

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 8074 of 2017

Smt. Farzana Ayub Shaikh ... Petitioners

Versus

The District Caste Certificate

Validity Committee And Ors. ... Respondents

Mr. Jayesh Kocheta with Alifiya Palitanwala, for the Petitioners.

Mr. A. A. Alaspurkar, AGP for the Respondent – State.

Mr. Ganesh Bhujbal, for Respondent No. 4.

Mr. Akshay Kulkarni i/b A. P. Kulkarni, for Respondent Nos. 5 & 6.

CORAM : B. R. GAVAI, &
M. S. KARNIK, JJ.

DATE : AUGUST 9, 2017

Order [Per : M. S. Karnik, J.]

1. Rule. Rule heard forthwith by the consent of parties.
2. The challenge in this petition is to an order 29th June, 2017 passed by the learned District Caste Certificate Validity Committee, Pune, invalidating the caste certificate dated 29th November, 2016 as belonging to 'Darji' caste which is recognised as OBC.

3. It is the case of the Petitioner that by a Government Notification 9th August, 1995 the State of Maharashtra included caste 'Darji' in OBC category at Serial No. 236 in Appendix "A" of the said notification. The learned counsel appearing for the Petitioner contends that the caste 'Darji' has been notified for the first time in the Government notification dated 9th August, 1995, and therefore, the Committee was not justified in taking the date as 19.6.1967 for the purpose of determining the caste claim of the Petitioner. In any event, he pointed that the Vigilance Inquiry is not conducted in accordance with the decision of this Court in the case of – *Jamadar Mehaboob Ghudubhai Vs. State of Maharashtra & Ors.*¹, to which one of us (M. S. Karnik, J.) was a party. The learned counsel relied in paragraph 13 of the said decision, which reads thus:

“13. We also find that Vigilance Cell has not carried out enquiry as required by clause (d) of Sub-Rule 1 of Rule 13 which provides that the Vigilance Cell should include information including sociological, anthropological, ethnological and genetical traits of the relevant Caste. In the present case, this exercise was necessary as there is no likelihood of any entry of caste recorded in old record in case of Mohameddans. It was necessary for the Vigilance Cell to make an enquiry in terms of clause (d). Perusal of the impugned order shows that the Committee has not

1 2017 (1) Mah. Law Journal, 797.

applied the affinity test. This Court has already considered the provisions of Rule 13 of the said Rules in case of Smt.Bismilla Mohammedsab Sayyed (Mujawar) @ Bismilla Allabaksh Shikkalgar (supra). In this case also we find that entire approach of the Caste Scrutiny Committee is erroneous as in the facts of this case, the Caste Scrutiny Committee should have directed the Vigilance Cell to do the exercise under the provisions of clause (d) of Sub-Rule 1 of Rule 13 of the said Rules. The Caste Scrutiny Committee ought to have held appropriate enquiry in the present case.”

4. We have perused the impugned order passed by the Scrutiny Committee. We find that the Committee has taken into consideration the fact that the Petitioner has not produced any documents prior to 1967 to prove his caste claim. In our opinion, in the light of what has been laid down by this Court in the case of *Jamadar Mehaboob (supra)*, the matter needs to be reconsidered afresh by the Respondent No. 1 – the District Caste Certificate Validity Committee in accordance with the observations made by this Court. The matter is remitted back to Respondent No. 1 Committee and the Vigilance Cell is directed to conduct a fresh inquiry in accordance with the observations made in paragraph 13 of the judgment of *Jamadar Mehaboob (supra)* case and include information including sociological, anthropological, ethnological and genetical

traits of the relevant caste. Respondent No. 1 Committee shall make an inquiry as required by clause (d) of sub-rule (1) of Rule 13 of the 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. Upon considering the report of the Vigilance Cell, the Committee shall pass a fresh order after hearing the Petitioner. Petitioner is at liberty to produce the additional documents, if any, before the Committee. Hence the following order.

- (i) The impugned order dated 29th June, 2017 passed by Respondent No. 1 Committee is quashed and set aside.
- (ii) The Vigilance Cell shall conduct a fresh inquiry in terms of the observations made by us hereinbefore.
- (iii) The Committee shall pass a fresh order on its own merits after hearing the Petitioner within 8 weeks from today.
- (iv) In the event an order adverse to the Petitioner is passed by the Committee, the same may not be implemented for a period of two weeks from the date of communication of the said order to the Petitioner.

- (v) Liberty is granted to the Petitioner to produce additional documents, if she so desires.
- (vi) Rule is made absolute in the aforesaid terms with no orders as to costs.

Sd/-
[M. S. KARNIK, J.]

Vinayak Halemth

Sd/-
[B. R. GAVAI, J.]