

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION {L} NO.2176 OF 2018
WITH
NOTICE OF MOTION {L} NO.528 OF 2018
IN
WRIT PETITION {L} NO.2176 OF 2018

Sagun Vasant Naik,
aged 56 years, residing at
3/3, Kadam Wadi,
Wakola Village Road,
Santacruz (East),
Mumbai – 55.

.... Petitioner

- Versus -

1. State of Maharashtra
through its Secretary, Social
Justice Department, Mantralaya,
Mumbai – 400 032.
2. District Caste Certificate Scrutiny
Committee, Mumbai Suburban
District through its Deputy
Director and Member Secretary,
having its office at New Administrative
Building, 5th Floor, Near Government
Colony, Bandra (E), Mumbai-51.
3. Shaikh Mohamad Rafiq Mustafa
Hussain, aged adult, residing
Having office at Office No.5,
Plot No.313/15, C.S.T. Road,
Kalina, Santacruz (E), Mumbai-98.

4. Municipal Corporation of Greater
Mumbai through its Commissioner,
having its office Municipal Hq.3,
Mahapalika Marg, Fort,
Mumbai-400 001.

5. State Election Commission
Maharashtra State through its
Commissioner, having its office
at New Administrative Bldg.,
Opposite Mantralaya, Madam
Cama Road, Mumbai-400 021.

.... Respondents

Mr. A.V. Anturkar, Senior Advocate with Mr. Chintamani
K. Bhangoji for the Petitioner.

Mr. Abhay L. Patki, Addl. Government Pleader with
Mr. Kunal Bhanage, Assistant Government Pleader, for
Respondent Nos.1 & 2.

Mr. V.A. Thorat, Senior Advocate with Mr. Sandeep S.
Sharma for Respondent No.3.

Mr. Y.P. Deshmukh with Mr. Sagar Patil for Respondent
No.4.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : SEPTEMBER 10, 2018

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. When the Notice of Motion in the above Writ
Petition was placed before us, it was agreed by both sides that
the petition itself would have to be disposed of finally.

Depending upon the outcome of the Writ Petition, the Notice of Motion would not survive.

2. It is upon this agreement between the parties that we pass this final order on the Writ Petition.

3. **Rule.** The respondent Nos.1 to 4 waive service. By consent, rule is made returnable forthwith.

4. The order passed by the second respondent/Scrutiny Committee, dated 20-6-2018, is impugned by the petitioner. By the impugned order, respondent No.2/Committee has invalidated the claim of the petitioner as belonging to "Bhandari", Other Backward Class. Consequently, the Caste Certificate, dated 13-12-1997, issued by the Deputy Collector, Mumbai Suburban District, stands cancelled and confiscated.

5. The facts necessary to appreciate the argument of the learned Senior Counsel appearing for the petitioner are as follows.

6. The petitioner is a citizen of India and claims to be

belonging to Bhandari, notified as Other Backward Class in the State. The first respondent is the State of Maharashtra through the Department of Social Justice. The second respondent is the Scrutiny Committee constituted in accordance with Section 6(1) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short, termed as "the Maharashtra Act No.XXIII of 2001). The third respondent is a rival candidate and had contested the election. He approached the Scrutiny Committee alleging that the petitioner contested the election for a seat reserved for the Other Backward Class (for short, "OBC"). The 4th respondent to this petition is the Municipal Corporation of Greater Mumbai for which the election, to fill-up the posts of Councillors thereof, was held. That was held under the auspices of the 5th respondent/State Election Commission.

7. The Ward No.91 was the reserved seat for which the petitioner as also the 3rd respondent filed their nomination

forms. The petitioner claims that the Caste Certificate issued on 13-12-1997, copy of which is at Exhibit-B to the petition, enables him to file his nomination form for this reserved seat. Accordingly, the nomination form was found to be valid. Equally, the nomination form presented by the 3rd respondent was found to be valid. The polling was conducted and accordingly results were declared on 22-2-2017. The petitioner was declared as elected.

8. It is common ground that the petitioner polled 7634 votes and the 3rd respondent lost the election by a margin of 2634 votes. It is complained that the allegation of the 2nd respondent was based on several grounds. One of them was that the documents produced in support of the caste claim were not genuine and authentic. The Scrutiny Committee heard both sides and has now come to the conclusion that the claim of the petitioner deserves to be invalidated. However, initially, it refused to pass an order on these lines, as contended by the 3rd respondent. Therefore, the 3rd respondent approached this Court by filing Writ Petition (Lodging) No.2435 of 2017

challenging the order of the Scrutiny Committee initially passed on 21-8-2017. This Court passed the following order, copy of which is at Exhibit-K (page 134) to the paper-book:-

“

*On hearing the learned counsel for the parties, and on a reading of the impugned order, it appears that though the vigilance cell had conducted the affinity test and had recorded some findings in respect thereof, the scrutiny committee has not referred to the same much less considered the same. According to the provisions of Rule 17 (7) of the Rules it may not be necessary in a given case to conduct a vigilance inquiry if the old documents tendered by the claimant could conclusively prove the caste claim of the claimant. Rule 17 (7) would however not apply to this case as the scrutiny committee had decided to conduct a vigilance inquiry in the matter of the caste claim of the respondent no.3. If the vigilance inquiry was conducted on three occasions and if the vigilance report was made available to the scrutiny committee, it was necessary to the scrutiny committee to have applied its mind to the findings in the vigilance report in respect of the affinity test. In the instant case, it was necessary for the scrutiny committee to consider the findings recorded by the vigilance cell in respect of affinity test as the scrutiny committee as also the vigilance cell had recorded a finding that there was interpolation and overwriting in some documents on which the respondent no.3 had relied on for proving his caste claim. Since the scrutiny committee had not adverted its mind to the affinity test though the same was conducted on the respondent no.3, the impugned order is liable to be set aside. The judgment reported in **2012 (1) SCC Pg.133** and relied on by the counsel for respondent no.3 cannot be made applicable to the case in hand. It is observed by the Hon'ble Supreme Court in paragraph 22 of the said judgment that it is*

*manifest from the observations made by the Hon'ble Supreme Court in the case of **Madhuri Patil** that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test which would include anthropological traits etc of the applicant. Since in this case, the affinity test was conducted on the respondent no.3, the scrutiny committee was bound to consider the findings in the vigilance report in that regard.*

*Hence, for the reasons aforesaid the writ petition is partly allowed. The impugned order is quashed and set aside. The matter is remanded to the respondent no.1 – scrutiny committee for a fresh decision in the caste claim of the respondent no.3 in accordance with law. The parties undertake to appear before the scrutiny committee on 15th January 2018, so that the issuance of notice to the parties could be dispensed with. Since the judgment in the case of **Anant Ulahalkar** is stayed by the Hon'ble Supreme Court, the office of the respondent no.3 as a corporator would be protected till his caste claim is decided. We direct the scrutiny committee to decide the caste claim of the respondent no.3 within six months from the appearance of the parties before the scrutiny committee.*

Rule is made absolute in the aforesaid terms with no order as to costs."

9. Since the matter was sent back, the Scrutiny Committee heard both sides, afresh.

10. It has now passed the impugned order upholding the complaint of the 3rd respondent and invalidating the claim of

the petitioner.

11. Mr. A.V. Anturkar, learned Senior Counsel appearing on behalf of the petitioner would submit that the impugned order is contrary to law. It is vitiated by total non-application of mind. The Scrutiny Committee seems to have relied upon the fact that though the petitioner produced a School Leaving Certificate which demonstrated and proved that he attended a school, but before being admitted to that school, the petitioner was studying in another school. That another school is not proved to be existing and that is why a doubt is cast on the genuineness and authenticity of the subsequent School Leaving Certificate. It is claimed by Mr. Anturkar that the Certificate, copy of which is to be found in the paper-book at page 49, would reveal that one Madan Sagun Naik, who is the uncle of the petitioner from the paternal side, had an entry in his favour in relation to Caste/Sub-Caste. The column No.2 of this document would denote that the said Madan is belonging to Hindu Bhandari, OBC. He was born in a place called Tulas. Thus, the Zilla Parishad, Sindhudurg, which was conducting the

school, namely, Jaiteer Vidyalay, Tulas, was pleased to issue this School Leaving Certificate. The said Madan was admitted to the school on 15-8-1944. He left the school on 31-8-1949, when he was in Fourth Standard. Mr. Anturkar would submit that this is a pre-constitutional document. The probative value of this document could not have been diluted by holding that the petitioner's uncle was admitted to this school but prior to the admission in Jaiteer school, he was studying in Vetel Vidyamandir, Tulas. This Vetel Vidyamandir is held to be non-existent. However, this is not the manner in which the scrutiny and verification could have been carried out. Further, the petitioner has also successfully cleared the affinity test. The report of the Vigilance Committee does not indicate anything adverse to the petitioner insofar as this affinity test is concerned. Thus, the two vital documents pertaining to the real uncles of the petitioner, namely, Madan Sagun Naik and Manohar Sagun Naik depicted the caste as Bhandari. The entries in relation thereto have been made on 15-8-1944 and 1-2-1945. The Scrutiny Committee, relying upon these very entries in the initial

round, validated the claim of the petitioner. There was no reason to take a different view on the subsequent occasion. In such circumstances, Mr. Anturkar would submit that this is a clear case where the highest probative value attached to pre-constitutional documents has been diluted, but not in accordance with law.

12. Mr. Anturkar also invited our attention to pages 61 and 62 of the paper-book which is nothing but a part of the report submitted by the Vigilance Cell to the Scrutiny Committee. It is stated that the Vigilance Cell was satisfied that Vetel Vidyamandir, Tulas was in fact an existing school. It may have been stated by the Headmaster of that school that the same was established on 1-4-1947 but there is a contemporaneous record which would evidence that this school was functioning from the same village. It was known as Vetel Vidyamandir. Mr. Anturkar tenders a compilation of documents which contains a copy of the Annual Report for the 7th and 8th year of this school. The school did not have its own premises until 1947 and that is why the Vigilance Cell reported/reiterated that it was

non-existent. This is not how the Scrutiny Committee can proceed in law.

13. Mr. Anturkar would submit that the compilation of documents tendered by the petitioner would denote that there were several students along with the said real uncles of the petitioner admitted to Vetel Vidyamandir. In the circumstances, there was nothing to doubt the genuineness and authenticity of the pre-constitutional documents.

14. On a query from the Court as to how a child stated to be born on 20-3-1929 could have been admitted to a Primary School on 15-8-1944, the explanation that is provided by Mr. Anturkar is that, true it is that when he was admitted to this Jaiteer Vidyalay, Tulas, he was 15 years of age. However, as is evident from the School Leaving Certificate, he left the school in five years thereafter on account of his lack of interest or lack of performance. Thus, the student may have been a poor performer but that is no ground to doubt the genuineness and *bona fides* of his claim or the authenticity of the document itself. For this

reason, it is submitted that the writ petition be allowed.

15. On the other hand, Mr. V.A. Thorat, learned Senior Counsel appearing on behalf of the contesting respondent No.3 would support the order of the Scrutiny Committee. He would submit that the view taken by the Scrutiny Committee cannot be said to be vitiated by non-application of mind. The Committee is free to appreciate and appraise the oral and documentary evidence placed before it. This is a case of appreciation and appraisal of the documentary evidence by the Scrutiny Committee. On a cumulative effect of the documentary evidence, the Scrutiny Committee concluded that the claim of the writ petitioner cannot be accepted. It has assigned cogent and satisfactory reasons for coming to that conclusion. This is not a case of perversity nor can it be said that for totally irrelevant, non-germane and unsatisfactory reasons the pre-constitutional documents have been discarded or omitted from consideration. Hence, there is no merit in this writ petition for this Court is not a Court of further appeal. He would submit that the writ petition be dismissed.

16. It is evident from the order passed by this Court in the initial round that it was not satisfied with the manner in which the Scrutiny Committee dealt with the claim. This Court found that there was a very serious infirmity in the initial order of the Scrutiny Committee. It had failed to carry out an affinity test. It had also not adverted to the report of the Vigilance Cell which contains a vital information in relation to the affinity of the petitioner with the OBC, Bhandari. The Scrutiny Committee having not applied its mind to the affinity test, though it was conducted, its order came to be set aside. That is how the remand.

17. On remand, the Scrutiny Committee carefully perused the record. It found that there were two pre-constitutional documents. The pre-constitutional documents pertaining to the real uncles of the petitioner Madan Sagun Naik and Manohar Sagun Naik may carry the entry in the Caste column as "Hindu Bhandari", which was subsequently notified as OBC, but it is evident that this Community was notified as OBC

on 13-10-1967. It is evident that the petitioner heavily relied on these two documents and claimed that they are pre-constitutional or pre-13-10-1967. Insofar as Madan Sagun Naik's School Leaving Certificate is concerned, the Committee referred to the contents of the Vigilance Cell report. That indicated that this student Madan was admitted to the school known as Jaiteer Vidyalay, Tulas. He was admitted on 15-6-1944. According to the Vigilance Cell, the School Leaving Certificate, however, shows that the said Madan was admitted on 15-8-1944 in Jaiteer Vidyalay, Tulas. Be that as it may, it is this very document which carries an entry that the said Madan studied, prior to his admission in Jaiteer Vidyalay, in Vetat Vidyamandir, Tulas. Naturally, when reliance was placed upon this document, the Scrutiny Committee referred the same to the Vigilance Cell and expected the Cell to conduct a thorough inquiry. That was from the point of view of vigilance. That is what the rule requires the Vigilance Cell attached to the Committee to do and carry out as a function. It is the rules which empowers the Cell to carry out such a vigilance inquiry.

It, therefore, inspected the school records at Jaiteer Vidyalay, Tulas and found that insofar as the entry in the School Leaving Certificate of the said Madan indicating that he attended the Vetel Vidyamandir, Tulas, that school was established on 1-4-1947. If that school was established on 1-4-1947, the same could not have been attended by Madan before his admission to Jaiteer Vidyalay.

18. Mr. Anturkar would heavily rely on the compilation of documents and submit that this Vetel Vidyamandir was indeed existing. He would also submit that there is a Register which is maintained in a proper form by Jaiteer Vidyalay in relation to several students, including Madan. Several of them have attended this Vetel Vidyamandir. He places reliance upon a copy of the Annual Report filed for the 7th and 8th year submitted by Tulas Srideo Jaitirashrit Sanstha, Mumbai-Bandra. Thus this is stated to be a religious Institution having its office at 26, Bhoiwada, Bandra. It says that this Institution is running Vetel Mandir, which is a school. This school has been functioning from a temple. This school is stated to be

functioning from 1-5-1940. This report would indicate that such a school was indeed functional and the report from 1-5-1939 to 30-4-1941 would evidence the existence of such a school. That it was functional thereafter is proved by an extract of the Annual Report from 9th to 12th year of the Society/religious Institution, and the period for which the report was prepared is 1-5-1941 to 30-4-1945. We have perused carefully this report. While in the first report the school is referred to as “Vetal Mandir School”, Tulas, in the second report it is referred to as “Vetal Mandir”. There is a difference between a recognized or an approved Institution functioning in a village and the existence of a temple. Vetal Mandir is nothing but a temple of a deity. Pertinently, this very religious Institution established Shree Jaiteer Vidyalay. That was established by this religious Institution/Trust in the year 1936. When this Institution/Trust had enough funds or money to establish Shree Jaiteer Vidyalay and Sharda Vidyalay, then, it is not clear as to how it says that in 1940, in the Western part of the village there is a school styled as Vetal Mandir. This school is stated to be established in 1940. It is a

semi-government school from 1943-44 and from 1945 it has given free education to children. It is stated that this school was established by the Members of this Trust/Institution in the temple. This is a private school.

19. To our mind, there was thus a doubt about whether the school is Vetāl Mandir School or Vetāl Mandir, which is a temple but also conducting a school from its premises. By relying upon such extracts of the Annual Reports, it could not have been conclusively established that a recognized or approved school was indeed functioning bearing the name Vetāl Vidyamandir. There is a difference between the name entered in the School Leaving Certificate of Madan Sagun Naik, copy of which is at Exhibit-C (Page 49), wherein this school is named as Vetāl Vidyamandir, whereas in the extracts of the Annual Reports we find a reference to this school as Vetāl Mandir. If this school was indeed functional, then, it could have definitely issued a Certificate evidencing leaving of that school by Madan for being admitted to Shree Jaiteer Vidyalay. Thus, this child/student was admitted in Jaiteer Vidyalay, Tulas, but prior

to that he claims that he attended the Vetāl Vidyamandir. Such a school was not functioning until 1-4-1947. It may have been conducted informally by some people in the temple but that activity cannot be termed as running a school in terms of the Grant-in-Aid Code. The Education Department, Zilla Parishad, Sindhudurg had no record of such a school functioning and established prior to 1-4-1947. Thus, the claim of the petitioner that his uncle studied in the school styled as Jaiteer Vidyalay may have been accepted by the Scrutiny Committee. It may have also termed as genuine and authentic, so also valid the School Leaving Certificate issued by Jaiteer Vidyalay, Tulas. However, when it appreciated and appraised the contents of this document, it found that there is a serious dispute about the existence of a prior school attended by Madan. That is how the Scrutiny Committee relied upon the Vigilance Cell report. The Vigilance Cell report has also referred to the documents which have been heavily relied upon before us by Mr. Anturkar. However, it found that Vetāl Vidyamandir cannot be said to be a school, recognized and approved.

20. This is not the only infirmity that is found in the documentary evidence relied upon by the petitioner.

21. Insofar as the document pertaining to Sagun Govind Naik, relied upon by the petitioner, it shows that this is a Death Certificate extract pertaining to the petitioner's grand-father. He died on 14-3-1961. The Vigilance Cell has carefully scrutinised this document and in order to verify the genuineness thereof, it also relied on the original record. It found that insofar as the entry or the particulars against the column pertaining to Caste, the word "Bhandari" has been inserted in a different ink. Thus, the insertion of the word "Bhandari" is subsequent. The Tahsildar of Vengurla was summoned by the Scrutiny Committee. He did not dispute that the Register contains several insertions or interpolations. The Committee opined that this original Register may have been removed from the custody of a public official so as to carry out such an exercise. The Committee also expressed serious doubt in relation to the information that was provided during the affinity test. The Committee referred to

the information provided by the petitioner. The information provided by those persons inhabiting the village and stated to be knowing the petitioner's family clearly indicated that the traits and characteristics, traditional occupation, information about ceremonies and religious festivals indicate a similarity with Maratha Community. Thus the members of Maratha Community, in order to claim the benefit of OBC, are relying on their residence and inhabitation of a village of Bhandaris, but they are not Bhandaris. They are Marathas. It is evident that the entries in relation to Dayanand Madan Naik and Nitin Manohar Naik and to be found from the school Register denote that these persons entered their caste as Hindu/Hindu Maratha. It is in these circumstances that the Committee expressed serious doubt and arrived at the conclusion that the petitioner could not establish and prove that he is a Bhandari, OBC.

22. We agree with Mr. Thorat that this is nothing but an appreciation and appraisal of the oral and documentary evidence on record. The Committee has also referred to the document pertaining to one Sandhya Madan Naik, who is the

cousin sister of the petitioner. In relation to her caste, the entry in the school Register is "Hindu-Maratha". Similar is the position when the Committee referred to the statement of one Aatmaram Narayan Naik, stated to be residing in Village Tulas. He stated that he is an ex-sarpanch and he knows Vasant Sagun Naik. He says that Vasant Sagun Naik, father of the petitioner and his ancestors were not residing in Village Tulas. They were residing in Village Asoli, Taluka Vengurla, District Sindhudurg. In an area of this village known as Khariwadi, there were several Maratha families then residing and their surnames are Naik. Similarly, there were several families belonging to Bhandari Community. However, in this village there are persons with similar surname Naik but not all of them are Bhandaris. They are Maratha, Bhandari and Devli. It is in these circumstances that some of the Naiks are trying to pose themselves as belonging to Bhandari, OBC in order to grab the concessions and benefits meant for such a Backward Class and extended by the State Government. This was the position in relation to another relative, namely, the paternal aunt of the petitioner Sitabai

Sagun Naik. There as well the Death Register carries the entry Hindu Bhandari, but the word Bhandari has been written in a different ink. This is, therefore, a clear case where the petitioner was trying to claim benefit as belonging to OBC in order to contest the election against a reserved seat. That he could not have contested from this seat is evident from the fact that his claim of belonging to Bhandari, OBC, is tainted and fraudulent. It is in these circumstances that the Committee said that initially it committed an error in not referring to the entire record. It scrutinised and verified the claim not in its entirety but relying only on some documents and omitted from consideration other very crucial and vital documentary evidence. If that had a great bearing on the claim, then, the Committee corrected itself after the matter was remanded to it. Such a finding rendered by the Scrutiny Committee, by no stretch of imagination, can be termed as perverse or vitiated by any error of law apparent on the face of the record. We have no hesitation in, therefore, agreeing with Mr. Thorat that the petitioner's claim cannot be said to be genuine and *bona fide*.

23. The compilation which has been tendered by the petitioner's Advocate during the course of his arguments contains nothing but the very material relied upon before the Scrutiny Committee. Once we find that the Scrutiny Committee has duly considered this material but found it not worthy of acceptance, then, this is not a case where the pre-constitutional documents have been either erroneously omitted from consideration or not taken into consideration at all. While conceding to their great probative value, the Committee found that the same gets diluted by the insertions and interpolations subsequently carried out. The record contemporaneous to the same would indicate that in order to claim benefits, the petitioner has produced questionable and suspicious so also dubious documentary evidence. Hence, this is not a case in which the law laid down by this Court in the Judgment rendered in the case of **Janardhan Vasant Yadav vs. Vidyadhar Kanade & Others**, reported in 2005 (1) Mh.L.J. 269, would apply. In fact, the Division Bench Judgment clearly says that once the claim is invalidated, then, the seat is deemed to have fallen

vacant. It is deemed to have been vacated. Once this is the position in law, we do not see how any benefit can be claimed by the petitioner.

24. As a result of the above discussion, we uphold the order of the Scrutiny Committee and dismiss this writ petition. There will be no order as to costs. Rule is accordingly discharged.

25. In view of dismissal of the writ petition, Notice of Motion (L) No.528 of 2018 preferred in the writ petition does not survive and it accordingly stands disposed of.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)

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