

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13121 OF 2017

Shah Junaid Nawab
Age – 24 years, Occ – Student,
R/o Firdos Nagar,
Vadjayi Road, Dhule

PETITIONER

VERSUS

- | | |
|---|-------------|
| 1. The State of Maharashtra
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai | RESPONDENTS |
| 2. Divisional Caste Scrutiny Committee Dhule
Taluka and District – Dhule | |
| 3. Gangamai College of Engineering
Nagaon Taluka and District – Dhule
Through its Principal | |
| 4. North Maharashtra University, Jalgaon
Through its Registrar | |

WITH
WRIT PETITION NO.13122 OF 2017

Aqib Mohd. Hanif Shah
Age – 24 years, Occ – Student,
R/o Firdos Nagar,
Vadjayi Road, Dhule

PETITIONER

VERSUS

- | | |
|---|-------------|
| 1. The State of Maharashtra
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai | RESPONDENTS |
| 2. Divisional Caste Scrutiny Committee Dhule
Taluka and District – Dhule | |

3. Gangamai College of Engineering
Nagaon Taluka and District – Dhule
Through its Principal
4. North Maharashtra University, Jalgaon
Through its Registrar

.....

Mr. Harishikesh A. Joshi, Advocate for the petitioners
Mr. G. O. Wattamwar, AGP for respondent - State

.....

**[CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ.]**

DATE : 24th SEPTEMBER, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.
2. Petitioners in the two writ petitions, being disposed of by this order, are cousins. Their caste claims have been refused validity under the orders impugned in aforesaid two writ petitions. In both the claims of cousins, their cases had been similar and similar evidence had been adduced and the events during the proceedings before scrutiny committee also went along simultaneously.
3. There is no dispute that both the petitioners were issued certificates by competent authority referring them to be belonging to *Chapparband* community of Muslim religion.

Further, there is no dispute that cases of the petitioners were referred to, to vigilance cell with a view to ascertain relations of the petitioners with the holders of validity certificates from their relatives / family. Thereafter, yet again petitioners were served with show cause notice.

4. Real brother of petitioner in writ petition No. 13121 of 2017 has been issued validity certificate by the very committee viz., Divisional Caste Scrutiny Committee, Dhule. The petitioners have annexed to the petitions, vigilance cell report. It appears that there are two vigilance cell reports made before the scrutiny committee, one dated 23rd February, 2016 and the other dated 9th February, 2017. Vigilance cell report dated 9th February, 2017 records that Shah Rizwan Nawab, real brother of petitioner in writ petition No. 13121 of 2017 had been issued validity certificate and they are blood relatives and that other two persons, having blood relations with the petitioners, have been issued caste validity certificates by the scrutiny committee. Shah Mobin Ramjan, who refers to in his affidavit that petitioners and him belong to *Chapparband* community and are blood relatives as cousins. Vigilance cell report also records that statements of two age old persons had been taken referring to that they are acquainted with the petitioners and cousins and that they know

that petitioners belong to *Chapparband* community.

5. Perusal of the impugned orders shows that a few documents in respect of relatives were examined by the vigilance cell and a few statements were also recorded including the persons referred to hereinabove. Three validity certificates were considered by the scrutiny committee, namely, Shah Rizwan Nawab - real brother of petitioner in writ petition No.13121 of 2017, Shah Mohd. Faiz Ashpak and Shah Mobin Ramjan, cousins of the petitioners. The observations would indicate that relations between petitioners on one hand and the persons referred to have not relied on, however, validity issued to Shah Mohd. Faiz Mohd. Ashfaq has not been taken into account for the reason that subsequently circulars were dropped with reference to which perhaps as may appear from the orders, validity certificate had been issued.

6. As far as validity certificate of Shah Mobin Ramjan is concerned, as there is no reference in the genealogy given in father's affidavit, therefore, it was not taken into account. Whereas validity certificate of real brother of petitioner in writ petition No. 13121 of 2017 has not been taken into account, since his file had not been traced in the record with the committee and the petitioners have not referred to evidence

which had been given by him. It had further been considered that school record of the petitioners does not show that they belong to *Chapparband* community, whereas the school record of grand father of the petitioners shows that he was from *Fakir* community.

7. It appears to have been appreciated that vigilance cell report is against the petitioners and there is no pre 1961 documentary evidence produced showing petitioners belong to *Chapparband* community.

8. Learned advocate for the petitioners, Mr. Joshi, submits that when there is substantive evidence available about real brother's validity as also the cousins' to whom validity has been given, as they belong to *Chapparband* community and especially when the subsequent vigilance cell report pointedly makes reference to that there is material showing petitioners belong to *Chapparband* community and statements were accordingly recorded, yet observations under paragraph No. 11 of the impugned orders disregarding the same, and considered the same to be otherwise, presumably may be with respect to earlier vigilance cell report. However, in such a case, it would imply that subsequent vigilance cell report has not at all been taken into account by the committee. He further submits that while real

brother's validity is there, no further inquiry in fact had been needed having regard to legal position in this respect. He, therefore, urges to dislodge the impugned orders with a direction to the scrutiny committee to issue validity certificates in favour of the petitioners.

9. Learned AGP Mr. Wattamwar, however, contends that the school records of the petitioners do not depict that they belong to *Chapparband* community and the oldest record in fact shows the family would be at the most *Fakir*, but not *Chapparband*. There is no record of any member of the family of the petitioners showing that they come from *Chapparband* community. In such a case, a reliance being placed on validity certificate of brother whose file is not being traced and petitioners are not in a position to refer to the evidence adduced in the same and looking at the considerations which had weighed with the committee, finding that certificates issued to cousins would be of little relevance to the petitioners, appears to be proper. He submits that there are two vigilance cell reports and one of them does not favour petitioners at all and in that context, observations of the committee appear under paragraph No. 11 of the impugned orders. While record in respect of validity of real brother is not available, relying on the same would be on

tenuous evidence and would not be sufficient to conclude community claim of the petitioners.

10. During the course of submissions, Mr. Joshi, learned advocate for the petitioners has drawn our attention to a decision of division bench of this court in the case of “*Siddheshwar Ramkisan W Ramkrushna More V/s Divisional Caste Certificate Scrutiny Committee No. 2 Akola and Anr*” reported in 2015 (3) LJSOFT 256 : 2015 (3) Mh. L. J. 100 and has particularly referred to paragraph No. 6, thereunder, reading, thus -

“6. The perusal of the impugned order would reveal that, it is observed that insofar as the validity granted in favour of the relatives of the petitioner is concerned, the petitioner had failed to establish the close relationship with the persons in whose favour the validity was granted. The perusal of the report of the Vigilance Cell dated 28/06/2013 would reveal that the Vigilance Cell had conducted the home enquiry and also enquired into the relationship of the petitioner with the persons whose validity certificates were placed on record. The perusal of the Vigilance Cell report would further reveal that the Vigilance Cell had also examined the family tree and upon examination of the family tree, it was found that the petitioner had close relations with the persons in whose favour the validity has been granted. The Vigilance Cell, at internal pages 6 and 7, has considered the validity granted in favour of various relations of the petitioner and the documents in support of the relationship of the petitioner with the said persons. The Vigilance Cell has specifically come to a finding that the persons in column No. 1 were given validity certificates certifying

them to be belonging to Rajput Bhamta (Vimukta jati) and the perusal of the chart at Sr. No. 1 established that the petitioner had placed documents to establish his relationship with the persons in whom the validity was granted.

Not only this, but the perusal of the statements of witnesses recorded by the Vigilance Cell also fortify that the petitioner belongs to Rajput Bhamta (Vimukta Jati). It could thus be clearly seen that the report of the Vigilance Cell clearly establish that the persons to whom the validity certificate were granted were having close blood relations with the petitioner. If the Scrutiny Committee was of the opinion that eh report of the Vigilance Cell was not in accordance with law, then it was incumbent upon the Scrutiny Committee to record the finding that the report of the Vigilance Cell was not correct and ought to have given an opportunity to the petitioner, if it desired to differ with the finding of the Vigilance Cell. Having not done so, we are of the considered view that the Scrutiny Committee has failed to apply its mind properly and the Scrutiny Committee erred in holding that there were no material to establish the relationship of the petitioner with the persons in whose favour the validity certificate was granted. We have no hesitation to hold that the finding of the Scrutiny Committee is without any application of mind. We, therefore, hold that the rejection of the claim of petitioner Siddheshwar More is not sustainable.”

11. The situation in the present matter as well comes quite close to the observations of the division bench referred to hereinabove, since it appears that the committee while finally rendering decision had fallen oblivious of the vigilance cell report

dated 9th February, 2017, referring to relationship as well as statements of old persons and the validity certificates of close relatives. In above referred case decided by division bench, matter had been remitted to scrutiny committee for reconsideration in accordance with law. Having regard to the same, we are inclined to adopt similar course in the present matter.

12. Impugned decisions of scrutiny committee, therefore, are set aside, remitting the matters to scrutiny committee for decision afresh by giving opportunity to the petitioners.

13. Writ petition, as such, stands disposed of. Rule is made absolute in aforesaid terms.

14. At this stage learned advocate for the petitioner requests to issue direction to the respondent college to issue marksheets and transfer certificates to the petitioners. It would be open to the petitioners to approach the college concerned, making such request.

[S. M. GAVHANE]
JUDGE

drp/wp13121-17

[SUNIL P. DESHMUKH]
JUDGE