

**IN THE COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5714 OF 2017**

Hanif Musa Kazi

....Petitioner

V/s.

The State of Maharashtra & Ors

....Respondents

Mr. C.K. Bhangoji i/b Mr. Laxman Deshmukh for the Petitioner.
Mr. A.A. Alaspurkar, AGP for the the Respondent Nos. 1 to 3.
Mr. Pradeep Dalvi for the Respondent Nos. 5 and 6.

CORAM : A. S. OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE ON WHICH THE JUDGMENT IS RESERVED: 29/06/2017

DATE ON WHICH THE JUDGMENT IS PRONOUNCED: 13/07/2017

:JUDGEMENT: (PER SMT. VIBHA KANKANWADI, J)

Heard the learned Counsel appearing for the Petitioner, the learned A. G. P. for the first to third Respondents and learned Counsel for the fifth Respondent. Rule. The Respondents waive service. Forthwith taken up for final hearing.

2. The Petitioner seeks to challenge the judgment and order dated 22nd May 2017 passed by the second Respondent, whereby the caste certificate of the petitioner has been held to be invalid. The said caste certificate was issued to the petitioner stating his caste as “Machhimar (Daldi)” has been cancelled by the said order.

3. The Petitioner has come with a case that a caste certificate came to be issued to him on 18-10-2016 in which his caste was shown as “Machhimar (Daldi)”. The Petitioner came to be elected as the President of the fourth Respondent on 28th November 2016 on the basis of said certificate. The Collector, the third Respondent had forwarded the said certificate for verification to Caste Scrutiny Committee/the second Respondent on 19th October 2016. A Vigilance Report was called by the second Respondent. After the report was received, a show cause notice came to be issued to the Petitioner. The Petitioner had given the explanation to the report. The matter was finally heard on 19th May, 2017. The Judgment/order was delivered by the second Respondent; wherein the caste certificate has been held to be invalid and it came to be cancelled.

4. It has been argued on behalf of the Petitioner that oral evidence was not considered by the second Respondent. The committee has relied on the document allegedly produced from Maritime Board record, which is stated to have been issued on 13th October, 2016. The said document is stated to be in respect of father of the Petitioner. The said document was not produced by the Petitioner. He was not given any opportunity to submit his say on the genuineness of the said document. A wrong inference has been drawn that the said document is forged one. Surname of the Petitioner can not recognize his caste. He relied on the decision of this Court in **Smt. Bismilla Mohammedsab Sayyed (Mujawar) v/s. Divisional Caste Certificate Committee** decided on 21st February, 2014; wherein it has been observed that,

“It can not be disputed that in case of the Mohammedans, there were no recognized castes or sub castes and therefore, as in the case of Hindus, there is no likelihood of finding any entry

of the caste of a person of Mohammedans religion in old records”.

5. It has been further submitted on behalf of the Petitioner that even if it is accepted that there are interpolations or corrections in the documents, yet, the second Respondent failed to consider that there was no evidence before it showing that those interpolations or corrections were made by the petitioner. The Police Officer had not taken care to find out who had made those interpolations or corrections. The Petitioner can not be blamed for the same. In order to substantiate this fact, he has relied on the decision in **Sayanna v/s. State of Maharashtra**¹; wherein it has been observed that,

“It is difficult to understand as to on which basis the Scrutiny Committee came to the conclusion that the word 'lu' was interpolated in the register of the school more particularly when it was not so opined by the Police Inspector who had conducted the enquiry. Whether interpolation by addition has taken place can be stated by a handwriting expert or by comparison of admitted letters of a person with this disputed one. It is an admitted position that the Scrutiny Committee had never attempted to get an expert's opinion nor itself had compared the disputed letters with admitted one of the appellant”.

6. In this case also there was no attempt on the part of the second Respondent to make comparison or obtain expert's opinion. Further, if the second Respondent was not inclined to consider the documents produced before it, then it should have undertaken affinity test. The second Respondent tried to rely on the inquiry with a person, who is not a resident of the village of the petitioner. Therefore, the conclusion drawn by the second Respondent is illegal. Proper and legal procedure has not been followed. On these submissions, it has been prayed that the impugned order be set aside. The learned AGP and the learned

¹ (2009)10 SCC 268

Counsel appearing for the fifth and sixth Respondents opposed the petition.

7. The Petitioner had applied for the caste certificate and it was issued on 18th October, 2016. The Petitioner has thereafter contested the election for the post of President of Rajapur Municipal Council, which was reserved for backward class. The said caste certificate was forwarded by the third Respondent with all the documents annexed thereto to the second Respondent for verification. A report from the vigilance cell was called. After the report was received, the Petitioner was given an opportunity to put forth his say on the same. Submissions were heard from the Petitioner and then a detailed order has been passed by second Respondent.

8. A list of documents produced by the Petitioner has been set out in para 4 of the order passed by the second Respondent. It has been specifically stated that the document issued by Maharashtra Maritime Board in the name of father of the Petitioner was filed by the Petitioner. While making an inquiry on the same, certain documents have been collected by Vigilance cell. It does not lie in the mouth of petitioner now to say that he has not filed that document. All the documents filed by the petitioner have been considered by the second Respondent. It has been observed that many documents produced by the Petitioner are forged (false and fabricated). The reasons have been assigned for coming to said conclusion. Interpolations and additions have also been found. This is not a case where only one document is said to be forged, but there are several documents which have been said to be forged and reasons have been assigned in respect of each document. When the Committee itself has undertaken that task of

verifying the documents on the basis of report submitted by vigilance cell, this case differs from the facts of the case before Apex Court in **(2009) 10 SCC 268**. The fact that Committee has not taken expert's opinion is not at all fatal in this case. The reasons stated by the Committee are sufficient.

9. The decision of the second Respondent was not only based on the said document issued by Maritime Board, but on the other documents produced by the Petitioner. Many documents have been held to be forged and fabricated.

10. We agree that the surname of the Petitioner can not be conclusive for deciding his caste claim. Therefore, even though petitioner's surname is Kazi, we can not presume that he was doing such activities which can be performed by a Kazi in his religion.

11. Now, it is required to be seen as contended by the Petitioner, whether there was any attempt to collect information including sociological, anthropological, ethnological and genetical traits of the caste alleged by the petitioner. Such exercise was required to be done in pursuance to Clause (d) of Sub-Rule 1 of Rule 13 of Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (for short 'the said Rules'). It is the duty of Vigilance Cell to collect the necessary information as contemplated as per the said Rules. When the Committee was of the opinion that the documents produced by the petitioner can not be relied, and the Committee was considering the Vigilance Cell report, it ought to have directed the Cell

to collect the requisite information including sociological, anthropological, ethnological and genetical traits of caste canvassed by petitioner. In the present case the said exercise was necessary as we have already observed earlier that there is no likelihood of any entry of caste recorded in old record in the case of Mohammedans. Perusal of the impugned order shows that there was no serious inquiry made in terms of clause (d). The Committee has not properly conducted the affinity test therefore, the approach of the Committee is erroneous. Hence, the petition deserves to be disposed of at the admission stage by remanding the matter for fresh inquiry regarding affinity test.

12. It is required to be pointed out here that taking into consideration the fact that the Committee has found many documents to be forged one, the Petitioner has filed an affidavit stating that he will not rely on documents referred by the second Respondent in paragraphs Nos. 1 to 4 of the impugned judgment where Committee has recorded adverse finding on the said documents. Therefore, now the Petitioner is precluded from relying on those documents after remand. We therefore, proceed to pass following order:-

ORDER

(i) The impugned order dated 22nd May 2017 passed by the second Respondent is quashed and set aside. The matter of his caste verification is remanded to the second Respondent-Caste Scrutiny Committee;

(ii) We direct the parties to appear before the second Respondent Committee on 17th July 2017 at 11.00 a. m.;

(iii) The second Respondent-Committee shall call fresh Vigilance Cell report in terms of Rule 13 and especially clause (d) of Sub-Rule (1) of Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012. The Committee shall make a fresh adjudication in accordance with law, as expeditiously as possible and preferably within 6 months from the date when this order is uploaded;

(iv) It is clarified that the Petitioner will not be entitled to rely on the documents referred by the second Respondent in paragraphs Nos. 1 to 4 of the impugned judgment where Committee has recorded adverse finding on the said documents, before the Committee;

(v) The Committee shall grant to the fifth and sixth Respondents an opportunity of being heard.

(vi) All parties concerned to act upon an authenticated copy of this order.

(vii) Writ petition is disposed of on above terms. No order as to costs.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)