

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3535 OF 2013

Jahangir Gani Patekari]
Age : 40 years, Occ.: Business,]
R/of Jawaharnagar, Ichalkaranji,]
Dist. Kolhapur.] Petitioner

Versus

1. Divisional Caste Scrutiny Committee No.2,]
Dr. Babasaheb Ambedkar Social Justice]
Bhavan, 2nd Floor, Vichare Maal, Kolhapur.]
]]
2. District Collector, Kolhapur,]
Swaraj Bhavan, Nagala Park, Kolhapur.]
]]
3. Ichalkaranji Municipal Council,]
Ichalkaranji, Rajwada Chowk,]
Ichalkaranji, Kolhapur.]
]]
4. Vitthal Pundalik Chopade]
Aged 36 years, Occu.: Business,]
R/of 10/437, Vikramnagar, Ichalkaranji,]
Dist. Kolhapur.] Respondents

ALONG WITH
CIVIL APPLICATION NO.1029 OF 2013
IN
WRIT PETITION NO.3535 OF 2013

Vitthal Pundalik Chopade]
Aged – 36 years, Occu.: Business]
R/of 10/437, Vikramnagar, Ichalkaranji,]
Dist. Kolhapur.] Applicant

In the matter between

Jahangir Gani Patekari] Petitioner

Versus

Divisional Caste Scrutiny Committee No.2 & Ors.] Respondents

AND
CIVIL APPLICATION NO.309 OF 2014
IN
WRIT PETITION NO.3535 OF 2013

Jafar Rasul Mujawar]
Age – 28 years, Occu.: Business]
R/of 3/792, Mujawar-Gali, Gavbhag,]
Ichalkaranji, Tal. Hatkanangle, Dist. Kolhapur.] Applicant

In the matter between

Jahangir Gani Patekari] Petitioner

Versus

Divisional Caste Scrutiny Committee No.2 & Ors.] Respondents

Mr. A.V. Anturkar, Sr. Advocate, i/by Mr. Rahul P. Walvekar, for the Petitioner.

Mr. P.G. Sawant, A.G.P., for Respondent Nos.1 and 2.

Mr. T.S. Ingale for Respondent No.3.

Mr. A.Y. Sakhare, Sr. Advocate, i/by Mr. P.P. Kulkarni, for Respondent No.4 and the Applicant in Civil Application No.1029 of 2013.

Mr. S.A. Rajeshirke for the Applicant in Civil Application No.309 of 2014.

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

DATE : 29TH MARCH 2016.

ORAL JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. Rule. Rule is made returnable forthwith. Heard finally, by consent of both the parties.

2. As the Caste Certificate of the Petitioner showing him to be

belonging to “BAJIGAR-6 Community”, that of OBC Muslim, is invalidated by the Caste Scrutiny Committee, by its order dated 5th April 2013, being aggrieved thereby, the Petitioner has preferred this Writ Petition.

3. The main and the only plank of submission advanced by learned Senior Counsel for the Petitioner is that the Caste Scrutiny Committee had not given any weightage to the Caste Validity Certificate issued by the Committee in favour of Petitioner's real paternal cousin, namely, Afasar-Badashaha Badesaheb Pattekari, in the year 2008. It is urged that the said Caste Validity Certificate of Petitioner's real cousin is discarded merely by observing that each case has to be decided on its own merits. It is urged that the Caste Scrutiny Committee has not given any reasons as such for rejecting the Caste Validity Certificate of Petitioner's cousin. It is urged that, only when the earlier Caste Validity Certificate is obtained by fraud, it can be discarded and not otherwise. Here in the case there was no allegation that the Caste Validity Certificate of Petitioner's cousin was obtained fraudulently or otherwise. In such situation, according to learned Senior Counsel for the Petitioner, it was incumbent on the Caste Scrutiny Committee to offer valid reasons for rejection of the Petitioner's claim and hence, according to him, the impugned order of the Caste Scrutiny Committee needs to be quashed and set aside.

4. To substantiate his submissions, learned counsel for the Petitioner has relied upon various authorities, like, in ***Vitthal P. Chopade Vs. State of Maharashtra & Ors. (in Civil Writ Petition No.736 of 2012, dated 25th September 2012, Coram : S.A. Bobde and R.G. Ketkar, J.J.); Varsha Ramsing Dhanavat Vs. State of Maharashtra & Ors., 2006 (4) Mh.L.J. 676); Kumari Kavita D/o. Baliram Wagh Vs. The State of Maharashtra, Department of Tribal Development, through its Secretary & Ors., 2010 (3) ALL MR 97); Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra & Ors., (1996) 3 SCC 685; Nillappa Mangleshwar Umbarje Vs. State of Maharashtra & Ors., 2010 (4) Bom.C.R. 433; and Sayanna Vs. State of Maharashtra & Ors., (2009) 10 SCC 268.***

5. Per contra, the submission of learned Senior Counsel for Respondent No.4 is that the Caste Scrutiny Committee has granted the Caste Validity Certificate in favour of the Petitioner's real cousin, without holding the vigilance inquiry and without recording any reasons for granting such Certificate. Therefore, the said Caste Validity Certificate was not rightly relied upon by the Caste Scrutiny Committee, while deciding the claim of the Petitioner. It is urged that the impugned order contains valid reasons on which the claim of the Petitioner is denied.

6. The learned Senior Counsel for Respondent No.4 has also relied upon the various authorities including that of ***Kumari Madhuri Patil and Anr. Vs. Additional Commissioner, Tribal Development and Ors., (1994) 6 SCC 241*** and others.

7. In the case of ***Madhuri Patil (Supra)***, which is relied upon by both the learned Senior Counsels, the Supreme Court has laid down various guidelines for verification of Caste Certificate by the Caste Scrutiny Committee, which are subsequently incorporated under the provisions of 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. As per the said procedure, the Caste Scrutiny Committee is required to call for the Report of the Vigilance Cell.

8. As the claim of the Petitioner in this case is based entirely on the Caste Validity Certificate issued in favour of his real paternal cousin Afasar-Badashaha Badesaheb Pattekari, it becomes necessary to know whether the said procedure was followed and complied with when the Caste Validity Certificate was issued in favour of the Petitioner's cousin.

For that purpose, learned A.G.P. was directed to procure the record of the caste scrutiny case in respect of Petitioner's cousin Afasar-Badashaha Badesaheb Pattekari. The said record is produced and it reveals that, though an endorsement is appearing therein that Caste Validity Certificate was issued on the basis of the Report of the Vigilance Cell, the record does not contain the Report of the Vigilance Cell. A statement is also made at the bar by learned Senior Counsel for Respondent No.4 Mr. A.Y. Sakhare that, when the application under Right to Information Act, 2005, was made for the copy of the Vigilance Cell Report, it was informed that the said Report is not available in the record. Hence, it necessarily follows that the requisite statutory compliance, that of, taking into consideration the Report of the Vigilance Cell, was not made when the Caste Validity Certificate was issued in favour of the Petitioner's cousin Afasar-Badashaha Badesaheb Pattekari.

9. Moreover, the perusal of the said Certificate also does not disclose the reasons. Though learned Senior Counsel for Petitioner has submitted that requirement of recording reasons is applicable only when claim of Caste Validity Certificate is rejected, we are not inclined to accept the said submission as giving of reasons is a mandatory requirement, even so as to follow the principles of natural justice and it is one of the fundamentals

to good administration. Therefore, as held by our own High Court in the case of **Neha Vinayak Patil Vs. State of Maharashtra and Ors.** (Civil Writ Petition No.5632 of 2013, order dated 4th December 2014 passed by the Division Bench of A.S. Oka & A.S. Gadkari, J.J.), when there are no reasons recorded by the Caste Scrutiny Committee and there is no application of mind reflected in the order, then such Caste Validity Certificate alone cannot be a basis for issuing Caste Certificate in favour of the Petitioner.

10. As held by our own High Court in the case of **Ankush Balaji Lad Vs. State of Maharashtra & Ors., 2002 (6) Bom.C.R. 201**, relied upon by learned Senior Counsel for Respondent No.4, though the Caste Certificate issued to a person is relevant while considering a claim made by his relative, that may not be conclusive in every case. If the Certificate is issued without obtaining Report of Vigilance Cell or in breach of the Supreme Court Guidelines laid down in the matter of **Madhuri Patil (Supra)**, much probative value cannot be attached to such Certificate.

11. In the instant case, therefore, there is no evidence proving that the Report of Vigilance Cell was called for when Caste Validity Certificate was issued in favour of Petitioner's cousin. Moreover, as the order granting

Caste Validity Certificate to the Petitioner's cousin - Afasar-Badashaha Badesaheb Pattekari, does not disclose any reasons for such order. Hence, it has to be held that the Caste Scrutiny Committee, in the present case, has rightly refused to place reliance on the said Certificate and considered Petitioner's case independently on its own merits.

12. As regards the second contention of learned Senior Counsel for the Petitioner that the Committee has not given any reasons for refusing to place reliance on the Certificate of his cousin, this contention also cannot be accepted as the impugned order clearly reflects that the Committee has considered the Certificate of Petitioner's cousin and also all other evidence produced by the Petitioner and thereafter invalidated his Caste Certificate.

13. In our considered opinion, therefore, this Writ Petition is devoid of merits and hence stands dismissed. Rule is discharged.

14. In view of the above, Civil Application No.1029 of 2013 and Civil Application No.309 of 2014 pending in the Petition do not survive and the same stand disposed of accordingly.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]