

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

WRIT PETITION NO. 4698 OF 2016

Kalpita Gangaram Mane,	]	
Married name :	]	
Kalpita Rohidas Salunkhe,	]	
Age : 29 Years, Occ. Housewife,	]	
Residing at : Roth Budruk,	]	
Taluka Roha, District Raigad.	]	Petitioner

Versus

1	Divisional Caste Certificate Scrutiny Committee No.1, Konkan Bhavan, Navi Mumbai for Raigad Region.	]]]]	
2	Mr.Vilas Tukaram Dhake, Roth Budruk, At Post Varse, Tal. Roha, District Raigad.	]]]]	
3	The Collector, of the District Raigad.	]]]	
4	State of Maharashtra	]	Respondents

- Mr.R.K.Mendadkar i/b. Mr.Rakesh Sawant for the Petitioner.
- Mr.Vikas Mali, AGP for Respondent No.1, 3 and 4 (State).
- Mr.Sachin Pawar for Respondent No.2.

**CORAM : NARESH H. PATIL &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

**RESERVED ON : 28th APRIL, 2017.
PRONOUNCED ON : 5th MAY, 2017.**

JUDGMENT : (Per Dr.Shalini Phansalkar-Joshi, J.)

1] Rule. Rule made returnable forthwith. Heard finally, by consent of the parties.

2] By this petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the order dated 2nd April 2016 passed by Respondent No.1-the Divisional Caste Certificate Scrutiny Committee No.1, Konkan Bhavan, Mumbai (for short 'the Committee'), thereby invalidating the Caste Certificate of the Petitioner as belonging to the caste "Hindu Kunbi".

3] The case of the Petitioner is to the effect that she belongs to "Kunbi" community. She had contested the election to the Gram Panchayat of Roth Budruk, Taluka Roha, District Raigad, held on 22nd April 2015, from the seat reserved for 'women candidate' from "Other Backward Classes" (OBC). Subsequent to being elected as 'Member', she was further elected as 'Sarpanch' of the Gram Panchayat. The wife of

Respondent No.2 had also contested in the said election, however, she has lost. Being aggrieved, she made a complaint to Respondent No.1-the Committee alleging that the Petitioner is not belonging to OBC. Meanwhile, the Caste Certificate of the Petitioner was also sent to Respondent No.1-Committee for its verification.

4] As per the Petitioner, the first hearing before the Committee was kept on 20th November 2015. However, she did not have any notice of that date. She was given notice of 8th December 2015, on which date she appeared and filed Vakalatnama of her Advocate and sought time for giving reply to the complaint. Thereafter, the Petitioner was in the process of collecting various documents and obtaining further information from different authorities to substantiate and validate her caste claim. The matter before the Committee was then kept on 13th January 2016 on which date the Committee itself was not available and hence it was adjourned to 15th January 2016. On that day, the Petitioner preferred an application seeking reasonable time for filing the documents in support of her claim. She also requested for the copy of the

report of Vigilance Cell. She was however not provided the said report. Her application seeking adjournment was rejected and the file was closed for order and order came to be passed on 2nd April 2016 invalidating her 'Caste Certificate'.

5] The grievance of the Petitioner is that she was thus not given sufficient opportunity to prove her claim. Moreover, the Committee did not take into consideration the documents which she had produced on record after the file was closed for order on 15th January 2016. According to her, the Committee should have taken into consideration those documents as those documents clearly prove her claim as belonging to OBC. According to the Petitioner, the impugned order, therefore, passed by the Committee is in violation of the principles of natural justice. It is also having far reaching consequences not only on her caste claim and her election as 'Sarpanch' of Gram Panchayat but also on her future generations and the Caste Validity Certificates issued in favour of her real brothers and other close relatives. It is, therefore, submitted by learned counsel for the Petitioner that the impugned order passed by the Committee is required to be quashed and set-aside and

matter needs to be remanded to Respondent No.1-the Committee for fresh hearing.

6] Learned Addl. Government Pleader and learned counsel for Respondent No.2 has supported the impugned order of Respondent No.1 by pointing out that sufficient opportunity was given to the Petitioner to produce the relevant documents in support of her claim; however, she failed to do so. Only when the file was closed for order, she has produced some documents and, therefore, those documents were not considered by Respondent No.1.

7] Further it is submitted by learned Addl. Government Pleader and learned counsel for Respondent No.2 that the main reliance of the Petitioner in support of her caste claim was on the school leaving certificate of her paternal aunt Tai Pandurang Mane and the school leaving certificate of her father Gangaram Pandurang Mane. It is submitted that as per the Vigilance Cell Report, in the school record of both these certificates, overwriting and interpolation was found by addition of the word 'Kunbi' in place of 'Maratha'. It is urged

that the Petitioner has also relied on the extract of 'Birth and Death Register' of her uncle Sahdeo Dama Mane, wherein his caste was shown as 'Maratha'. It is submitted that in view of these documents on record and the report of Vigilance Cell, there was nothing much to prove the claim of the Petitioner. Moreover, as her claim was found to be based on false and fabricated documents, Respondent No.1 did not find any reason to adjourn the hearing, from time to time, as the entire intention on the part of the Petitioner was just to prolong the matter so as to retain her post as 'Sarpanch' of the village.

8] Thus, according to learned Addl. Government Pleader and learned counsel for Respondent No.2 whatever documents which the Petitioner has subsequently produced on record, after the file was closed for orders, like the 'Caste Validity Certificates' of her two brothers, as those documents were also based on the false and fabricated entries in the record of the Petitioner's father and paternal aunt, no prejudice can be said to be caused to the Petitioner, even if, Respondent No.1 has not taken into consideration those documents. In sum and substance, therefore the submission of learned Addl.

Government Pleader and learned counsel for Respondent No.2 is that there is no need to remand the matter for fresh hearing and hence, this petition is required to be dismissed.

9] We have considered the competing assertions and found that the impugned order of Respondent No.1 is based on the report of Vigilance Cell. Hence, we have perused the same. As the said report discloses that the Vigilance Cell found some overwriting and interpolation in the school record of the Petitioner's father and paternal uncle, to satisfy ourselves, we called for the original record of Respondent No.1. Our perusal of the same substantiates the report of the Vigilance Cell. We noticed that in the school leaving certificate of Petitioner's father Gangaram Pandurang Mane, his caste is though mentioned as 'Hindu-Kunbi', the said caste is not appearing in the original record. In the original school record viz. the General Register maintained by Z.P. School, at entry No.176, his caste is recorded as 'Hindu-Maratha' and not 'Hindu-Kunbi'. In the 'General Register' maintained by Z.P. School, Khamb, Taluka Roha, District Raigad, at entry No.460, the name of the Petitioner's paternal aunt Tai Pandurang Mane is appearing

and against her name though the caste is mentioned as 'Hindu-Kunbi', however, the word 'Kunbi' appears to be written in a different ink and different handwriting. Thus, as regards these two documents namely; the school leaving certificates of Petitioner's father and aunt, on which the Petitioner has placed reliance, we find that Respondent No.1 has rightly held that these certificates being based on false and fabricated entries made in General Register of the school, no reliance can be placed on them. Respondent No.1 has, accordingly, given its detailed findings and reasons as to why the Committee is not relying on these documents and we do not find any reason to interfere with the same.

10] Respondent No.1 has also taken in to consideration the extract of the 'Birth and Death Register' of Petitioner's great-grandfather Dama Ambaji Mane and Petitioner's uncle Sahdeo Dama Mane, wherein their caste was mentioned as 'Maratha'. Both these documents were produced before the Committee by Respondent No.2. In view of these documents also it has to be held that the committee has rightly disbelieved the claim of the Petitioner as belonging to the caste of 'Hindu-

Kunbi'. On our own independent analysis, we do not find any reason to disturb this finding of the Committee also as it is based on the material produced before it.

11] The real grievance of the Petitioner, however, is that she was not given sufficient opportunity to produce the other material to substantiate her claim as on the receipt of the Vigilance Cell Report, the file was closed for orders on 15th January, 2016. Thereafter, also she produced certain documents, however those documents were not considered by the Committee. According to learned counsel for the Petitioner, those documents being the 'Caste Validity Certificates' of Petitioner's real brothers were relevant for deciding the 'Caste Validity Certificate' of the Petitioner and non-consideration of the same has resulted into causing grave prejudice to the petitioner.

12] On perusal of the impugned order of the Committee, we find that the Committee has given sufficient opportunity to the Petitioner; like the matter was kept for hearing from time to time i.e. 20th November 2015, 8th December 2015, 13th

January 2016 and 15th January 2016. As admitted by the Petitioner, she was very much present on 8th December 2015 and on the request of her counsel, the matter was adjourned to 13th January 2016. On that day, the Petitioner produced some documents and affidavit and then the matter was adjourned to 15th January 2016. On that day, oral submissions were heard by the Committee and the application filed by the Petitioner for producing certain documents was rejected as already sufficient opportunity was given to do so. Accordingly, the file was closed for orders. It is a matter of record that thereafter the Petitioner has produced two documents namely; 'Caste Validity Certificates' of her brothers Kalpesh Gangaram Mane (page 49) and Rupesh Gangaram Mane (page 50). In both these Certificates, their caste as 'Kunbi' is validated. It is an admitted position that the Committee has not considered these two documents, having been produced after the file was closed for orders.

13] In view thereof, learned counsel for the Petitioner has placed reliance on the judgment of *Apoorva Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 &*

Ors., 2010(6) Mah.L.J. 401, wherein the Division Bench of this Court has considered as to what can be the effect of 'Caste Validity Certificate' of close and blood relatives of the claimants on the caste claim of the Applicant. In that case, the main grievance of the Petitioner was that her 'Caste Certificate' as belonging to 'Kanjari-Bhat-Nomadic Tribe' ought not to have been invalidated in view of the undisputed fact that Certificate of the Petitioner's sister to the same effect has been validated by the Caste Scrutiny Committee. Reliance was also placed on the Government Resolution dated 22nd August 2007 issued by the Principal Secretary, Social Welfare Department, Government of Maharashtra. In the light of the same, it was held that as the caste claim of a blood relative such as father and daughter, brother and sister has been scrutinized and has been accepted, the caste claim of the applicant should be allowed without insisting on any other proof.

14] The relevant paragraph Nos.4 and 7 of the judgment read as follows;

“4. We have considered the matter and we are of the view that the petitioner's caste claim that she belongs to Kanjar Bhat-Nomadic Tribe ought to have been accepted by the Committee merely on

the basis that identical caste claim of her sister that she belongs to Kanjar Bhat has been allowed by the Committee, even apart from the Government Resolution. We are of the opinion that the guidelines provided by the said Govt. Resolution are sound and based on sound principles. It would indeed be chaotic otherwise. If the relationship by blood is established or not doubted, and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent in the committee testing the same evidence and making the same conclusion unless of course the Committee finds on the evidence that the validity of the certificate of such relation has been obtained by fraud.

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.”*

15] The Division Bench of this Court was further pleased to observe in paragraph No.9 of its order as follows;

- “9. ... 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 caste 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.” (emphasis supplied)

16] Learned counsel for the Petitioner has also relied on judgment of the Hon'ble Supreme Court in *Gayatrilaxmi Bapurao Nagpure vs. State of Maharashtra & Ors.*, (1996) 3 SCC 685, wherein placing reliance on its own judgment in the case of *Madhuri Patil vs. Addl. Commissioner, Tribal Development*, (1994) 6 SCC 241, it was held that greater care must be taken before granting or rejecting any claim for caste certificate and the Court has to see whether the Committee has considered all the relevant material placed before it or has applied its mind to relevant facts which have ultimately led the Committee to record the finding.

17] In the instant case, therefore in our view, it was

necessary for the Committee to take into consideration these two 'Caste Validity Certificates' of her brothers as produced by the Petitioner, so as to arrive at just decision of the case. Even if it is accepted that these Certificates were produced after the file was closed for 'Orders', it is pertinent to note that the file was closed for 'Orders' on 15th January 2016, however, the impugned order is passed on 2nd April 2016. Therefore, in the meanwhile if the Petitioner has produced certain documents and those documents were the 'Caste Validity Certificates' of her two blood relatives i.e. real brothers of the Petitioner, it was necessary for the Committee to consider those documents also, before invalidating the 'Caste Certificate' of the Petitioner. As observed by this Court in the above said judgment of *Apoorva* (supra), the matters pertaining to validity of caste are having great impact on the candidate as well as her future generations and therefore, the Committee ought to have given a finding about the validity of the Caste of a candidate after taking into consideration all the material placed before it. Moreover, for taking a different view the Committee should have arrived at a finding that the 'Caste Validity Certificates' of the blood relatives of the Petitioner were obtained by fraud, then only it

would not have been bound to follow the earlier 'Caste Validity Certificates'. Here in the case, in view of these two 'Caste Validity Certificates' of the Petitioner's blood relatives i.e. her brothers, which are not considered by the Caste Scrutiny Committee, while invalidating the caste claim of the Petitioner, we find it necessary to remand the matter back to Respondent No.1-the Committee for fresh hearing, which will be limited only to the extent of making enquiry relating to these two 'Caste Validity Certificates' of the Petitioner's brothers. Accordingly, we allow this petition by setting aside the impugned order of Respondent No.1-the Committee and remand the matter by passing following order.

Order

- i) Writ Petition is allowed.
- ii) The impugned order dated 24th April 2016 passed by Divisional Caste Certificate Scrutiny Committee No.1, Mumbai is quashed and set-aside.
- iii) The Committee is directed to consider the Caste Validity Certificates of Petitioner's brothers namely; Kalpesh Gangaram Mane (page 49) and Rupesh Gangaram Mane (page 50) for deciding caste validity claim of the Petitioner.

- iv) The Committee is at liberty to call for the original record of these two Caste Validity Certificates of Petitioner's brothers, in order to verify and satisfy itself as to whether those Certificates were obtained by fraud or otherwise. If it is found to be so, the Committee would not be bound to follow these 'Caste Validity Certificates' and is at liberty to refuse the caste claim and also, in addition, to initiate proceedings for cancellation of those 'Caste Validity Certificates' .
- v) For the purpose of making this enquiry, the Committee is at liberty to call for the fresh 'Vigilance Report', if required, and to make necessary enquiry in respect thereof.
- vi) The Committee is also directed to hear the additional submissions, if any, to be advanced by the Petitioner and Respondents.
- vii) The Committee is directed to conduct the enquiry in the light of the above observations and in accordance with law, as expeditiously as possible and within a period of three months from the receipt of this order.
- viii) Rule made absolute in above terms.