

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

WRIT PETITION NO. 2987 OF 2013

- 1) Narendrakumar Bhimrao Nalawade,
Age: 40 Years, Occ. Service,
R/o M.S.E. Supply Co. Ltd., Quarter No.12,
Pag Power House, Chiplu, Tal. Chiplun,
Dist. Ratnagiri. .. Petitioner

V/s.

- 1) The Divisional Caste Scrutiny Committee,
Opposite Power House Ratnagiri.
- 2) The Maharashtra State Electricity Supply
Company Ltd., Divisional Office Ratnagiri.
- 3) The State of Maharashtra .. Respondents

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Mrs. Indrayani M. Koparkar for Petitioner.
Mr. B.V. Sawant, Asstt. Govt. Pleader for Respondent Nos.1 & 3.
Ms. A.R.S. Baxi for Respondent No.2.

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**CORAM : S.C. DHARMADHIKARI AND
SMT. BHARATI H. DANGRE, JJ.**

**RESERVED ON : 22nd NOVEMBER, 2017.
PRONOUNCED ON : 29th NOVEMBER, 2017.**

ORAL JUDGMENT (Per SMT.BHARATI H. DANGRE, J.):

1. The petitioner, an employee of the Maharashtra

State Electricity Supply Company Limited claiming to be belonging to “Vadar” Vimukta Jatis (A) has approached to this Court challenging the order passed by the Divisional Caste Scrutiny Committee No.2, Ratnagiri. The Committee has invalidated the claim of the petitioner as belonging to caste “Vadar” and cancelled the Caste Certificate issued by Sub Divisional Magistrate, Chiplun, Ratnagiri on 03.03.1999.

2. The grievance of the petitioner in the present petition is that the Committee has not considered the documents produced by the petitioner and has invalidated the certificate of caste “Vadar” granted in his favour only on the ground that he has not produced any proof prior to 1961. The claim of the petitioner was forwarded to the Divisional Caste Committee for verification and in support of the claim the petitioner had produced documentary evidence in form of documents reflecting the caste as “Vadar” issued in his favour, in favour of his father and parental cousin. He also submitted a genealogical tree in form of affidavit and

certificate issued by Chairman Chiplun Nagar Parishad certifying that he belongs to caste "Vadar" and he is resident of State of Maharashtra.

For the purpose of verification of the claim of the petitioner, the Committee conducted an inquiry through vigilance cell and the report of the vigilance cell was forwarded to the Committee on 4th January, 2012. However, according to the Committee, the vigilance cell did not reveal any information on the caste of the petitioner or his place of residence and therefore, the said report was not considered by the Committee. The petitioner was supplied the copy of the vigilance cell and he was asked to offer his comments on the same. However, according to the Committee, the petitioner did not submit any response thereto. The Committee thereafter conducted the proceedings on various dates and the petitioner was called for hearing. The Committee passed the impugned order on 8th November, 2012 by observing that the petitioner has not adduced any evidence or tendered any document to demonstrate that his ancestors were residing in State of Maharashtra prior to 21st

November, 1961 nor has produced any document in relation to his caste and on this limited ground the Respondent No.1 Divisional Caste Verification Committee No.2 invalidated the claim of the petitioner as belonging to caste "Vadar" (Vimukta Jatis).

3. We have heard learned counsel Mrs. Indrayani M. Koparkar for petitioner and Shri Sawant learned Assistant Government Pleader on behalf of the State Government. On the earlier date of hearing, we had asked Mr. Sawant learned AGP to produce the record of the proceedings before the Respondent No.1 and accordingly Shri Sawant has produced the record. The counsel for the petitioner submitted before us that Respondent No.1 Committee did not apply its mind to the claim of the petitioner in proper perspective and rejected the claim on solitary ground that the petitioner has failed to produce any evidence to demonstrate that the petitioner and his fore-fathers were resident of State of Maharashtra prior to 1st May, 1961. According to the learned counsel, the documents produced

by the petitioner clearly reflects the caste as Vadar [Vimukta Jatis (A)] and he claims that he is resident of Village Allore, Tal. Chiplun, District Ratnagiri and she relied upon the tax receipt from Chiplun Nagar Parishad, Chiplun to demonstrate that the petitioner is resident of said place. She also placed reliance on Ration Card issued in favour of the petitioner by the Tehsildar Chiplun. The counsel for the petitioner would submit that the petitioner was not afforded an opportunity to respond to the vigilance inquiry report and the Committee proceeded with the verification process without taking into consideration the response of the petitioner. The petitioner submits that the vigilance report supported the caste of the petitioner. It reflects that, on inquiry it is found that the father of the petitioner is resident of Chiplun since 55 years and there are approximately 150 houses of persons belonging to "Vadar" caste and the said inquiry report further mentions that the inquiry reveals that caste of the petitioner is "Vadar". However, the Committee rejected the vigilance report and in turn did not entertain the claim of the petitioner. The counsel for petitioner relies

on a validity certificate issued in favour of cousin Hanumant Rajaram Nalawade issued by the Caste Scrutiny Committee, Ratnagiri on 20th January, 2009 validating the claim belonging to "Vadar". According to the learned counsel for the petitioner, Hanumant Rajaram Nalawade is cousin brother of the petitioner and she would argue that since the blood relative of the petitioner is granted the validity certificate, by applying the principle laid down by the Hon'ble High Court of Bombay, Bench at Nagpur, in ***Apoorva d/o Vinay Nichale V/s. Divisional Caste Certificate Scrutiny Committee No.1, Nagpur and others***, reported in ***[Mah.Law Journal 401 2010(6)]***, the petitioner is entitled for validity certificate of caste 'Vadar'.

4. Learned AGP Shri Sawant referred to the affidavit filed by the Research Officer Divisional Caste Certificate Scrutiny Committee filed on 26th June, 2013 in response to the petition. According to learned AGP Shri Sawant, the petitioner has failed to prove his caste claim as well the factum of residence of his fore-fathers in State of

Maharashtra prior to 21st November, 1961 and according to him, on this ground the Committee has rejected the claim of the petitioner. Shri Sawant, learned AGP invited our attention to Rule 14 of the Maharashtra Scheduled Castes, De notified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes & Special Backward Category (Regulation of Issuance & Verification of) Caste Certificate Rules, 2012 to submit that if the claim for De notified Tribes (Vimukta Jatis) Nomadic Tribes is to be granted, candidate should submit the proof of permanent residence in regard to State of Maharashtra with regard to a deem date and for De notified Tribes (Vimukta Jatis), the said date is prior to 21st November, 1961 and since the petitioner did not adduce any evidence to demonstrate that his fore-fathers are resident of State of Maharashtra prior to 21st November, 1961, therefore, the claim of the petitioner is rejected.

5. On perusal of the impugned order dated 8th November, 2012 and record produced before us, we note that the Respondent No.1 Committee has not considered the

documentary evidence produced by the petitioner reflecting caste as "Vadar". It is also noted by us that the documents produced by the petitioner before the Committee are the documents of his own self, his brother, his father. However, none of the documents are of the pre-constitutional era and are recent, the earliest one being of 1972 which is extract of his own service book. Petitioner has relied upon the school leaving certificate of his brother which is of the year 1987 and caste certificate issued in favour of his cousin of the year 1985. None of the documents are prior to 21st November, 1961 and in our view the Committee was justified in not taking them into consideration. However, the record of the Respondent No.1 Committee reveals acceptance of one document which is certificate of validity issued in favour of one Hanumant Rajaram Nalawade by the Divisional Caste Certificate Scrutiny Committee No.2, Ratnagiri, Maharashtra State. The said document states that application of Hanumant Rajaram Nalawade dated 20th January, 2009, was placed before the verification Committee in the meeting held on 23rd April, 2010 and the Committee

has verified and scrutinized the caste claim and certified that the certificate of Shri Hanumant Rajaram Nalawade dated 19.01.1990 is found to be correct and Shri Hanumant Rajaram Nalawade belongs to Vadar caste which is Vimukta Jati. The order sheet of the Committee reflects that on 30.12.2012 the affidavit containing the genealogical tree and the school leaving certificate of Shri Baliram Nalawade alongwith caste validity certificate in favour of Hanumant Nalawade was produced before the Committee and on the same date the hearing of the claim was closed by the Committee. However, perusal of the impugned order does not reflect any consideration of this document by the Respondent No.1 Committee.

6. Perusal of the impugned order dated 8th November, 2012 discloses that the claim is rejected on the ground that the petitioner has failed to produce any document showing that the petitioner and his fore-fathers were resident of State of Maharashtra prior to 21st November, 1961. Validity certificate produced by the petitioner in respect of Shri Hanumant Rajaram Nalawade

and as per the affidavit produced by the petitioner before the Committee disclosing his genealogical tree, Hanumant Rajaram Nalawade is the cousin brother of the petitioner Narendrakumar Nalawade whose father Bhimrao is real brother of Rajaram i.e Hanumant's father. Learned AGP invited our attention to another affidavit dated 16th August, 2012 filed by the petitioner before the Scrutiny Committee giving the genealogical tree and in the said document Shri Tukaram Nalawade i.e grand father of the petitioner is shown to have three sons namely Rajaram, Babu and Bhimrao. Mention of Babu as son of Tukaram is absent in the affidavit dated 03.10.2011. However, as far as the fact of Rajaram and Bhimrao being two brothers and petitioner and Hanumant being cousins, however, there is no variance.

7 Since, the petitioner has produced a vital document in support of his claim, namely the validity certificate issued by the Divisional Caste Scrutiny Committee, Ratnagiri in favour of Hanumant Rajaram Nalawade, the cousin of the petitioner and the same was not

considered by the Committee while deciding the claim of the petitioner, we deem it appropriate to remand the matter back to the respondent No.1 Committee to re-examine the claim of the petitioner in light of the certificate of validity in favour of the Hanumant Rajaram Nalawade, cousin of the petitioner. If the petitioner is able to establish his blood relationship with Hanumant Rajaram Nalawade, as he claims so, the said document would be of vital importance in deciding the claim of the petitioner. The petitioner has also not submitted his reply to the vigilance cell inquiry report which was forwarded to him and he was asked to submit his reply to the said report and we feel it expedient and in the interest of justice to afford an opportunity to the petitioner, who can submit his reply to the vigilance cell report and the Committee should accept and consider the same.

8 The petitioner is an employee of the Maharashtra State Electricity Distribution Company Limited and the impugned order is dated 8th November, 2012 and while issuing notice on the petition filed by the petitioner, this court had granted interim relief to the effect that the

employment of the petitioner be not terminated on the basis of impugned order dated 8th November, 2012. The said interim order dated 1st July, 2013 passed by this court is in operation and the services of the petitioner are not disturbed.

In such circumstances, we feel it appropriate to direct the respondent No.1 Committee to decide the claim of the petitioner by taking into consideration the reply which would be submitted by the petitioner to the vigilance cell report, which is directed to be submitted within a period of four weeks. The Committee is directed to decide the matter afresh by taking into consideration the said reply and also taking into consideration the certificate of validity in favour of Hanumant by affording an opportunity to the petitioner to establish his relationship to the holder of the said certificate by presenting himself before the Committee. The Respondent No.1 Committee should complete the entire process of verification of the claim of the petitioner within a period of three months from the date of communication of this order.

9 In the result, the Writ Petition is allowed. The claim of the petitioner as belonging to Vadar (Vimukta Jatis) is remanded back to the Respondent No.1 Committee and Committee is directed to decide the claim of the petitioner in the light of aforesaid observations within, a period of three months. Needless to say that the interim protection granted by this court on 1st July, 2013 to the effect of not terminating of the service of the petitioner on the basis of impugned order will remain in force till the decision of the Committee and for a period of four weeks thereafter, in the consequence of the Committee's order being adverse to the petitioner. In deciding the claim afresh as directed, the Committee shall not be influenced by the observations in the impugned order, which we have set aside.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)