

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.720/2017

Aagamiya Bismilla Shah

...Versus...

The Divisional Caste Certificate Scrutiny Committee No.2, Akola Tah. and Dist.
Akola through its Chairman and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.B. Kalwaghe, Counsel for petitioner
Shri S.S. Doifode, AGP for respondent no.1

**CORAM : SMT. VASANTI A NAIK AND
ARUN D. UPADHYE, JJ.**

DATE : 11/01/2018

By this petition, the petitioner challenges the order of the Divisional Caste Certificate Verification Committee, Akola dated 19/9/2016 invalidating the claim of the petitioner of belonging to Chhaparband Vimukta Jati.

The petitioner was appointed as an Assistant Teacher on a post earmarked for the Vimukta Jatis and the caste claim of the petitioner was referred to the Scrutiny Committee for verification. The Scrutiny Committee invalidated the claim of the petitioner by the impugned order dated 19/9/2016.

Shri Kalwaghe, the learned Counsel for the petitioner submitted that the impugned order suffers from total non-application of mind, inasmuch as though the petitioner had claimed to belong to Chhaparband Vimukta Jati, in several

paragraphs of the order a reference is made that the petitioner has claimed to belong to Rajput Bhamta Vimukta Jati. It is stated that the claim of the petitioner to belong to Rajput Bhamta Vimukta Jati is wrongfully considered in certain paragraphs of the order of the Scrutiny Committee. It is submitted that though the caste certificate of the petitioner is of the year 1998, wrongfully the certificate of the year 2011 of which the number is different is considered to be the petitioner's caste certificate and the same is cancelled after invalidating the caste claim. It is submitted that the documents with prefix and suffix of 'Shah' and 'Fakir' to the names of the relatives of the petitioner are not considered by the Scrutiny Committee after observing that the Government Circular, providing that the entries with the prefix of Fakir and Shah could be helpful in proving the claim towards Chhaparband Vimukta Jati, was withdrawn. It is submitted that though a vigilance enquiry was conducted in the caste claim of the petitioner, the Scrutiny Committee has not applied its mind to the findings of the vigilance cell. It is submitted that the vigilance enquiry was made in the case of the petitioner on 19/12/2011 but the vigilance report dated 18/2/2012 which does not concern the petitioner is referred to the impugned order. It is submitted that the aforesaid facts would clearly show that the Scrutiny Committee did not apply its mind to the claim of the petitioner before invalidating the same.

Shri Doifode, the learned Assistant Government Pleader appearing for the Scrutiny Committee has supported the impugned order. It is submitted that since the Government Circular granting benefit to the persons belonging to Chhaparband Vimukta Jati on the basis of the entries of Shah and

Fakir was withdrawn, the Scrutiny Committee rightly refused to consider the same. It is, however, fairly admitted that in several paragraphs of the order a reference is made to Rajput Bhamta Vimukta Jati and not Chhaparband Vimukta Jati. It is further admitted that there is no consideration of the vigilance report though a reference is made to the same in the impugned order and that a finding in respect of the affinity test is also not recorded.

It is clear on a reading of the impugned order and on hearing the learned Counsel for the parties that the impugned order suffers from non-application of mind. In several paragraphs of the impugned order, a reference is made to Rajput Bhamta Vimukta Jati though the petitioner claims to belong to Chhaparband Vimukta Jati. The cancellation of the caste certificate is not referable to the caste certificate of the petitioner and some other caste certificate appears to have been cancelled by the operative part of the order of the Scrutiny Committee. The vigilance enquiry in the case of the petitioner was conducted in the year 2011 and the vigilance report was prepared on 19/12/2011 but the Scrutiny Committee has wrongly referred to some other vigilance report dated 18/02/2012. We find that the Scrutiny Committee has not specifically dealt with the vigilance report in the case of the petitioner and has made no reference whatsoever to the affinity test. It was necessary for the Scrutiny Committee to have applied its mind to the vigilance report. In the circumstances of the case, the impugned order is liable to be set aside and the matter is liable to be remanded to the Scrutiny Committee for deciding the claim of the petitioner afresh on merits, in accordance with law.

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.3 – Committee for a fresh decision in the caste claim of the petitioner, in accordance with law. The Scrutiny Committee is directed to decide the caste claim of the petitioner as early as possible. Till the caste claim of the petitioner is decided, the services of the petitioner would remain protected.

Order accordingly. No order as to costs.

JUDGE

JUDGE

Wadkar