

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10490 OF 2017

Mayuri d/o. Shriram Kalyanpad ...Petitioner
vs.
The State of Maharashtra and Others ...Respondents

Mr. S.B. Talekar a/w. Ms. Madhavi Ayyappan, for the Petitioner
Mr. A.A. Kumbhkoni, Advocate General a/w. Mr. Akshay Shinde,
Special Counsel and Mr. Sandeep Babar, AGP, for the Respondent.

**CORAM : SHANTANU KEMKAR &
G.S. KULKARNI, JJ.**

DATE : OCTOBER 03, 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 4th September, 2017 passed by the Scrutiny Committee (Respondent No.2) whereby the Petitioner's claim for caste validation of his caste as of "*Mannerwarlu*" has been rejected.
3. The grievance of the petitioner is that though she had submitted Caste Validity Certificate granted to her by the Committee in favour of her father and cousin brother 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 him to produce the relevant evidence. According to the learned counsel appearing for Petitioner, the decision 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 the other hand, the learned AGP has supported the impugned order.

5. 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."

6. 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 Nichale** (supra).

7. The another reason assigned by the Committee for discarding the validity certificate submitted by the Petitioner is that the Vigilance Cell did not collect any documents of the Petitioner's relatives prior to 1950. This reason is also in our considered view is not sustainable. Merely because while granting earlier caste validity certificate, no documents of pre constitution period were collected by the then Vigilance Cell itself will not be a ground to discard the earlier validity certificates, while considering the claim of the Petitioner. There may be cases where there may not be any pre constitution document. So to reject the claim on that count is wholly illegal and unsustainable.

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.)