

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8144 OF 2014
WITH
CIVIL APPLICATION NO.432 OF 2018

Kum.Fehmi Mushtak Mukadam, Age 18 years,
R/o.202, Unite4d Enclave (B),
Near Ajaju Furniture, Khend, Chiplun,
Dist.Ratnagiri.

Petitioner

versus

1. The State of Maharashtra, through
Secretary, Social Justice and Special Assistance
Department, Mantralaya, Mumbai.

2. The Divisional Caste Certificate Scrutiny
Committee no.2, through its Member Secretary,
Ratnagiri.

3. The Government Medical College,
through Dean, Miraj, Dist. Sangli.

4. Maharashtra University of Health Science,
Nashik, through its Registrar.

Respondents

Mr.R.K.Mendadkar for petitioner/applicant.
Mr.VM.Mali, AGP, for Respondents 1 to 3 State.
Ms.Pallavi N. Dabholkar for respondent no.4.

CORAM : B.R.GAVAI AND
PRAKASH D. NAIK, JJ.

DATE : 19th April 2018

PC :

1. Rule. Rule made returnable forthwith. Heard by consent.

2. The petition challenges the order of Scrutiny Committee dated 13th July 2014 thereby rejecting the claim of the petitioner of belonging to 'Gavali', which is recognized as Nomadic Tribe-B.

3. Heard Mr.Mendadkar appearing for the petitioner and Mr.Mali, learned AGP for respondents-State. Learned counsel for petitioner submits that since the vigilance cell report supports the claim of the petitioner, the members of respondent no.2 committee have committed grave error in rejecting the said report and in turn the claim of petitioner. Mr.Mali, learned AGP, on the contrary submits that the petitioner has failed to produce any old document showing that the petitioner's ancestors belonged to Gavali Tribe and as such no interference is warranted in the impugned order.

4. A perusal of the impugned order would reveal that the claim of the petitioner is basically rejected on the ground that the petitioner has failed to produce any document on record in support of her claim. We have perused the material placed on record. The report of the vigilance cell is annexed as Annexure-E, at pages 38 and 39, of the paper book. The vigilance cell report reveals that the inquiry officer has found that the petitioner's grand-father was residing in village Kolthare, Taluka Dapoli, District Ratnagiri and was having an ancestral business of grazing the cows and selling milk. He further found that the petitioner's grand-father had also cattle shed wherein he was having 15 to 20 cows and buffaloes. He was also engaged in the business of selling the milk from house to house. From the statements of the witnesses, the vigilance cell found that the names of petitioner's other relatives are Choughule, Waghmare, Tikle,

Rumane, Samle and Karanjikar etc., who were all belonged to Gavali Tribe.

5. The petitioner professes Muslim religion. A Division Bench of this Court in Writ Petition No.188 of 2014 (Coram : S.C.Dharmadhikari and G.S.Kulkarni, JJ) vide judgment and order dated 6th April 2016, while considering the claim of a candidate belonging to Machchimar Daldi (OBC), observed that if the traditional occupation of the family members of the petitioner therein had been fishing, then, there was no reason to discard his claim. The petitioner in the said case also professed Muslim religion.

6. Similarly, in another decision of a Division Bench of this Court in Writ Petition No.11394 of 2016 (Coram : N.H.Patil and M.S.Karnik, JJ.), the Bench quashed the order of scrutiny committee and remanded the matter to the committee for fresh adjudication.

7. In the present case, the report of vigilance cell shows that the grand-father of the petitioner was in the business of grazing the cattle and selling the milk. He had cattle shed and maintaining 15-20 cows and buffaloes. Not only this but upon examination of the witnesses the vigilance cell further found that the relatives of the petitioner are having surnames which are normally found in Gavali Tribe. In that view of the matter, we are inclined to allow the petition.

8. Accordingly the impugned order dated 30th July 2014 of respondent no.2 Divisional Caste Certificate Scrutiny Committee no.2, Ratnagiri is quashed and set aside. It is held that the petitioner

belongs to 'Gavali' Nomadic Tribe-B. The respondent no.2 committee is directed to issue caste validity certificate to the petitioner within two weeks from the date of receipt of a copy of this order in above terms. Needless to state that as a result of allowing this petition, all consequences to follow.

9. In view of disposal of Writ Petition No.8144 of 2014 itself, Civil Application No.432 of 2018 does not survive and stands disposed off as such.

(PRAKASH D. NAIK, J.)

(B.R.GAVAI, J.)

MST