

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

WRIT PETITION NO. 9815 OF 2017

Munaf Abu Dasurkar

... Petitioner.

Versus

State of Maharashtra
and others

... Respondents.

....

Mr. C.K. Bhangoji a/w Mr. T.V. Jadhav for the Petitioner.

Mr. A.P. Vanarase, AGP for Respondent Nos.1 to 3.

Mr. Rishin mantri i/b. mr. S.b. Shetye for Respondent No.4.

Mr. Balkrishna D. Joshi for Respondent No.5

....

***CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 07th December, 2017.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned counsel for the parties.

By this writ petition, the petitioner challenges the order of scrutiny committee dated 22.08.2017, invalidating the caste claim of the petitioner of belonging to 'Khatik' caste (Other Backward Class).

The petitioner and the respondent No.4 had contested the election to the Panchayat Samiti on a seat earmarked for the Other Backward Classes (OBC). The petitioner claims to belong to

'Khatik' caste which falls in OBC and the caste claim of the petitioner was referred to the scrutiny committee for verification. The scrutiny committee invalidated the caste claim of the petitioner by the impugned order, dated 22.08.2017.

Mr. Bhangoji, the learned counsel for the petitioner submitted, *inter alia*, that the impugned order is liable to be set aside as the affinity test was not conducted while verifying the caste claim of the petitioner. It is submitted that a vigilance enquiry would not be necessary while verifying a caste claim, only if the documents tendered by the claimant conclusively prove that the claimant belongs to a particular caste or tribe. It is stated that since the scrutiny committee was not satisfied from the documents tendered by the petitioner that the petitioner belongs to 'Khatik' caste, it was necessary for the scrutiny committee to conduct the affinity test. It is stated that the statements of the petitioner or his near relatives, i.e his uncles and the other close relatives were not recorded while considering whether the petitioner could prove his affinity to 'Khatik' caste. It is stated that the affinity test was not conducted by recording the statements of the petitioner and his near relatives and the statements of only the *Sarpanch*, the *Police Patil* and some villagers were recorded.

The learned Assistant Government Pleader appearing for the scrutiny committee has supported the order of the scrutiny committee. It is submitted that since in the old documents the scrutiny committee has found some overwriting, the scrutiny committee has rightly rejected the caste claim of the petitioner as the petitioner could not produce any other old document to prove

his caste claim. It is stated that there is no material on record to show that the ancestors of the petitioners were butchers and were slaughtering animals. It is however fairly admitted that the affinity test was not conducted while verifying the caste claim of the petitioner.

Mr. Joshi, the learned counsel for the respondent no.5 submitted that this Court may not interfere with the impugned order as a clear finding is recorded by the scrutiny committee that the name of Mr. Karim Mohd. was inserted in the birth and death register at a later point of time. It is stated that since the aforesaid finding is recorded by the scrutiny committee, this Court may not quash and set aside the impugned order only because an affinity test was not conducted in the caste claim of the petitioner.

On hearing the learned counsel for the parties, we find that the petitioner had not produced any document of the pre independence era or any old documents to prove his caste claim. Only two documents of the years 1952 and 1961 were produced by the petitioner and the scrutiny committee had found that there was some overwriting in the original birth and death register and the entries were inserted in the register at a subsequent point of time. We have also observed so in our order dated 30.11.2017 after we perused the original birth and death register. However, a finding is not recorded either by the vigilance cell or by the scrutiny committee that the petitioner was instrumental in inserting the entries in the original birth and death register. Since the other documents produced by the petitioner are of the recent times and since they could not have conclusively

established the caste claim of the petitioner, it was necessary for the scrutiny committee to have conducted an affinity test to consider whether the petitioner proves his affinity to 'Khatik' caste. In the circumstances of the case, since the affinity test was not conducted on the petitioner, it would be necessary to remand the matter to the scrutiny committee for a fresh decision on merits.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order is quashed and set aside. The matter is remanded to the scrutiny committee for deciding the caste claim of the petitioner in accordance with law within six months. The parties undertake to appear before the scrutiny committee on 08.01.2018 so that issuance of notice to the parties could be dispensed with. The scrutiny committee should pass appropriate orders in the caste claim of the petitioner after ensuring that an affinity test is conducted. No steps for disqualification of the petitioner should be initiated till his caste claim is decided. Rule is made absolute in the aforesaid terms with not order as to costs.

(Riyaz I. Chagla J)

(Smt. Vasanti A Naik, J)