

mm

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

WRIT PETITION NO. 5637 OF 2016

Nilesh Jaykumar Desai
Aged 44 years, residing at
Flat No.4, udra Apartment,
New Palace Area, Kolhapur-416003
Dist: Kolhapur.

...Petitioner

Vs.

1. The State of Maharashtra through
its Secretary, Social Justice Dept., Mantralaya
Urban Development Department,
Mumbai-400032.
2. Divisional Caste Certificate Scrutiny Committee No.2
Through its Member Secretary
Having its office at Dr. Babasaheb Ambedkar Samajik
Nyay Bhavan, Vichare Mal, Kolhapur,
District: Kolhapur.
3. Kolhapur Municipal Corporation,
Kolhapur, through its Commissioner
having its office at Kolhapur, Dist: Kolhapur.
4. Sub Divisional Officer
Karveer Sub Division, Karveer,
Dist: Kolhapur.
5. Raj Babubhai Jadhav,
Resident of 221, Ratnamangal Building,
Tarabai Park, Kolhapur, Dist: Kolhapur.

6. State Election Commission,
Maharashtra State, Mumbai.

...Respondents

Mr. R.K. Mendadkar, Advocate for the Petitioner

Mr. Vikas Mali, AGP for the State

Mr. A.M. Adagule, Advocate for Respondent No.3

Mr. Mayur Jadhav i/b. Mr. S.B. Shetye, Advocate for Respondent No.6

Mr. G.N. Salunkhe i/b. Mr. Umesh Kurund, Advocate for Rspdt.No.5

**CORAM : NARESH H. PATIL &
M.S. KARNIK, JJ.**

**Reserved on 22nd March, 2017
Pronounced on 21st April, 2017**

JUDGMENT [PER SHRI M.S. KARNIK, J]

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

2. The Petitioner challenges the order dated 6th May, 2016 passed by the Respondent No.2, the Divisional Caste Certificate Scrutiny Committee No.2 Kolhapur (hereinafter referred to as the Committee for short) whereby the Committee has invalidated and cancelled the Caste certificate dated 4th July, 2005 issued to the Petitioner by Respondent No.4 authority as belonging to Kunbi – Other Backward Class (OBC).

3. The Petitioner was issued the caste certificate dated 4th July, 2005 by the competent authority Respondent No.4 ie., Sub Divisional Officer, Karveer, District: Kolhapur as belonging to Kunbi – OBC. The Petitioner contested the election from Ward No.11 of the Respondent No.3 Corporation and was elected as a Corporator.

4. Respondent No.5 is the complainant who objected to the caste claim of the Petitioner. The Petitioner's caste claim was referred to the Committee. The Vigilance Cell conducted an enquiry into the caste claim of the Petitioner and submitted a report dated 6th April, 2016. Copy of the Vigilance Cell report was furnished to the Petitioner.

5. According to the Petitioner he had engaged Shri S.D. Chogle Advocate to represent his case. From the Roznama dated 2nd May, 2016 it is revealed that the Petitioner's Advocate Shri Chogle informed the Committee that he could not contact the Petitioner and therefore, showed his unwillingness to proceed further in the matter. In the application made by the Petitioner's Advocate he informed the

Committee that he has to adopt the procedure for taking discharge. According to the Petitioner instead of deciding the application made by his Advocate Shri S.D. Chogle for discharge, the Committee closed the matter for orders on 2nd May, 2016. By the impugned order dated 6th May, 2016 the caste claim of the Petitioner was invalidated. The Petitioner was kept in dark by his Advocate.

6. Learned Counsel for the Petitioner urged that the impugned order is completely in breach of the principles of the natural justice. According to him he was not given a proper opportunity to represent his case as the application for discharge filed by his Advocate Shri S.D. Chogle was not decided. The Committee was not justified in deciding the caste claim in these circumstances.

7. The learned Counsel for the Petitioner contended that in the absence of there being any documentary evidence to prove the caste claim of the Petitioner the Committee ought to have applied the crucial affinity test to decide the caste claim. The Committee has failed to apply this test and thus the impugned order stands vitiated on this ground alone.

8. The Petitioner placed reliance on the decision rendered by the Full Bench of this Court in the case of **Shilpa Vishnu Thakur Vs. State of Maharashtra & Ors. 2009(3) Mh.L.J. 995** to support his contention that as the inquiry cannot be confined to the examination of the birth and the school records, but would involve an investigation of the affinity of the candidate with a tribe or the tribal community the affinity test was a must. According to the learned Counsel for the Petitioner the Scheme of the Act and Rules clearly underlines the application of the affinity test as an integral part of the process of verification.

9. On the other hand, the A.G.P on behalf of the Respondents supported the impugned order passed by the Committee. According to him the Committee considered all the documents relied upon by the Petitioner while examining his caste claim.

10. We have given out anxious consideration to the submissions advanced by the respective Counsels.

11. As regards the Petitioner's contention that the Petitioner was not given reasonable opportunity to present his case, we find that the said submission is without any basis. The Committee has recorded a finding that the Petitioner was granted every possible opportunity to present his case. In fact by the order dated 18th November, 2015 this Court in Writ Petition No. 10660 of 2015 had directed the Committee to pass a final order within a period of six months. The Committee has recorded that on the date of hearing on 2nd May, 2016 the Advocate for the Petitioner filed an application that as the Petitioner had not met him, the Advocate is finding it difficult to conduct the matter. In these circumstances it was requested that he may be discharged. The same was objected to by the Complainant. We find that the Committee had granted ample opportunity to the Petitioner to present his case and in fact the Petitioner was heard on several occasions. The Petitioner was represented by his Advocate. It is also matter of record that the Petitioner had filed his written submissions. If this Court had directed the Committee to take a final decision within a period of six months and at the fag end of the hearing, if an application was made by the Petitioner's Advocate for discharge on

the ground that he had not met him, according to us the approach of the Committee in proceeding to pass the impugned order cannot be said to be unreasonable.

12. The Committee has also recorded a finding that the Petitioner has not produced any documentary evidence to indicate that he belongs to the Hindu Kunbi caste. In fact it is the Petitioner's case that in the absence of there being any documentary evidence the Scrutiny Committee ought to have applied the crucial affinity test, which it has failed to do so.

13. We find that the Petitioner had submitted a detailed written submission on 26th April, 2016. In the said submission the Petitioner has made reference to the various rites, rituals, customs, worships, ceremonies associated with birth, marriage and death and the conventions followed for birth and death etc., in respect of the Petitioner's caste.

14. The learned Tribunal on examining all these aspects observed that the Petitioner's grandfather was a Teacher in the Government

School and from 1952 was a Member of Legislature Assembly. He has failed to produce the school leaving certificate of his grandfather. The Petitioner in his application has mentioned that his father's educational qualifications are B.PEd. However, he has not produced his father's school leaving certificate also.

15. The Committee has also taken into consideration that in the local inquiry conducted none of the residents in their statements have mentioned any thing about the caste of the Petitioner.

16. It is not the Petitioner's case that he has not relied upon any documentary evidence in as much as, the documentary evidence relied upon by the Petitioner of his relatives indicate the caste as Hindu Maratha. In fact the Petitioner has failed to produce school leaving certificate of his grandfather who became M.L.A in the year 1952 and also the school leaving certificate of his father who was B.P Ed. The Petitioner has filed detailed written submissions to show his affinity to the said caste. In this view of the matter when out of the several documents relied upon by the Petitioner none of the documents indicate caste as Kunbi, on the contrary, the documents

produced and relied upon by the Petitioner indicate the caste as Hindu Maratha, we do not find any reason to interfere with the finding recorded by the Committee that the Petitioner has failed to prove his caste claim on the basis of the materials on record.

17. The order passed by the Committee is a well reasoned order and after taking into consideration all the materials on record. The Writ Petition, therefore, is devoid of any merits and is accordingly dismissed with no orders as costs.

18. Rule is discharged in the above terms.

(M.S. KARNIK, J.)

(NARESH H. PATIL, J.)

After pronouncement of judgment, learned Counsel appearing for petitioner requests for continuation of ad-interim relief which was granted on 16/05/2016. Learned Counsel appearing for the respondents submits that lastly on 01/07/2016, ad-interim relief was continued till the next date of hearing, but thereafter it is not continued. Even otherwise, in view of dismissal of Petition on

merits, we are not inclined to continue ad-interim relief. Request made by learned Counsel appearing for the petitioner stands rejected.

(M.S. KARNIK, J.)

(NARESH H. PATIL, J.)