

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10305 OF 2017

Pratidnya Pandharinath Kamthewad ...Petitioner
Vs.
The State of Maharashtra and Others ...Respondents

Mr. R.K. Mendadkar a/w Mr. C.K. Bhangoji and Mr. Tanaji Jadhav
for the Petitioner.

Mr. A.A. Kumbhkoni, Advocate General a/w. Mr. Ashutosh
Gavnekar, Special Counsel and Mr. Sandeep Babar, AGP, for the
Respondent.

**CORAM : SHANTANU KEMKAR &
G.S. KULKARNI, JJ.
DATE : OCTOBER 06, 2017**

P.C.:

Parties through their counsel.

2. Through this Petition filed under Article 226 of the Constitution of India, the Petitioner has assailed the order dated 31st August, 2017 passed by the Scrutiny Committee (Respondent No.2) whereby the Petitioner's claim for validation of her caste certificate as of "*Mannervarlu*" Tribe has been rejected.

3. The grievance of the petitioner is that in support of her claim for verification of her caste certificate, she had submitted Caste Validity Certificate granted by the Committee in favour of his three cousin brothers, one cousin sister, one real uncle and his father

Pandharinath Digambar Kamthewad but the Committee has discarded the same on the ground that the same would not be conclusive proof and would not absolve the Petitioner from discharging the burden cast on her to produce the relevant evidence. According to the learned counsel appearing for Petitioner, the impugned order of the Committee runs contrary to the Division Bench judgment of this Court in the case of Apoorva Vinay Nichale v/s Divisional Caste Certificate Scrutiny Committee No.1 and others, reported in 2010(6) Mh.L.J. 401 which was based upon the Supreme Court judgment passed in the case of Raju Ramsing Vasave v/s Mahesh Deorao Bhivapurkar and others, reported in (2008) 9 SCC 54.

4. On going through the impugned order, we find that while discarding the petitioner's validation certificate and other documents, the Scrutiny Committee had placed reliance on solitary entry in respect of Raghunath Digambar Kamtewad, real uncle of the petitioner in whose school record according to the Committee the word "lu" after "Manervar" has been subsequently added so as to make "Manervar" as "Manervarlu". It is not in dispute that the said Raghunath Digammbar Kamtewad has also been granted validity certificate. In our considered view, the findings recorded by the Scrutiny Committee on the basis of stray entry cannot be said to be

sufficient ground to discard various documents as also various caste validity certificates submitted by the petitioner as referred above. It is also to be noted that the interpolation as aforesaid has also not been proved before the Committee conclusively.

5. On the other hand, the learned AGP has supported the impugned order.

6. Having considered the submissions and having gone through the order passed by the Division Bench of this Court in the case of **Apoorva Vinay Nichale** (supra), we find that the Division Bench has in paragraphs 7 and 9 observed thus :

“7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.

9. In the present case, we find that the committee has disbelieved the petitioner's case that she belongs to Kanjar Bhat after calling the school leaving certificate of Petitioner's father and noticing that the original caste written on it was 'Thakur' and that was subsequently changed to Kanjar Bhat. The committee observed that the caste has been changed without complying with the procedure prescribed by section 48(e) and 132(3) of Mumbai Primary Education Act. In fact, the caste has been changed on the basis of the affidavit. From the findings of the committee it appears that the committee has observed that the change of caste has been one illegally. Obviously, the committee which decided the caste claim of the

petitioner's sister did not hold the same view, otherwise it would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent cast claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the Petitioner.”

7. The impugned order does not reflect that the various close relatives of the petitioner including his father had obtained the validation certificate by playing fraud or by misrepresentation or their orders were without jurisdiction. Thus in our considered view, the reason assigned by the Respondent No.2 – Committee for rejection of the Petitioner's claim cannot be sustained as it runs contrary to the view taken by the Division Bench of this Court in the case of **Apoorva Vinay Nichale** (supra).

8. In the circumstances, we allow the Petition and set aside the

impugned order. As a result, the Respondent No. 2 – Committee is directed to issue the caste validity certificate to the Petitioner forthwith on receipt of authenticated copy of this order.

9. The Petition stands disposed of as such.

(G.S. KULKARNI, J.)

(SHANTANU KEMKAR, J.)