

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5340 OF 2016

Imran Dilawar Hydrabade

.... Petitioner

Vs.

Divisional Caste Certificate Scrutiny
Committee No.2 & Others

.... Respondents

Mr. Mujahid S. Ansari i/by Mr. Rahimtulla M. Momin
for the Petitioner.

Ms Sushma Bhende, AGP, for the Respondent Nos.1
and 2.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : JULY 11, 2016

P.C:

1. This writ petition is directed against an order passed by the Divisional Caste Scrutiny Committee No.2, Kolhapur, dated 28-8-2015. The petitioner laid a claim of belonging to "Kasai", Other Backward Class (OBC). It is a common ground that the petitioner is a student. He proceeded against the respondent Nos.1 and 3 essentially because he was taking admission at the respondent No.3-College. While taking such

admission and against a reserved seat, the petitioner was informed that merely on the strength of a Caste Certificate issued now by the Deputy Collector & Special Land Acquisition Officer No.1, Sangli will not be enough and upon taking admission, his caste scrutiny would have to be undertaken by a Competent Committee in terms of Act XXIII of 2001 of the State Legislature.

2. The petitioner was admitted in Mechanical Engineering in Government Polytechnic, Miraj. He, thereafter, completed his Diploma successfully and took admission in the Second Year of the said Bachelor of Engineering in OBC category. Prior to joining the third respondent-College, the Principal of the Government Polytechnic, Miraj, had forwarded the petitioner's Caste Certificate for scrutiny and verification by the Competent Committee. The petitioner was awaiting the result of such scrutiny and verification by the Committee, but that was not forthcoming. That is why he filed a petition in this Court being Writ Petition No.2819 of 2015. On that writ petition, this Court passed an order directing the Scrutiny

Committee to complete the scrutiny and verification. Until such scrutiny and verification, the petitioner's admission was protected by this Court. Thereafter, the Committee followed the requisite procedure in terms of the Act XXIII of 2001 and has invalidated the caste claim. It is such an order of the Committee which is challenged in this writ petition. The only contention raised before us is that the petitioner's forefathers have been residing in Maharashtra and all the relevant revenue records were submitted. Merely because in the School Leaving Certificate of the petitioner his caste or OBC category is not mentioned, that cannot be a reason to deny the claim. Even if the religion is entered, that was sufficient because the Government took into consideration the request from Muslim Organisations that those Muslims who are backward, and that is why the Classes amongst them have been notified as OBC by the State, then, the benefit of that category or reservation should not be unduly denied to those Classes and members of this religion. A hyper-technical approach should not be adopted. There is a Government Resolution dated 22-7-1996. All this has

been ignored and the claim denied. Alternatively and without prejudice, even if the Committee's order is accepted by the petitioner, the benefit flowing from a Judgment of the Hon'ble Supreme Court of India in the case of **Yogesh Ramchandra Naikwadi Vs. State of Maharashtra and others {Civil Appeal No.2079 of 2008, decided on 7-3-2008}** be extended by protecting the educational career of the petitioner.

3. After perusing the writ petition and all Annexures thereto, including the impugned order, we are unable to agree with the petitioner. The Committee has assigned cogent and satisfactory reasons while rejecting the claim. It is found that even in the school leaving record of the petitioner's father the caste is not entered. The entry is only about religion. If the entry is only with regard to religion, that would not suffice. Similarly, mere residence or proof of that nature within the State of Maharashtra will not assist the petitioner. Any letter or Government Resolution in pursuance thereof for the benefit of the Muslim Organisations will also not carry the case of the petitioner any further simply because the burden is on the

petitioner and he has to produce independent proof. If the petitioner claims that he belongs to Kasai, OBC, then, on the strength of some positive finding in the Vigilance Report his claim cannot succeed. The petitioner must prove that his forefathers and relatives from the paternal side were residing in the State of Maharashtra prior to 13-10-1967, and secondly, that they belong to Kasai, OBC. No contemporaneous record and of this nature has been produced. The Committee, therefore, rightly concluded that there is no merit in the claim.

4. Reliance by the petitioner's Advocate on the Judgment of the Hon'ble Supreme Court will not carry the case or advance his case any further. The contention raised before the Hon'ble Supreme Court was that even if the claim as belonging to Scheduled Tribe is rejected, the appellant before the Hon'ble Supreme Court should not be denied the benefit of the Degree obtained by him. The Degree Course was completed and the appellant before the Hon'ble Supreme Court was conferred with the Degree of University of Pune on 31-3-2004. It is in these peculiar circumstances that the Hon'ble Supreme Court has

exercised its powers under Article 142 of the Constitution of India and granted the relief. We do not think that the Judgment of the Hon'ble Supreme Court can have any application for the simple reason that the petitioner has laid knowingly a false claim. If neither his parents nor him had any material, much less evidence to support the claim, then, merely on the strength of the religion the petitioner could not have derived any benefit meant for genuine and *bona fide* reserved category persons. The petitioner having been found to be guilty of such a false claim, that we do not assist him in our extraordinary equitable and discretionary jurisdiction under Article 226 of the Constitution of India. The petition is dismissed.

(DR. SHALINI PHANSALKAR-JOSHI, J.)

(S.C. DHARMADHIKARI, J.)