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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.78 OF 2013

WITH

CIVIL APPLICATION NO.1083 OF 2016

Mangala Vasant Thakur

..Petitioner.

V/s.

State of Maharashtra & Ors.

..Respondents.

Mr.R.K.Mendadkar for the Petitioner.

Mr.P.P. More, AGP for Respondent Nos.1 to 3.

Mr.S.V.Marne for Respondent No.4.

***CORAM : SHANTANU S.KEMKAR AND
M.S.SONAK, JJ.***

DATED : 13 JULY 2017

P.C.:-

Heard the learned counsel for the parties.

2. Through this Petition filed under Article 226 of the Constitution of India, the Petitioner has assailed the order dated 6 August 2012 passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane (Respondent No.2) whereby

the Petitioner's claim for caste validation has been rejected. The grievance of the Petitioner is that though she had submitted Caste Validity Certificate granted by the Committee in her favour 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. She has submitted additional documents including caste validity certificates of her cousin sister and the certificates in relation to her grandfather, cousin grandfather and father. The documents pertain to the year 1921 to 1941. According to the learned counsel appearing for Petitioner, the decision runs contrary to the Division Bench judgment of this Court in the case of ¹*Apoorva Vinay Nichale V/s. Divisional Caste Certificate Scrutiny Committee No.1 and others*, which was based upon the Supreme Court judgment passed in the case of ²*Raju Ramsing Vasave V/s. Mahesh Deorao Bhivapurkar and others*.

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

¹ 2010 (6) Mh.L.J. 401

² (2008) 9 SCC 54

4. 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.”

5. 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)*. In the circumstances, we set aside the impugned order and

remand the matter back to the Committee for deciding the Petitioner's caste validity claim afresh keeping in view the certificates of his cousin sister, grandfather, cousin grandfather and father and also keeping in view the law laid down by the Division Bench of this Court in the case of *Apoorva Nichale (supra)*.

6. The petition is disposed of in above terms. The Petitioner to appear before the Committee on 1 August 2017 at 11.00 am. The Committee to take appropriate decision within four months from the Petitioner appearing before the Committee. All contentions are kept open.

7. Till the Committee takes a decision, the services of the Petitioner shall not be terminated for want of production of Caste Validity Certificate.

8. In the consequence, the Civil Application also stands disposed of.

(M.S.SONAK, J.)

(SHANTANU S.KEMKAR, J.)