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

WRIT PETITION NO.10532 OF 2017

Dinesh S/o. Shivaji Kondawar	..Petitioner
Vs.	
The State of Maharashtra & Ors.	..Respondents

Mr. S.B. Talekar a/w. Ms. Madhavi Ayyappan i/b. M/s. Talekar & Associates, 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 04, 2017

P.C.:

Rule. By consent, rule is made returnable forthwith.

2. By consent of the parties, heard finally.

3. The petitioner has filed this petition challenging the order dated **1st September 2017** passed by the second Respondent – Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, (hereinafter referred to as “the Committee”) whereby the petitioner's claim for validation of his Caste as of “*Mannervarlu*” has been rejected.

4. In support of his caste validity claim, the petitioner has submitted as many as 30 documents. Out of those

documents, 2 documents were validity certificates granted in favour of his father Shivaji Bhumanna Kondawar and his real uncle Sayalu Bhumanna Kondawar. The Committee, after getting Vigilance Cell Report on the basis of 3 documents relating to petitioner's cousin grandfather, relative and cousin grandfather wherein the caste was entered as "*Munurwar*", had rejected the petitioner's claim.

5. Learned Counsel for the petitioner submits that since the petitioner's father as well as uncle were granted Caste Certificate after due vigilance enquiry in the year 2011 and 2006 respectively, the said validation certificates could not have been discarded by the Committee without there being any reason as has been observed by the Division Bench of this Court in 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.**

6. On the other hand, the learned AGP has supported the impugned order. He argued that the Committee, on the basis of the documents as referred to in paragraph 10 of the impugned order, has rightly rejected the petitioner's Caste Validity claim.

7. 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 caste 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.”

8. We have considered the submissions of the parties and we have also gone through the record which is placed before us by the learned AGP. Having gone through the record, we find that while granting Caste Certificate to the petitioner's father Shivaji Bhumanna Kondawar, proper procedure was followed. The Vigilance Enquiry report dated 17th February 2011 confirms the genealogy and different relations as relied upon by the petitioner's father while applying for validation of Caste Certificate. In the circumstances when the proper procedure was followed while granting validation to petitioner's father, in our considered view, the petitioner cannot be deprived of getting Caste Validation Certificate on the basis of entries of petitioner's cousin grandfather having mention of 'Munurwar'. It is also borne out from the record that the petitioner's cousins Lakshman, Ashok and Raju have also been granted Caste

Validation Certificate. In the circumstances, when there are various Caste Validity Certificates issued in favour of the petitioner's relatives from paternal side including the petitioner's father, the order passed by the Committee is unsustainable.

9. Accordingly, the Petition is allowed and the impugned order is set aside. The Respondent No. 2 – Committee is directed to issue the caste validity certificate to the petitioner forthwith on receipt of an authenticated copy of this order.

10. Needless to observe that in case any show cause notice has been issued by the Committee for cancellation of Caste Certificate of the petitioner's relatives, this order will not come in the way of Committee while deciding the show cause notice.

(G.S. KULKARNI, J.)

(SHANTANU KEMKAR, J.)