

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

WRIT PETITION 5700 OF 2016

Shri Deepa Dilip Magdum
Alias Kum. Rekha Marutirao Chorge
Adult, Residing at Plot No.27,
Old More Colony, Near Sambhaji Nagar,
S.T. Stand, Kolhapur, District: Kolhapur. ...Petitioner

Vs.

1. State of Maharashtra
Through its Secretary, Social Justice
Department, mantralaya, Mumbai-32.

2. Divisional Caste Certificate
Scrutiny Committee No. 2, Kolhapur
through its Member Secretary, having
its office at Dr.Babasaheb Ambedkar
Samajik Nyay Bhavan, 2nd floor, Vichare Mal,
District : Kolhapur.

3. Kolhapur Municipal Corporation.
Through the Commissioner,
Having its office at Kolhapur,
District: Kolhapur.

4. The Sub Divisional Officer (Revenue)
Karveer Sub Division, Karveer,
District Kolhapur.

5. State Election Commissioner
Maharashtra State, having its office
at New Administrative Building
Opp. Mantralaya, Mumbai-21. .. Respondents

Mr. R.K. Mendadkar, 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 & 5
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 challenge in the present Petition is to an order dated 9th May, 2016 passed by the Divisional Caste Certificate Scrutiny Committee No. 2, Kolhapur (hereinafter referred to as the Committee for short) thereby invalidating the caste claim of the Petitioner as belonging to the “Kunbi” caste, which is recognised as Other Backward Class category. The Petitioner also challenges the consequential order dated 10th May, 2016 passed by the Respondent No.3 Kolhapur Municipal Corporation disqualifying the Petitioner as the Councilor.
2. The Petitioner was granted caste certificate by the Respondent No.4 The Sub Divisional Officer (Revenue), Karveer Sub Division, Karveer, District Kolhapur Competent Authority on 4th September,

2015 certifying that the Petitioner belongs to the “Kunbi” caste. The Petitioner contested election to the Respondent No.3 Municipal Corporation from Ward No.70 which was reserved for Other Backward Class citizens – women. The Petitioner's case was referred to the Respondent No.2 Committee for verification of her caste claim. The Petitioner relied upon various documents in support of her caste claim. The Petitioner relied upon her own school leaving certificate, the school leaving certificate of her brother by name Nandkumar Marutirao Chorge showing his caste as “Hindu-Kunbi” as on 1st March, 1950. The Petitioner also relied upon a true translation of document in Marathi in relation to School record of Bhau Bala Chorge who is the grandfather of the Petitioner from her paternal side where his caste is recorded as “Shudra”. The said document which is in “Modi Script” has been translated into Marathi.

3. The Petitioner also relied on some more documents to support her caste claim. The Respondent No.2 Committee referred the matter to the Vigilance Cell for conducting home, school and domestic inquiry. Report dated 9th February, 2016 was submitted by the Vigilance Cell to the Respondent No.2 Committee.

4. Perusal of the Vigilance Cell Report indicates that the Vigilance Cell examined the original school record in relation to the Petitioner, her elder brother Nandkumar Marutirao Chorge and found that the entries therein are correct. The Vigilance Cell found that there is neither erasing nor difference in ink and handwriting in the said school records. The statements of Shri Tukaram B. Chorge aged 85 years and Shri Kishore Shinde also came to be recorded who have given information in relation to the traditional occupation of the family of the Petitioner and peculiar trades, characteristics and sociocultural affiliation. Said persons stated that the Petitioner belongs to the “Kunbi” caste. The Vigilance Cell Report thus favours the claim of the Petitioner.

5. Pursuant to the Respondent No.2 Committee issuing show cause notice dated 3rd March, 2016 calling upon the Petitioner why her caste certificate should not be invalidated, the Petitioner furnished a detailed genealogy of her family pointing out her relationship with Nandkumar Marutirao Chorge and Bhau Bala Chorge and according to the Petitioner her relationship is proved on the basis of records of rights maintained by the Revenue Authority. The Petitioner placed

reliance upon the Revenue Records to establish relationship with these two persons. The Petitioner also relied upon a Government Resolution dated 16th October, 1985 to contend that since school records of her brother Nandkumar Marutirao Chorge shows caste as “Kunbi” she is also entitled to get caste validity certificate.

6. According to the Petitioner after the matter was closed for orders the Respondent No.2 Committee again issued show cause notice on 29th April, 2016 alleging that in the school admission register in relation to her brother Nandkumar Marutirao Chorge, at serial No.259 there are two entries: one is in relation to Nandkumar Marutirao Chorge and another is in relation to Durgappa Laxman Mane; and in relation to entry in regard to Nandkumar Marutirao Chorge the ink and handwriting is different. The Petitioner was, therefore, called upon to show cause as to why her caste certificate should not be invalidated.

7. The Petitioner filed a detailed reply to the show cause notice on 18th April, 2016. Apart from the various contentions raised by the Petitioner in reply to the show cause notice, the Petitioner also contended that a second show cause notice was not contemplated by

the Rules.

8. According to the Petitioner the Respondent No.2 Committee has not appreciated the documentary evidence produced on record in its correct perspective and that the decision of the Committee is illegal and erroneous.
9. Learned Counsel for the Petitioner contended that without adverting to the Vigilance Cell report which was in favour of the Petitioner and assigning any reason whatsoever, the Committee was not justified in discarding the Vigilance Cell Report in the manner as has been done in the present case.
10. In the submission of the learned Counsel for the Petitioner the Committee has proceeded to discard the Vigilance Cell Report only because the Petitioner could not prove her case on the basis of the documentary evidence on record.
11. Per contra the learned Government Pleader appearing for Respondent No.2 supported the impugned order. He took us through the impugned order and submitted that the Vigilance Cell

report is only for internal assistance to Respondent No.2 Committee and the same cannot be read as evidence. Learned Government Pleader contended that there has been interpolation in the registers and that the Respondent No.2 has upon appreciation of the material on record correctly arrived at the finding that the Petitioner could not prove her caste claim. According to the learned Government Pleader the order passed by the Respondent No.2 Committee is a well reasoned order and hence, does not warrant any interference at the hands of this Court. The learned Government Pleader would contend that the Petitioner having failed to prove her case on the basis of the documentary evidence on record, Respondent No.2 Committee was justified in discarding the report of the Vigilance Cell Report.

12. On perusal of the impugned order we find that the Respondent No.2 Committee has not at all adverted to the report of the Vigilance Cell. The Committee has discarded the Vigilance Cell report only on the ground that the Petitioner has failed to establish her claim on the basis of the documentary evidence on record.

13. The issue as regards Sub Rule 7 of Rule 17 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) which requires the Committee to give reasons before discarding the Vigilance Cell Report was the subject matter in Writ Petition No. 5699 of 2016 which was decided on 5th August, 2016. It has been held that the detailed procedure provided by the Rules, clearly demonstrates that the Vigilance Cell inquiry is not a mere formality but it meant to assist the Committee for determining the caste claim and therefore, Sub Rule 7 of Rule 17 requires the Committee to give reasons before discarding the Vigilance Cell Report.

14. In the present case also we find that the Respondent No.2 has discarded the Vigilance Cell Report by giving reason that 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.

15. 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 9th 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.)