

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2742 OF 2018**

Rehana Abdul Rashid Mulla

..Petitioner

Vs.

State of Maharashtra & Ors

..Respondents

Mr. R. K. Mendadkar i/b Mr. A. P. Pawar for the Petitioner

Mr. U. R. Mankapure for the Respondent No.7

Mr. C. P. Yadav AGP for the Respondent State

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL,JJ
DATE : 22nd MARCH, 2018**

P.C.

1 The Writ Jurisdiction of this Court under Article 226 of the Constitution of India is invoked against the order dated 22-12-2017 passed by the Caste Scrutiny Committee, Sangli, by which the Petitioner's claim as belonging to the "Mujawar Caste" came to be rejected. The Petitioner is also challenging the order dated 15-1-2018 passed by the Collector, Sangli by which order, the Petitioner has been disqualified to be a member of the Tasgaon Municipal Council on account of invalidation of her caste certificate as belonging to "Mujawar Caste".

2 The Petitioner herein contested the elections to the Tasgaon Municipal Council from Ward No.6A in a seat reserved for the candidates belonging to the Backward Class of Citizens. It seems that the Petitioner prior

thereto had obtained a caste certificate from the Respondent No.4 herein as belonging to the “Mujawar Caste”. The Petitioner had submitted the said caste certificate for validation to the Caste Scrutiny Committee, Sangli accompanied by all the necessary documents. The Petitioner was elected as a Member of the Tasgaon Municipal Council from Ward No.6A and therefore was obligated to comply with the requirements of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified tribes, Nomadic tribes, other backward classes and Special backward category (Regulation of issuance and verification of) Caste Certificate, Act 2000, in the matter of getting her caste certificate as belonging to “Mujawar Caste” validated. In view of the fact that the Petitioner had approached the Caste Scrutiny Committee, Sangli for getting her certificate as belonging to “Mujawar Caste” validated, the process of such validation commenced. A Vigilance Inquiry was conducted and a report came to be submitted to the Caste Scrutiny Committee by the said Vigilance Cell on 11-4-2017. At this stage it is required to be noted that the home inquiry was conducted at her place of residence after her marriage and not at the place of residence of her father. The Caste Scrutiny Committee did not concur with the findings as recorded in the Vigilance Cell Report and therefore a show cause notice came to be issued to the Petitioner on 5-5-2017 under Rule 17(11)(i) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified tribes, Nomadic tribes, other backward classes and Special backward category (Regulation of issuance and verification of) Caste Certificate, Rules 2012. The

Petitioner submitted a written reply to the said show cause notice dated 5-5-2017 along with the documentary evidence. In view of the fact that the Vigilance Inquiry was carried out at her matrimonial residence i.e. at Tasgaon and not Walva which is the residence of her father. A second Vigilance Inquiry thereafter came to be conducted at Walva, District Sangli. In the said second Vigilance Inquiry the statement of the three residents of Walva came to be recorded by the Vigilance Cell. The Vigilance Cell accordingly submitted its report dated 18-8-2017 to the Caste Scrutiny Committee. The show cause notice as contemplated under Rule 17(11)(i) of the said Rules came to be issued to the Petitioner accompanied by the Vigilance Cell Report. However, the packet containing the notice and the report was returned as address of the Petitioner was found to be insufficient. However, during the course of the hearing of the proceedings before the Caste Scrutiny Committee i.e. on 31-8-2017 a copy of the Vigilance Cell Report came to be furnished to the Learned Advocate who was appearing for the Petitioner who has in acknowledgement of the receipt of the report, has signed in the roznama of the said report. The Petitioner filed an exhaustive reply dated 3-11-2017 to the said report and to the said reply were annexed various documents in support of her caste claim. Pertinently in the said reply the Petitioner acknowledges the fact that the Petitioner is in receipt of the second Vigilance Cell Report. The Petitioner in the said reply also seeks to question the statements which have been recorded by the Vigilance Cell of the three local residents from Walva by mentioning

that the said three persons have filed affidavits that no home inquiry was conducted by the Vigilance Cell. As indicated above, the Petitioner has also inter alia relied upon various documents some of which relate to her family from father's side as also certain documents which are the revenue record in respect of one Shahsaheb Peer Darga.

3 The Caste Scrutiny Committee adverted to the material on record which included the documents on which reliance was placed by the Petitioner. The Caste Scrutiny Committee has recorded a finding in respect of each of the said documents as to how the said documents do not support the case of the Petitioner as belonging to the "Mujawar Caste". The Caste Scrutiny Committee has adverted to the fact that the Petitioner had obtained a certificate from the Deputy Collector and SLO Sangli, as belonging to the "Kasai" caste which certificate is in existence and has not been cancelled. The Caste Scrutiny Committee has also referred to the documents pertaining to the father of the Petitioner in which documents, the Caste Scrutiny Committee found no mention of the particular caste to which the father of the Petitioner belongs. The Caste Scrutiny Committee has also considered the revenue record of the Shahsaheb Peer Darga wherein there is no mention of the name of the family members from paternal side of the Petitioner as being the persons connected with the said darga. It is having regard to the aforesaid conspectus of documents as also the report of the Vigilance Cell that the Caste Scrutiny

Committee came to a conclusion that the Petitioner has not substantiated her case as belonging to the “Mujawar Caste” which is categorised as Other Backward Class in the State of Maharashtra. The Caste Scrutiny Committee accordingly by the impugned judgment and order dated 22-12-2017 has rejected the caste claim of the Petitioner. Consequentially the Collector, Sangli has passed an order disqualifying the Petitioner to continue as a Member of the Tasgaon Municipal Council. The same has been done in exercise of the power conferred by Section 9 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The order passed by the Collector dated 15-1-2018 can only be said to be consequential to the order passed by the Caste Scrutiny Committee.

4 On behalf of the Caste Scrutiny Committee an affidavit has been filed by Shri Sachin Krishana Kawale, Member Secretary, dealing with the contention of the Petitioner that the notice and the Vigilance Cell Report has not been received by the Petitioner.

5 Heard the Learned Counsel for the parties.

6 The Learned Counsel for the Petitioner Mr. Mendadkar at the threshold would contend that there is an infraction of Rule 17(11)(i) of the Rules in as much as the Petitioner has not been served with a notice as

contemplated by the said Rules accompanied with the second report of the Vigilance Cell. It was the submission of the Learned Counsel that the same results in the violation of the principles of natural justice and therefore the impugned order passed by the Caste Scrutiny Committee is required to be set aside on the said ground alone. The Learned Counsel sought to place reliance on a Division Bench judgment of this Court in the matter of **Saraswati Rajnikant Mayekar Vs. State of Maharashtra & ors.**¹ and an unreported judgment of the Division Bench of this Court in Writ Petition No.6001 of 2014 dated 2-2-2017. It was also the submission of the Learned Counsel that the impugned order is bereft of any reasons as to why the first Vigilance Cell Report has not been accepted by the Caste Scrutiny Committee. The Learned Counsel would further submit that the documents which have been produced by the Petitioner especially her reply to the first Vigilance Cell Report, the documents from the revenue record as regards the Shahsaheb Peer Darga, have not been taken into consideration by the Caste Scrutiny Committee and therefore the order is vitiated on the said ground. The Learned Counsel sought to place reliance on the unreported decisions of the Division Benches of this Court in Writ Petition No.8044 of 2013 and Writ Petition No.10072 of 2016 in support of the said contention. It was therefore the submission of the Learned Counsel that both on the ground of the violation of principles of natural justice as also on merits, the impugned order passed by the Caste Scrutiny Committee is unsustainable.

¹ 2016(1)Bom C.R. 749

7 Per contra, the Learned Counsel appearing for the Respondent No.7 Mr. Mankapure and the Learned AGP Mr. Yadav appearing for the State, would support the impugned order.

The Learned AGP would draw the attention of this Court to the affidavit in reply filed on behalf of the State and especially to the roznama dated 31-8-2017 of the proceedings before the Caste Scrutiny Committee in respect of the case of the Petitioner as also the reply filed by the Petitioner dated 3-11-2017 to the second Vigilance Cell Report. It was the submission of the Learned AGP that the aforesaid facts therefore belie the case of the Petitioner that the Petitioner was not served with the copy of the second Vigilance Cell Report and that there was no opportunity given to the Petitioner to represent against the said second Vigilance Cell Report.

The Learned Counsel Mr. Mankapure appearing for the Respondent No.7 would draw this court's attention to the findings recorded by the Caste Scrutiny Committee and especially the findings in respect of the first Vigilance Cell Report. It was the submission of Mr. Mankapure that having regard to the said findings there is no substance in the contention of the Learned Counsel for the Petitioner that no reasons have been assigned by the Caste Scrutiny Committee as to why the first Vigilance Cell Report has not been accepted by it. The Learned Counsel also sought to draw this court's attention to the Petitioner's conduct of obtaining the certificate as belonging to

“Kasai” caste which certificate as observed by the Caste Scrutiny Committee is still in existence and has not been cancelled.

8 Having heard the Learned Counsel for the parties, we have given our anxious consideration to the rival contentions. The question that arises is whether the order dated 22-12-2017 passed by the Caste Scrutiny Committee is required to be interfered with by this Court is its Writ Jurisdiction under Article 226 of the Constitution of India. Before addressing the said question, it would be necessary to deal with the first contention of the Learned Counsel for the Petitioner. As indicated above, the Learned Counsel Mr. Mendadkar at the threshold contended that the order is unsustainable on account of infraction of Rule 17(11)(i) of the Rules. It would therefore be apposite to reproduce the said Rule:

17. Procedure of Scrutiny Committee:-

(11)(i):- In case of those cases which are referred to Vigilance Cell upon considering the “Report of Vigilance Cell” if the Scrutiny Committee is not satisfied about the claim of the applicant, it shall call upon the applicant to prove his Caste claim by discharging his burden as contemplated under Section 8 of the Act by issuing a notice in FORM-25 coupled with copy of “Report of Vigilance Inquiry”.

Hence a reading of the said Rule discloses that if the report of the Vigilance Cell is adverse to the applicant seeking validation, then a show cause notice along with a copy of the report is to be served on the applicant. In the

instant case as mentioned hereinabove notice alongwith copy of the report was sent to the Petitioner, however it seems that packet came back with the remark that the address was insufficient. However, it is required to be noted that during the course of the hearing of the proceedings before the Caste Scrutiny Committee on 31-8-2017, a copy of the Vigilance Cell Report was furnished to the Advocate appearing for the Petitioner herein who has affixed his signature in the roznama for the said day in acknowledgement of having received the said report. Hence the fact remains that the copy of the Vigilance Cell Report was furnished to the Petitioner. After the receipt of the said report, the Petitioner has filed an exhaustive reply dated 3-11-2017 and has sought to deal with the report in detail. This can be seen from the fact that the Petitioner has sought to discredit the three local residents of Walva whose statements were recorded by the Vigilance Cell during the course of the home inquiry, by filing their affidavits alongiwth her reply stating that no such home inquiry was conducted by the Vigilance Cell. Hence the filing of the reply belies the case of the Petitioner that any prejudice has been caused to the Petitioner.

9 It would have to be borne in mind that the object of the said Rule 17(11)(i) is that a party should be given an opportunity to deal with what is adverse against his/her, that requirement can be said to have been fulfilled in the instant case on account of the report being furnished to the Petitioner and

the Petitioner replying to the same exhaustively. Hence even assuming that the notice under Rule 17(11)(i) was not served upon the Petitioner, that can be said to be only an irregularity and cannot be said to vitiate the proceedings resulting in the order being unsustainable. Having regard to the fact that the second Vigilance Cell Report was furnished to the Petitioner and the Petitioner having filed an exhaustive reply to it the judgment of the Division Benches of this Court in Saraswati Mayekar's case and Pinky Udasi's case holding that on account of the breach of Rule 17(11)(1) the order is vitiated, would be of no avail to the Petitioner. In our view therefore, the first contention of the Learned Counsel for the Petitioner would have to be rejected.

10 In so far as the second contention of the Learned Counsel for the Petitioner that there are no reasons appearing in the impugned order as to why the first Vigilance Cell Report has not been accepted by the Caste Scrutiny Committee. The said submission has to be dealt with having regard to the recording made in paragraph 4 of the order passed by the Caste Scrutiny Committee. In the said paragraph 4 the Caste Scrutiny Committee has referred to the fact that in the first Vigilance Cell Report the statements of the persons at Tasgaon i.e. the place of the residence of the Petitioner after her marriage, have been recorded. The Caste Scrutiny Committee has thereafter referred to the second Vigilance Cell Report dated 18-8-2017 wherein the statements of the persons residing at Walva i.e. the place of residence of the

Petitioner prior to her marriage, have been recorded and therefore the Caste Scrutiny Committee has observed that it did not deem it appropriate to accept the first Vigilance Cell Report. Hence the Caste Scrutiny Committee has in clear terms stated that since the first Vigilance Cell Report was based on a home inquiry conducted at the place of residence of the Petitioner after marriage, which is not material in so far as the caste claim of the Petitioner is concerned, as the Petitioner would have the same caste as her father, the Caste Scrutiny Committee did not give credence to the first Vigilance Cell Report.

11 Now coming to the contention of the Learned Counsel for the Petitioner that the material on record and especially the reply along with affidavits have not been accepted, in our view the said submission can only be said to be a last ditch attempt of the Petitioner to some how support her case that she belongs to “Mujawar Caste”. The Caste Scrutiny Committee as indicated above in the earlier part of this order has recorded a finding in respect of each document which the Petitioner has produced to buttress her case that she belongs to “Mujawar Caste”. Having regard to the said fact and also having regard to the second Vigilance Cell Report, merely because the reply filed by the Petitioner to the said Vigilance Cell Report which contains a reference to the same set of documents has not been referred to in detail by the Caste Scrutiny Committee, the same in our view would not vitiate the order passed by the Caste Scrutiny Committee. The judgment in Imran

Shaikh's case wherein the Division Bench has found fault with the Caste Scrutiny Committee in relying solely upon the documents instead of considering the Vigilance Cell Report, as well as the order passed by the Division Bench in Shaikh Noor's case wherein the order passed by the Scrutiny Committee was found to be vitiated on account of the fact that the reply which was filed by the applicant relying upon the Vigilance Cell Report which was in his favour was not taken into consideration, would not further the case of the Petitioner in so far as the instant case is concerned. The Caste Scrutiny Committee can be said to have recorded findings of fact having regard to the material on record which this Court obviously in its Writ Jurisdiction under Article 226 of the Constitution of India, would be slow to interfere with. In our view, there is no illegality or infirmity in the order passed by the Caste Scrutiny Committee for this Court to interfere in its Writ Jurisdiction. The order passed by the Collector being only a consequential order, the same is also not required to be interfered with. The Writ Petition is accordingly dismissed.

[SARANG V. KOTWAL, J]

[R.M.SAVANT, J]