

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1575 OF 2018

Liyakat Abdul Hakim.] ... Petitioner

Versus

The State of Maharashtra & Ors.] ... Respondents

Mr. L. S. Deshmukh a/w Mr. S. S. Inamdar for Petitioner.

Ms. Reena Salunke, AGP for Respondent Nos.1 & 2.

Mr. Kalpesh Patil for Respondent No.3.

CORAM :- SHANTANU KEMKAR &
SARANG V. KOTWAL, JJ.
DATE :- AUGUST 20, 2018

P. C. :-

1. By filing this petition under Article 226 of the Constitution of India, the Petitioner who was the complainant before the second Respondent i.e. District Caste Certificate Scrutiny Committee, Satara, (for short, 'the Committee'), has challenged the order dated nil 2017 passed by the Committee thereby rejecting the Petitioner's complaint and validating the caste certificate of the third Respondent as belonging to Kasai (OBC).

2. The third Respondent, in support of his caste validity claim, had submitted as many as 8 documents, including the caste validity certificate dated 28/10/2016 issued in favour of his son Asadulla Abdulgani Chafekar. The Committee, considering the various documents, including the aforesaid caste validity certificate of third Respondent's son, rejected the complaint and validated the caste validity claim of the third Respondent by the impugned order. For validating the caste certificate of the third Respondent, the Committee placed reliance on the Judgment passed by the Division Bench of this Court in the case of Apoorva Vinay Nichale V/s Divisional Caste Certificate Scrutiny Committee No.1 and Others¹. Feeling aggrieved, the Petitioner complainant has filed this petition.

3. According to the learned Counsel for the Petitioner, the caste validity certificate issued in respect of the third Respondent's son could not have been made basis for validating the third Respondent's caste certificate, as the caste validity certificate issued to the third Respondent's son was not issued after adopting the due procedure of conducting vigilance inquiry.

¹ 2010 (6) Mh.L.J. 401

4. On the other hand, the learned AGP, as also the learned Counsel appearing for the third Respondent, have supported the impugned order of the Committee by stating that the Committee has rightly validated the third Respondent's caste validity claim after considering the various documents, including caste validity certificate of the third Respondent's son. The Respondent - State, by filing a detailed reply, has supported the impugned decision of the Committee and has stated that the Committee has correctly applied the law laid down by the Division Bench of this Court in the case of **Apoorva Vinay Nichale** (*supra*).

5. Having considered the submissions made by the learned Counsel appearing for the parties and having gone through the Judgment passed by the Division Bench of this Court in the case of **Apoorva Vinay Nichale** (*supra*) which is based upon the Judgment of the Supreme Court in the case of **Raju Ramsing Vasave V/s. Mahesh Deorao Bhivapurkar and Others**², we find that there is no flaw in the order passed by the Committee. The Division Bench of this Court, in the case of **Apoorva Vinay Nichale** (*supra*) has observed in

² (2008) 9 SCC 54

paragraphs 7 and 9 as under :

"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."

6. Having regard to the aforesaid, we find no ground to interfere into the impugned order passed by the Committee. The Committee has rightly applied the ratio of the Judgment of the Division Bench of this Court in the case of Apoorva Vinay Nichale (*supra*).

7. As a result, we dismiss this petition with no order as to costs.

(SARANG V. KOTWAL, J.)

(SHANTANU KEMKAR, J.)