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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6201 OF 2017
WITH
CIVIL APPLICATION NO.1990 OF 2017

Kishor Uttam Dhankavade
age 42 years, residing at 36/2,
Near Nirmohi Plaza, Dhankavadi,
Pune – 411 043.

...Petitioner

versus

1. State of Maharashtra
through its Secretary, Social
Justice Department, Mantralaya,
Mumbai 400 032.

2. District Caste Certificate Scrutiny
Committee, Pune District, Pune
through its Member Secretary,
having its office at Jail Road,
Commer Zone, Behind IT Park,
Yerwada, Pune – 411 006.

3. Pune Municipal Corporation,
Pune, through its Commissioner,
having its office at Pune, Dist. Pune.

4. Sub Divisional Officer (Revenue),
Bhor Sub Division, Bhor, Dist. Pune

5. Mrunal Shantaram Dholepatil
residing at 5, Balkrishna Apartment,
Pune – 411 001.

...Respondents

.....
Mr. Rajiv B. Chavan, Senior Advocate i/by Mr. P.B. Chavan, i/by Veera V. Shinde, for the Petitioner.
Mr. B.V. Samant, AGP for Respondent Nos. 1 and 4.
Mr. Manoj Badgujar, i/by A.P. Kulkarni, for Respondent No.3.
Mr. Ganesh Bhujbal, for Respondent no.5.
.....

**CORAM : B. R. GAVAI AND
M.S.KARNIK, JJ.**

DATE : 21st AUGUST, 2017.

ORDER (PER M.S. KARNIK, J.) :-

The challenge in this petition is to an order dated 30th May, 2017 passed by the Respondent No.2-District Caste Scrutiny Committee, Pune, thereby invalidating the caste claim of the Petitioner as belonging to Kunbi, Other Backward Class.

2. The Sub Divisional Officer (Revenue), Bhore Sub Division, Bhore, District Pune, issued a caste certificate in favour of the Petitioner certifying him as belonging to the Kunbi Caste which is recognized as Other Backward Class at Serial No.83 under Government Resolution dated 13/10/1967 and as amended from time to time.

3. The Scrutiny Committee referred the caste claim of the petitioner to the Vigilance Cell for investigation. The Vigilance Cell submitted the report after visiting the concerned authorities who had issued the certificates/birth-death extracts of his ancestors on which the petitioner based his claim. Insofar as the documents pertaining to the birth and death extract of the year 1923-1924 in respect of the son of Shri Mukinda Sakharam Dhankavade and the son of Mukinda Bin Sakharam Dhankavade indicates that the petitioner's ancestors belonged to the Kunbi caste. The Vigilance Cell observed that in respect of the birth extract dated 21/4/1923 of the brother of the petitioner's grand-father, the same is in different handwriting and further observed that the handwriting must be during that period only. In respect of the second entry being the death extract no.15 dated 30/5/1924 of the petitioner's grand-father's brother, the entry is not clearly legible as ink has spilled over the document.

4. The Scrutiny Committee by the impugned order invalidated the caste claim of the petitioner.

5. The learned Senior Counsel for the petitioner submits that genealogy is not disputed. The petitioner having relied upon the

pre-constitutional documents of his relatives clearly indicating the caste as Kunbi, the Scrutiny Committee ought to have concluded that the said entries have great evidentiary value to support the caste claim of the petitioner. Learned Senior Counsel further submits that in the explanation to the show cause notice dated 10/4/2017 issued by the Committee, in para 3 the petitioner had raised the contention that observation of Vigilance Cell about change in handwriting being of the same period when the certificate was issued, which aspect has not at all been dealt with by the Committee. Learned Senior Counsel further contends that Rule 13 of the Maharashtra Scheduled Castes, 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') is not followed by the Vigilance Cell. According to him, no inquiry has been conducted by the Vigilance Cell in terms of the mandate of Rule 13 and in particular clauses (a) to (c) thereof. The statements as contemplated by clause (b) have not been recorded. Information as stated in clause (c) has not been collected. He submits that except for verifying the documents, the Vigilance Cell though mandated has not conducted the inquiry as is the requirement of the Rule 13 of the said Rules.

6. The learned Senior Counsel further submits that after the order was passed by the Scrutiny Committee there are some additional documents in support of his caste claim. He submits that with a view to give the petitioner a fair opportunity of establishing his claim, it is necessary in the interest of justice to allow him one opportunity to present his caste claim before the Scrutiny Committee.

7. Learned AGP on behalf of the Respondent Nos1 and 4 and learned Counsel for Respondent No.5 invited our attention to the impugned order. It is pointed out that there are interpolations in the entries and the same are in different handwriting. In the submission of the learned Counsel the Scrutiny Committee has rightly discarded these piece of evidence. Learned Counsel submits that the Committee has recorded a finding of fact based on the materials on record and therefore no interference is warranted in the exercise of this Court's jurisdiction under Article 226 of the Constitution of India.

8. We have considered the rival submissions made by the learned Counsel. We have perused the record of the Scrutiny Committee. Rule 12 of the said Rules provides that there shall be a Vigilance Cell to assist the Scrutiny Committee for the purposes of

conducting field inquiry in accordance with Rule 13 of the said Rules. The procedure of the Scrutiny Committee has been laid down in Rule 17. Sub-Rule (7) of Rule 17 provides that if evidence produced by the petitioner does not conclusively prove his caste claim, the Scrutiny Committee shall refer the said case to Vigilance Cell for carrying out suitable inquiry, as it deems fit. Sub-rule (7) of Rule 17 also provides that findings recorded by the Vigilance Cell shall not be binding on the Scrutiny Committee, as the inquiry conducted by the Vigilance Cell is meant for internal assistance to the Scrutiny Committee. Sub-rule (7) of Rule 17 provides that the Vigilance Cell shall work under the control and supervision of the concerned Caste Scrutiny Committee. The relevant part of Rule 13 is reproduced as under :-

“13. Report of Vigilance Cell and Issues to be dealt with :-

(1) Vigilance Cell Officer (s) shall submit report upon investigating into the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Clases or Special Backward Category claim, referred to it, -

(a) by visiting permanent place of residence and conducting domestic inquiry ; or

(b) by recording statements of respected and responsible persons from concerned area, including representatives of Local Self Government, Police Patil, etc.; or

(c) by collecting information, as part of recording statement, as regards to name, age, educational qualification, occupation, existing place of residence and information regarding properties (existing and disposed) of family members of applicant or claimant ; or

(d) by collecting information including the sociological,

anthropological and ethnological (anthropological moorings and ethnological kinship), genetical traits of the Scheduled Caste, Scheduled Caste, converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, if any ; or

(e) by personally visiting Office of the Competent Authority or revenue or school or other concerned officers.”

9. In the present case we find that the Vigilance Cell only conducted the inquiry in respect of the documents which have been submitted. The Scrutiny Committee has not taken into consideration the observation made by the Vigilance Cell that the change in the handwriting relates to the period during which the entry was made. We also find substance in the contention of the learned Senior Counsel that the Committee has not taken into consideration the explanation submitted by the petitioner on this aspect of the matter at para 3 of the explanation dated 19/5/2017 to the show cause notice dated 10/4/2017. Apart from this the perusal of the report of the Vigilance Cell shows that no domestic inquiry as contemplated in clause (a) of Sub-rule (1) of Rule 13 of the said Rules is made. As provided in clause (b), the Vigilance Cell ought to have recorded statements of respected and responsible persons from concerned area, including representatives of Local Self Government, Police Patil, etc. We find that no attempt has been made to record such

statements as contemplated in clause (c) of Sub-rule (1) of Rule 13 of said Rules. From the scrutiny of the said Rules, it appears that the function of the Vigilance Cell is not only to verify the correctness and genuineness of the documents produced by the Applicant, but also to hold enquiry as contemplated by relevant clauses and in particular clauses (a), (b) and (c). In a given case, if sociological, anthropological and ethnological information as regards a particular caste is not available, even the collection of information as contemplated under clause (d) will have to be made.

10. We therefore set aside the impugned order inasmuch as the impugned order is based on the report of the Vigilance Cell. In these circumstances the Scrutiny Committee is required to consider the matter afresh on his own merits after giving an opportunity to the petitioner. The Vigilance Cell shall conduct the investigation as contemplated by Rule 13 of the said Rules and submit a fresh report. The petitioner is granted liberty to furnish additional documents in support of his caste claim. Hence the following order.

ORDER

1. The impugned order is quashed and set aside. Matter is remitted back to the Respondent No.2 - Scrutiny Committee for

consideration afresh. Needless to state that Respondent No.2 – Scrutiny committee shall give an opportunity to the Petitioner to produce additional material available to the Petitioner. Further, needless to state that Respondent No.5 would be given an opportunity of being heard in the proceedings before the Scrutiny Committee.

2. Rule is made absolute in the aforesaid terms. Petition is disposed of. Since Petition itself is disposed of, Civil Application does not survive and the same is also disposed of.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)