the case was closed for orders. The petitioner then submitted his written submissions and additional documents on 29 December, 2015.

ix) After going through the documents and written submissions tendered by the complainant, the petitioner made an application before the committee on 19 January, 2016 with the request to allow the petitioner to submit important documents in support of his claim. According to petitioner the documents were not accepted on 19 January 2016. On 20 January, 2016, the petitioner submitted an application alongwith number of documents before the committee. He placed reliance upon the several documents. He submitted about 22 school leaving certificates of his family members such as his cousin, cousin uncle, cousin grandfather, cousin great grandfather etc. to show

that his family belongs to Kunbi caste and that those certificates are of pre-independence era. He also tendered 7/12 extract in respect of his ancestral property. He submitted the said documents on 20 January 2016 in addition to the various documents submitted by him earlier. The said documents are annexed to this petition. On the same day i.e. 20 January, 2016, respondent no.2 passed an order, rejecting the petitioner caste claim that he belongs to Kunbi (OBC Caste) and had invalidated the caste certificate issued to him on 9 January 2015.

5. The petitioner has therefore moved this Court challenging order dated 20 January 2016, passed by respondent no.2 invalidating the caste certificate of the petitioner.

6. Learned Senior advocate Shri Jahagirdar appearing for the petitioner has submitted that there is total non application of mind on the part of the Caste Scrutiny Committee while passing the impugned order. He submitted that the Scrutiny Committee has not taken into consideration the Vigilance report supporting the claim of the petitioner in proper perspective. He submitted that the Vigilance Cell has verified the authenticity of the documents relied upon by the petitioner and had opined that the claim of the petitioner is genuine. He submitted that the authority has not considered the voluminous documents relied upon by the petitioner which establishes his claim that he belongs to Kunbi (OBC Caste). He submitted that the impugned order was passed by violating the principle of natural justice. The petitioner is not afforded proper opportunity of hearing and the authority has proceeded to pass the impugned order. He submitted that the complainant had

filed documents on record while objecting to the caste claim of the petitioner. The petitioner had sought time to scrutinize the said documents. However, the Committee without accepting the request closed the case for orders. He further submitted that after going through the documents placed on record by the complainant, the petitioner submitted his application dated 20 January 2016 and tendered voluminous documents which established his caste claim. According to him surprisingly the committee proceeded to pass order on 20 January 2016 itself, by overlooking the said documents. He submitted that the petitioner is not afforded opportunity to put forth his case qua the said documents. He, therefore, submitted that the impugned order deserves to be set aside. He submitted that the documents on record which were placed before this Scrutiny committee which are part of the petition are sufficient to establish that the petitioner belongs to Kunbi (OBC Caste). He, however, alternatively submitted that this court may remand the case back to the Scrutiny Committee, for a fresh consideration by setting aside the impugned order.

7. Shri Warunjikar, learned counsel appearing for respondent nos. 5 and 6 had opposed the submission made by the petitioner's counsel. He has placed reliance upon an affidavit-in-reply filed on behalf of respondent no.6 wherein he had relied upon documents which according to him, falsify the claim of the petitioner. He also tendered the compilation consisting of several documents which were relied upon by respondent no.6 before the Scrutiny Committee which counter the claim of the petitioner. He submitted that the report of the

Vigilance Cell is not final approval for establishing the claim of the caste certificate. He submitted that the report is not binding on the Scrutiny Committee. He submitted that the Vigilance Cell's enquiry is meant for assisting the Scrutiny Committee. He submitted that the Scrutiny Committee had analysed the material on record and had given cogent reasons which are reflected in the impugned order. He submitted that the petitioner has failed to prove that he belongs to a Kunbi caste. The school leaving certificate produced by him show that he belongs to 'Hindu Maratha caste'. He submitted that other documents filed by him do not fortify the claim of the petitioner. He placed reliance on the documents which falsify the documents relied upon by the petitioner. He further submitted that this court may scrutinize the material on record which would show that the petitioner has not made out his case that he belong to Kunabi (OBC Caste). He submitted that the documents relied upon by the petitioner in support of his caste claim and purportedly establishing his relationship with the persons whose documents are related are doubtful which is established by respondent no.6 by producing documents. He relied upon the decision delivered by this court in ***writ petition no.8537 of 2015 in Atul Tukaram Patil vs. State of Maharashtra and others.*** He submitted that in said decision, this court has rejected the claim of the petitioner therein, which was based on similar facts as in the present case.

8. Learned Asstt. Govt. Pleader, supported the impugned order, he submitted that the Committee has analysed the material on record and has arrived at conclusion which does not warrant any interference.

9. We have perused the documents on record. We have given our anxious consideration to the submission made by both the parties. However, we are of the opinion that the case requires to be remanded back to the Scrutiny Committee for a fresh consideration. We are, therefore, not expressing any opinion on the merits of the case. It would be appropriate not to give any findings whether the documents relied by either parties are genuine or support their case. The reason for remanding the case back to the Scrutiny Committee is to give an opportunity to the petitioner to put up his case by relying upon the documents which are referred to hereinabove. From the facts narrated hereinabove, it is apparent that the Vigilance Cell has supported the claim of the petitioner. We have also noticed that the complainant had tendered the documents which were required to be countered by the petitioner. The Scrutiny Committee however instead of granting time, closed the case for orders. However, thereafter the petitioner had tendered voluminous documents in the nature of 22 school leaving certificates of his relations and extracts of properties in support of his claim. The said documents were tendered on 20 January 2016. However, on the same day, respondent no.2 passed the impugned order. The said documents were apparently not considered. Obviously, there was no opportunity to the petitioner to put forth his case qua the said documents. The Committee ought to have given proper opportunity to the petitioner to prove his relationship with his ancestors whose extracts of Birth and Death Registers of pre-independence era were produced by the petitioner in the form of school leaving certificates etc. We are, therefore, of the opinion that in consonance with the principles of natural justice an opportunity ought

to be given to the petitioner to put up his case in proper perspective by relying upon the material in the form of the documents which are stated hereinabove before the Scrutiny Committee. It is true that Vigilance report is not binding on the Scrutiny Committee. However, the Committee may consider the opinion of the Vigilance Cell in the light of the documents relied upon by the petitioner. We are making it clear that it may not be construed that this court has accepted the report of the Vigilance Cell and/or the genuineness of the documents tendered by either side. The Committee may take appropriate decision, on its own merits.

10. We are, therefore, inclined to quash and set aside the impugned order dated 20 January, 2016 passed by respondent no.2 and remand the matter back to the said respondent/Committee for a fresh consideration of the caste claim of the petitioner. The Committee may look into the submissions of both sides alongwith the documents referred to by the petitioner and the respondent in this petition as well as before the Scrutiny Committee, and may pass a fresh order on its own merits. We may not be understood to have expressed any opinion on the merits of the order passed by respondent no.2 as we are setting aside the impugned order only on the ground that proper opportunity of hearing is not given to the petitioner. The Committee will decide the matter a fresh on its own merits in accordance with law without being influenced by any observations made in this order. Hence, we pass the following order:

ORDER

1. The petition is partly allowed.
2. The impugned order dated 20 January 2016 passed by respondent no.2 invalidating the caste claim of the petitioner and his caste certificate dated 9 January 2015 is quashed and set aside.
3. The matter is remanded to respondent no.2 for passing a fresh order in accordance with law and in consonance with observations made hereinabove, after hearing the petitioner as well as respondent nos.5 and 6 within a period of three months from 16 December, 2016
4. The parties are directed to appear before respondent no.2 Committee on 16 December, 2016 at 11.00 am
5. The interim order passed by this Court on 25th January, 2016 shall continue till the decision of the Scrutiny Committee.
6. It is clarified that this court has not expressed any opinion on the merits of the petitioner's claim.
7. With aforesaid directions, the petition is disposed of.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)