IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11237 OF 2016

Junaid Mukeshraj Gandhi (Minor)
through his father Mukeshraj Gajanan Gandhi Petitioner
versus
State of Maharashtra and others Respondents

Mr.S.M.Gorwadkar, Senior Advocate, with Mr.K.T.Pawar for Petitioner.
Mr.S.B.Kalel, AGP, for Respondents 1 to 3.
Mr.S.D.Oak for Respondent no.4.

CORAM : SHANTANU S. KEMKAR AND
PRAKASH D. NAIK, JJ.

DATE : 25th November 2016

PC :

1. Not on board. Production of papers is allowed at 3.00 p.m.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioner has assailed the order dated 16.06.2016 passed by the Divisional Caste Certificate Scrutiny Committee No.3, Pune (Respondent No.2) whereby the Petitioner's claim for caste validation has been rejected. The petitioner claims that his relatives as described in column no. 11 of the impugned order has already been granted caste validity certificate holding him to be of caste "*Gujar*". According to the learned counsel appearing for Petitioner, the decision runs contrary to the Division Bench judgment of this Court in the case of **Apoorva Vinay Nichale vs. Divisional Caste**

Certificate Scrutiny Committee No.1 and others[1], which was based upon the Supreme Court judgment passed in the case of **Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar and others**[2].

3. On the other hand, the learned AGP has supported the impugned order.

4. Having considered the submissions and having gone through the order passed by the Division Bench of this Court in the case of **Apoorva Vinay Nichale** (supra), we find that the Division Bench has in paragraphs 7 and 9 observed thus :

> *"7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.*
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> *9. In the present case, we find that the committee has disbelieved the petitioner's case that she belongs to Kanjar Bhat after calling the school leaving certificate of Petitioner's father and noticing that the original caste written on it was 'Thakur' and that was subsequently changed to Kanjar Bhat. The committee observed that the caste has been changed without complying with the procedure prescribed by section 48(e) and 132(3) of Mumbai Primary Education Act.*

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1 2010(6) Mh.L.J. 401

2 (2008) 9 SCC 54

> *In fact, the caste has been changed on the basis of the affidavit. From the findings of the committee it appears that the committee has observed that the change of caste has been one illegally. Obviously, the committee which decided the caste claim of the petitioner's sister did not hold the same view, otherwise it would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent cast claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the Petitioner."*

5. Thus in our considered view, the reason assigned by the Respondent No.2 – Committee for rejection of the Petitioner's claim cannot be sustained as it runs contrary to the view taken by the Division Bench of this Court in the case of Apoorva Vinay Nichale (supra). In the circumstances, we set aside the impugned order dated 16th June 2016 and remand the matter back to the Committee for deciding the Petitioner's caste validity claim afresh keeping in view

the certificates of his relatives as described in column no. 11 of the impugned order, as also keeping in view the law laid down by the Division Bench of this Court in the case of Apoorva Nichale (supra).

6. The Petitioner to appear before the Committee on 21.12.2016 at 11.00 a.m.

7. The Committee to take appropriate decision as aforesaid within three months from the date of Petitioner appearing before the Committee.

8. Till the matter is decided by the Committee, no coercive steps be taken against petitioner and he shall be allowed to pursue his studies and he be allowed to appear for the examination of first year of the course.

9. The Petition stands disposed of as such.

(PRAKASH D. NAIK, J.) (SHANTANU S. KEMKAR, J.)

MST