

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

WRIT PETITION 5687 OF 2016

Shri Sandip Vilas Nejdar

Age: 41 years, Occ: Agriculture/Business

Rp/. 446, E Ward, Hanuman Galli,

Kasba Bawada, Tal: Karveer, Dist: Kolhapur

...Petitioner

Vs.

1. State of Maharashtra
[Summons to be served on the
Learned Government Pleader appearing
for State of Maharashtra
under Order XXVII, Rule 4, of the
Code of Civil Procedure, 1908]

2. Divisional Caste Certificate
Scrutiny Committee No. 2,
Dr.Babasaheb Ambedkar
Social Justice Bhavan,
2nd floor, Vichare Mal,
District : Kolhapur.

3. Kolhapur Municipal Corporation.
Through the Commissioner,
[Summons to be served on the
Municipal Commissioner,
Kolhapur Municipal Corporation,
'C' Ward, Bhausingji Road,
Kolhapur – 416001.]

4. The Sub Divisional Officer,
Tal – Karveer, Dist. - Kolhapur,
[Summons to be served on the
Learned Government Pleader appearing for

State of Maharashtra under
Order XXVII, Rule 4, of the
Code of Civil Procedure, 1908]

.. Respondents

Mr. S.M. Gorwadkar, Senior Advocate
a/w. Mr. S.R. Ganbhavale, Advocate for the Petitioner
Mr. A.B. Vagyani, Government Pleader
a/w. Ms. M.P. Thakur, AGP
Ms. Tintina Hazarika, Advocate for Respondent Nos. 1 & 2
Mr. A.M. Adagule, Advocate for Respondent No.3

**CORAM : SHANTANU S. KEMKAR &
M.S. KARNIK, JJ.**

**RESERVED ON : 4TH AUGUST, 2016
PRONOUNCED ON : 10TH AUGUST, 2016**

ORDER (PER MR. M.S. KARNIK, J.):

1. The Petitioner by way of this Petition is challenging the order dated 6th May, 2016 passed by the Respondent No.2 the Divisional Caste Certificate Scrutiny Committee No.2, Kolhapur thereby invalidating the caste claim of the Petitioner as belonging to the 'Hindu-Kunbi' caste. The Petitioner is also challenging the consequential order dated 6th May, 2016 passed by the Respondent No.3 disqualifying the Petitioner as the Councilor of the Kolhapur Municipal Corporation.
2. The Petitioner was elected as a Councilor from Ward No.2 in

the general elections of the Respondent Corporation which were held in November, 2015. The Petitioner's caste certificate of Hindu-Kunbi as belonging to the Other Backward Class was referred for validation to the Respondent No.2 Committee.

3. Before the Scrutiny Committee the Petitioner relied upon various documents to prove his claim as belonging to the Hindu-Kunbi caste. One of the vital document relied upon is the birth register, wherein the caste of the Petitioner's father's father's sister is shown as Kunbi. The Petitioner also relied upon sale deed of 1932 and the genealogy produced to support his claim.
4. The Vigilance Cell submitted a report wherein it is stated that there does not appear any interpolation, change in ink in the original birth register in respect of the documents that are relied upon by the Petitioner. Even in respect of the Birth Death Extract of the daughter of Dadu Nejdar, which is relied upon by the Petitioner, the same is in conformity with the original record. The Vigilance Cell recorded the statements of the permanent residents of the place of residence of the Petitioner ie., Kasba Bawada, Tal: Karveer, Dist: Kolhapur and made inquiries as contemplated by the

provisions of Rule 13(2)(a) and (b) of the Maharashtra Scheduled Castes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (hereinafter referred as “Rules of 2012” for short).

5. The Vigilance Cell recorded the statements of Tukaram Rajaram Patil and Babu Krushna More in respect of the caste claim of the Petitioner. Vigilance Cell thus reported in favour of the Petitioner.
6. The learned Senior Counsel for the Petitioner contended that the documentary evidence produced on record is sufficient to prove the caste claim of the Petitioner as belonging to Hindu-Kunbi.
7. According to the learned Senior Counsel, the Respondent No.2 Committee was not justified in holding that the Petitioner has failed to establish his case on the basis of the documentary evidence. The learned Senior Counsel submits that the Vigilance Cell Report is in favour of the Petitioner and the said report has not at all being considered by the Respondent No.2 Committee. According to the

learned Senior Counsel the Respondent No.2 Committee has discarded the Vigilance Cell Report only because the Petitioner has failed to prove his claim on the basis of the documentary evidence on record. The Respondent No.2 Committee ought to have adverted to the Vigilance Cell Report and in any case give its reasons for discarding the same.

8. On the other hand the learned Government Pleader while supporting the impugned order passed by the Respondent No.2 contends that the findings recorded by the Vigilance Cell are not binding on the Scrutiny Committee as Vigilance Cell inquiry is meant for internal assistance to the Scrutiny Committee nor can it be used as evidence in support of the claim. It is submitted by the learned Government Pleader that the Petitioner has miserably failed to prove his claim and that the Respondent No.2 Committee has properly appreciated the entire material on record while coming to the conclusion that the Petitioner has failed to prove his caste claim. According to the learned Government Pleader the Respondent No.2 Committee having found that the Petitioner's caste claim is not established on the basis of the documentary evidence on record, the Respondent No.2 Committee was justified in discarding the

Vigilance Cell Report. The learned Government Pleader took us through the impugned order to contend that the order is a well reasoned order and no interference, therefore, is warranted.

9. Though the learned Government Pleader has taken us through the impugned order we did not find any reason given by the Respondent No.2 Committee for discarding the Vigilance Cell Report. According to the Respondent No.2 Committee, the Petitioner failed to establish his caste claim on the basis of documentary evidence and as the Vigilance Cell Report is not binding on the Committee, the same is discarded.

10. We may note here that the issue as regards the Respondent No.2 Committee giving reasons before discarding the Vigilance Cell Report was subject matter of Writ Petition No. 5699 of 2016. It has been held that the detailed procedure provided by the Rules, clearly demonstrate that the Vigilance Cell inquiry is not a mere formality but is meant to effectively assist the Committee in determining the caste claim. Sub Rule 7 of Rule 17 of the said Rules requires the Committee to give reasons before discarding the Vigilance Cell Report.

11. In the present case also we find that the Respondent No.2 has discarded the Vigilance Cell Report only because the same is not binding on the Scrutiny Committee and as the Petitioner has failed to prove his case on the basis of the documentary evidence on record. We find that the Scrutiny Committee has just brushed aside the Vigilance Cell Report without adverting to the same and recording its reasons for discarding it.

12. We, therefore, quash and set aside the impugned order and remand the matter back to respondent No.2 – Committee for a fresh consideration of the caste claim. The Committee may pass a fresh order on its own merits after complying with the provisions of the sub-Rule 7 of Rule 17 of the said Rules of 2012. 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 of non compliance of the provision of sub-Rule 7 of Rule 17 before discarding the report of the Vigilance Cell. The Committee will decide the matter afresh on its own merits in accordance with law without being influenced by any observations made in this order.

ORDER

1. The impugned order dated 6th May, 2016 passed by respondent No.2 is quashed and set aside.
2. The matter is remanded back to respondent No.2 for passing a fresh order in accordance with law and after hearing the petitioner within a period of 6 weeks from today.
3. The consequential order of disqualification is set aside.
4. No order as to costs.
5. Writ Petition is accordingly disposed of.

(M.S. KARNIK, J.)

(SHANTANU S. KEMKAR, J.)