

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9276 OF 2016

Yogesh Bansi Shinde

Aged 36 years, resident of Nere,

Tal. Mulashi, Dist. Pune – 411 033.

.. Petitioner

Vs.

1. State of Maharashtra

Through its Secretary, Social Justice

Department, Mantralaya, Mumbai – 32.

2. Divisional Caste Certificate Scrutiny

Committee No.3, Pune Division, Pune

Through its Member Secretary, having

Its office at Jail Road, Commer Zone,

Behind IT Park, Yerwada, Pune 411 006.

3. Collector, Pune, Dist. Pune.

4. Sub Divisional Officer, Maval-Mulashi

Sub Division, Maval, Dist. Pune.

5. Rahul Balu Jadhav,

Resident of Nere, Tal. Mulashi,

Dist. Pune.

.. Respondents

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

Mr.Vikas Mali, AGP for State.

Mr.A.B. Patil, for Respondent No.5.

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

**RESERVED ON : 16th MARCH, 2017
PRONOUNCED ON : 21ST APRIL, 2017**

JUDGMENT (PER M.S.KARNIK, J.) :

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

2. The petitioner by this Petition is challenging the order dated 03/08/2016 passed by respondent No.2 – Committee thereby invalidating, cancelling and confiscating the caste certificate of the petitioner dated 27/03/2015 issued by the respondent No.4 as belonging to Kunbi caste which is notified as Other Backward Class (for short 'OBC') in the State of Maharashtra.

2. According to the petitioner, ward No.3 of Grampanchayat Nere, Tal. Mulashi, Dist. Pune was reserved for backward class of citizens. As the petitioner was desirous of contesting election from the said ward, he moved respondent No. 2 – Committee on 06/07/2015 through Tahsildar Mulashi. The petitioner's application was forwarded for verification of his caste claim along with the documents. Respondent No.2 –

Committee referred the matter to the Vigilance Cell. The enquiry was conducted by the Vigilance Cell. The birth and death extracts in relation to three children born to the great grandfather of the petitioner were enquired by the Vigilance Cell. According to the petitioner, the enquiry conducted is not in conformity with Rule 13 of the Caste Certificate Act in as much as there is complete departure from following Rule 13(1) (a) to (d). The grievance of the petitioner is that while conducting the Vigilance Cell enquiry, the investigation as regards the collecting of information with regard to socio-cultural, anthropological moorings and ethnological kinship, genetical traits of OBC was not carried out.

3. The show cause notice dated 03/12/2015 came to be issued to the petitioner alleging that in the original records relating to the relatives of the petitioner which he relied in support of his caste claim, there is difference in ink and handwriting. The petitioner pointed out to the the Committee in the hearing held on 22/12/2015 that original records are

always kept in the custody of Tahsildar, Mulshi and unless and until the custodian of said record is examined, mere allegations made in the enquiry report cannot be sustained.

4. The petitioner also filed 2 more documents in relation to his relatives namely Eknath Bhiva Maruti Shinde and the death extract in relation to Dagadi Bhiva Shinde showing caste in abbreviated form in Marathi as “Ma.Ku”. meaning Maratha Kunbi. Again the vigilance enquiry was conducted and report was submitted on 16/02/2016 wherein it has been clearly mentioned that caste of these persons namely Eknath and Dagadi is shown as Kunbi. The police inspector of vigilance cell reported that he has examined the records and found that there is no tampering or difference in ink and handwriting in respect of these entries.

5. Respondent No.2 – Committee was not satisfied with the said enquiry report and again issued a show cause notice dated 18/02/2016 to the petitioner pointing out that the

petitioner has not submitted evidence of blood relatives in support of his caste claim. The petitioner appeared before the Committee for hearing on 08/03/2016 and pointed out that the Vigilance Cell has confirmed genuineness and authenticity of original documents and did not doubt the relationship.

6. The petitioner also relied on the death extract of Maruti Bhiva Govinda which dates back to 01/05/1912 who is the great grandfather of the petitioner from paternal side to show that they are related by blood. The petitioner has also placed reliance on three affidavits along with genealogical tree. The petitioner was heard on 22/03/2016. Thereafter, the impugned order came to be passed by respondent No.2 – Committee.

7. The petitioner has challenged the order on various grounds. According to the learned Counsel for the petitioner, the document at serial No. 8 is the death extract in relation to Maruti who is the agnate great grandfather of the petitioner

from paternal side. The document dates back to 1912 showing caste as Kunbi. The said entry is discarded by the respondent No.2 – Committee on the ground that there is difference in ink and handwriting. According to the learned Counsel for the petitioner discarding this entry is against the principles of natural justice and the same should not have been done without issuing a show cause notice to the petitioner in relation to the alleged tampering.

8. Learned Counsel for the petitioner next contended that the Committee has committed an error in not referring to the death extract dated 01/05/1912 in relation to Maruti Bin Govinda Shinde for verification to the Vigilance Cell and therefore, has acted contrary to the mandate of Rule 13(1)(e) of the Caste Certificate Rules, 2012. Learned Counsel for the petitioner submitted that various documents have been discarded without examining the custodian of the records. According to him, the Committee has committed an error in not considering the efficacy of second enquiry report of the Vigilance

Cell which is in favour of the petitioner. According to him, the Committee did not apply its mind to the genealogical tree and thereby committed an error in discarding the birth extract in relation to Eknath Shinde and Dagadi Shinde on the ground that petitioner's relationship with them is not proved.

9. Learned Counsel for the petitioner next contended that crucial affinity test is not conducted and therefore, also the decision calls for interference.

10. The learned AGP on the other hand supported the order passed by the Committee. He invited our attention to the findings recorded by the Committee. He also produced the original record for our perusal.

11. We have perused the record. The Scrutiny Committee has discarded the documents at serial Nos. 3, 4 & 5 on the ground that there is tampering and overwriting as also there is difference in ink and handwriting as reported by the

Vigilance Cell. In so far as the documents at serial No. 6 which relate to the birth extract of son born to Bhiva Maruti Shinde and document at serial No. 7 which is birth extract of Bhiva Maruti Shinde's daughter are discarded by the Committee on the ground of change of ink, overwriting and the same being of different type. The Committee has found that the petitioner was not able to establish his relationship with Eknath Bhiva Maruti Shinde and Dagadi Bhiva Maruti Shinde. In fact the complainant has proved that the said Eknath Bhiva Maruti Shinde and Dagadi Bhiva Maruti Shinde are not in blood relation of the petitioner.

12. The Committee also took into consideration the document produced by the petitioner pertaining to Shri Maruti Bin Govinda Shinde. The said document is of the year 1912 is a birth- death extract. In fact even after the Committee had closed the matter for orders on 22/03/2016, the Committee considered the said document after hearing the petitioner afresh. The Committee upon examination of the original register found that

there is tampering and the same is written in different handwriting. The Committee, therefore, did not take into consideration the said document.

13. The Committee while considering the revenue entries and mutation entries produced by the petitioner opined that the same did not contain any entry as regards the caste, therefore, did not take into consideration those entries in support of the petitioner's caste claim. The Committee has given cogent reasons why it has not considered the Vigilance Cell report dated 16/02/2016.

14. Learned Counsel for the petitioner has relied upon the decision of the Apex Court in the case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and ors., (2012) 1 Supreme Court Cases 113** to contend that the vigilance enquiry is not restricted to the verification of documents but also includes conducting the affinity test in accordance with the scheme of the Act and Rules which is

relevant and germane to determination of social status of claimant.

15. In our opinion, the Committee has arrived at a finding that the documents relied upon by the petitioner are found to be tampered and over written. The said finding is supported by the materials on record. We do not find any perversity in the view taken by the Committee. The petitioner heavily relied upon the documentary evidence produced by him in support of his claim. As held by the Apex Court in the case of **Anand** (*supra*), the burden to prove the caste claim lies upon the applicant and in case the materials produced by the applicant does not prove his caste claim, the Committee cannot gather evidence on its own to prove or disprove his caste claim. The first report of the Vigilance Officer clearly reports that the documents relied upon by the petitioner in support of his caste claim are over written and tampered with. In our opinion, if the petitioner has based his claim on the basis of documents which are tampered and over written and in these circumstances, if the

Committee has come to the conclusion that the petitioner has failed to prove his caste claim, we do not find that the view of the Committee is perverse or unreasonable. The view taken by the Committee does not warrant any interference only on the ground that affinity test is not conducted in the facts of this case.

16. In this view of the matter, we do not find any merit in the Petition. The Petition is therefore, rejected with no order as to costs.

17. 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 08/08/2016. Learned Counsel appearing for the respondents submits that record does not reflect that ad-interim relief was continued by this Court on the successive dates. Even otherwise, in view of order passed today,

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

(M.S.KARNIK, J.)

(NARESH H. PATIL, J.)