

Jsn

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

WRIT PETITION NO. 9918 OF 2017

Joti Dadu Musale

... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

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

Mr. A.P. Vanarase, AGP for Respondent Nos. 1 to 5.

Mr. P.S. Dani, Senior Advocate with Mr. Anand Patil for Respondent No.6.

**CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**

DATED: 30TH NOVEMBER 2017

PC:-

By this writ petition, the petitioner challenges the order of the scrutiny committee, dated 22nd August 2017 invalidating the claim of the petitioner of belonging to 'Kunbi' caste which falls under the Other Backward Classes.

The petitioner had contested the election to the panchayat samiti on a seat that was reserved for the OBC. The petitioner had claimed to belong to the 'Kunbi' caste and his caste certificate was referred to the scrutiny committee for verification. The petitioner had produced a few documents before the scrutiny committee for proving his caste claim. In the documents pertaining to the petitioner, specially the school record the caste of the petitioner was recorded 'Maratha'. The petitioner mainly relied on the entry in the birth register, dated 24th February 1932 in respect of Ganpati Dadu Musale, who the petitioner claimed to be his

brother. The scrutiny committee, on an appreciation of the evidence on record however invalidated the caste claim of the petitioner. The petitioner has challenged the said order in the instant petition.

Shri Mendadkar, the learned counsel for the petitioner submitted that the scrutiny committee could not have invalidated the caste claim of the petitioner by observing that the petitioner did not prove his relationship with Ganpati Dadu Musale. It is submitted that in the genealogical tree submitted by the petitioner before the scrutiny committee, Ganpati was shown to be the brother of the petitioner. It is submitted that before recording a finding that the petitioner had failed to prove his relationship, with Ganpati Dadu Musale, the scrutiny committee did not serve a notice on the petitioner asking him to prove his relationship with Ganpati Dadu Musale. It is submitted that in the absence of any notice in that regard the impugned order is liable to be set aside.

On hearing the learned counsel for the parties and on a perusal of the impugned order, it appears that there is no scope for interference with the impugned order in exercise of the writ jurisdiction. The caste of the petitioner was recorded as 'Maratha' in his school record. The only document on which the petitioner heavily relied for proving his caste claim was the birth record pertaining to Ganpati Dadu Musale, who according to the petitioner is his real brother. The scrutiny committee however rightly found that the petitioner had failed to establish his relationship with Ganpati Dadu Musale. Before recording the finding in that regard, in the circumstances of the case, it was not

necessary for the scrutiny committee to serve a show cause notice on the petitioner for establishing his relationship with Ganpati Dadu Musale. The respondent no.6 – complainant has specifically raised an objection in the complaint filed before the scrutiny committee on 27th February 2017 that the petitioner is not related to Ganpati Dadu Musale. Again, the said fact was reiterated by the respondent no.6 – complainant on 10th March 2017. On 18th May 2017, the petitioner sought the copies of the complaint – objection raised by the respondent no.6 and sought time on 26th June 2017 and 25th July 2017 to file reply to the said objection – complaint. The petitioner therefore had a clear notice that his relationship with Ganpati Dadu Musale was put to challenge. The petitioner had filed a reply on 3rd August 2017 and also argued on this aspect of the matter on 11th August 2017 after filing an additional reply on that date. In the aforesaid set of facts, it cannot be said by any stretch of imagination that the petitioner did not have notice about the objection in regard to the relationship of the petitioner with Ganpati Dadu Musale, whose certificate of birth of the year 1932 was relied on by the petitioner for proving his caste claim. It is also surprising that although the petitioner is born in the year 1957, the document pertaining to Ganpati Dadu Musale, whose certificate was produced before the scrutiny committee was born in the year 1932. Also, the real brother of the petitioner viz Ganpati Dadu Musale appears to have been born in 1953 and the petitioner was wrongly relying on the entry in the birth extract of another Ganpati Dadu Musale with whom the petitioner had no concern by taking the advantage of the resemblance of the name. The findings recorded by the scrutiny committee are pure findings of facts based on a proper

appreciation of the material evidence on record. The petitioner had not produced any documents that could establish the claim of the petitioner of belonging to 'Kunbi' caste.

Since, the order of the scrutiny committee is just and proper, we dismiss writ petition with no order as to costs.

In the circumstances of the case, the prayer made by the learned counsel for the petitioner for continuing the ad-interim relief is rejected as we do not find an iota of evidence to establish that the petitioner belongs to 'Kunbi' caste.

Order accordingly.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A. NAIK, J.)