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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9594 OF 2018

Priyali Balu Ajalkar .. Petitioner
Vs.
State of Maharashtra & ors. .. Respondents

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Mr. Chetan Gajanan Patil, Advocate for the petitioner.
Mr. S.B. Kalel, AGP for respondent Nos. 1, 2 and 4.

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**CORAM : B.R.GAVAI &
M.S. KARNIK, JJ.**

DATE : 4th SEPTEMBER , 2018

ORAL JUDGMENT (PER M.S.KARNIK, J.) :-

Rule. Rule made returnable forthwith by consent of the parties.

2. The petitioner has challenged the order dated 12th June, 2018 passed by the respondent No. 2 – District Caste Certificate Scrutiny Committee, Kolhapur, thereby invalidating the caste claim of the petitioner.

3. The Sub Divisional Officer, Gadhinglaj Division,

Gadhinglaj, issued a caste certificate on 5th August, 2011 in favour of the petitioner certifying that she belongs to “Hindu-Ellamalwar” caste which is notified as Scheduled Caste. The petitioner cleared her 10th Standard examination in 2010 and obtained admission in “Maharani Radhabai Madhyamik Va Ucca Madhyamik Prashala, Gadhinglaj” for 11th Standard. The said college approached respondent No. 2- Committee seeking validation of the caste certificate issued to the petitioner. The petitioner cleared her 12th Standard examination and obtained admission for the first year of M.B.B.S. Court in respondent No.5 – College for the Academic year 2016-2017.

4. During the course of the inquiry, the Vigilance Cell submitted its report. The said report appears to be in favour of the petitioner. By a notice dated 20th November, 2017 issued by respondent No. 2- Committee clarification was sought from the petitioner on the aforesaid report of the Vigilance Cell. The petitioner duly responded by submitting her explanation dated 27th November, 2017.

5. At the relevant time, when the caste claim of the petitioner was pending before respondent No. 2 – Committee at Kolhapur, the caste claim of the petitioner's father Shri Balu Dhondiba Ajalkar was also pending before the Caste Certificate Scrutiny Committee, Solapur. The Caste Certificate Scrutiny Committee at Solapur validated the caste claim of the petitioner's father on 2nd June, 2018. On receipt of the said validity certificate, the petitioner's father by an application dated 19th June, 2018 produced the validity certificate issued in his favour before respondent No.2 – Committee. On 20th June, 2018, the Member/Secretary of respondent No.2 issued a letter dated 28th June, 2018 enclosing the copy of the order dated 12th June, 2018 passed by respondent No. 2 – Committee invalidating the caste claim of the petitioner.

6. Before the Committee the petitioner relied upon the genealogy of the family. From the said genealogy tree it is seen that one Shri Parimal Shankar Ajalkar is the petitioner's uncle being the cousin of the petitioner's father. Shri Parimal Shankar

Ajalkar has been issued with a caste validity certificate by the Scrutiny Committee of Pune, as belonging to 'Ellamalwar" caste.

7. Respondent No. 2- Committee while invalidating the claim of the petitioner was of the view that the petitioner failed to produce any pre-constitutional documents of her ancestors as belonging to 'Ellamalwar" caste. The Committee was of the view that in the various documents relied upon by the petitioner the caste is indicated as "Yelmar" and therefore petitioner is trying to take advantage of the similarity of the name of the caste. The Committee disagreed with the findings of the Vigilance Cell and observed that mere statements of the local residents in the area is not sufficient to prove the caste claim and that Vigilance Cell's report is therefore not binding on the Committee.

8. It will thus be seen that the position as it stands is that the caste claim of the petitioner's father as belonging to "Ellamalwar" caste is validated by the Caste Scrutiny Committee, Solapur on 2nd June, 2018. By the application dated 19th June, 2018, the same was produced before respondent No.2 –

Committee. By a letter dated 20th June, 2018 issued by the Member/Secretary of respondent No. 2, the petitioner was informed about the impugned order dated 12th June, 2018 passed by respondent No. 2 – Committee invalidating the caste claim of the petitioner. The petitioner's uncle whose name is shown in the genealogy of the family, though distantly related to her, has been issued with the caste validity certificate.

9. In so far as the caste validity certificate of the said Parimal Shankar Ajalkar relied upon by the petitioner is concerned, the Committee has observed that the same cannot be relied upon for the reason that except for the affidavit regarding the genealogy no revenue records are relied upon to prove the relationship.

10. The fact remains that the petitioner's father has now been issued with the caste certificate which was produced before respondent No. 2 – Committee prior to the communication of the impugned order passed by the Committee. In ordinary course we would have been inclined to remand the matter back

to respondent No.2 – Committee for considering the matter afresh on the basis of the Caste Validity Certificate which has now been issued in favour of the petitioner's father. However, having regard to the well settled judicial pronouncement of this Court in the case of **Apoorva d/o Vinay Nichale v/s. Divisional Caste Certificate Scrutiny Committee No.1 and others reported in 2010 (6) Mh.L.J. 401**, we are not inclined to adopt this course. This Court in **Apoorva d/o Vinay Nichale's** case has clearly held 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. It is not in dispute that the petitioner's father has been issued with a caste validity certificate by a validly constituted Committee having jurisdiction to issue such certificate. The said certificate was in fact produced before respondent No. 2 – Committee prior to communication of the impugned order.

11. As indicated earlier, even the Vigilance Cell's report is in favour of the petitioner but respondent No.2 – Committee disagreed with the said report. Now that the caste claim of the petitioner's father has been validated by a duly constituted Scrutiny Committee having jurisdiction to issue the validity, having regard to the law laid down by this Court in the case of **Apoorva d/o Vinay Nichale** (supra) the claim of the petitioner deserves to be allowed. In this view of the matter, we are of the view that the petition must succeed. Accordingly, the Rule is made absolute. Hence the following order :-

ORDER

- I) The Writ Petition is allowed.
- II) The impugned order dated 12th June, 2018 is quashed and set aside.
- III) It is held and declared that the Petitioner belong to Ellamalwar, “Scheduled Caste”.
- IV) The Respondent No. 2 – Caste Scrutiny Committee is directed to issue Caste Validity Certificate within a period of four weeks from today.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)