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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 3252 OF 2015

Shaikh Minhaj Bano Moh. Husein and Anr. ... Petitioners.

V/s.

State of Maharashtra & Ors. ... Respondents.

Mr. Chintamani Bhangoji with Priyanka Shaw I/b. R.K. Mendadkar
for the Petitioners.

Mr. K.S. Thorat, AGP for the Respondents 1 and 2.

Mr. I.M. Khairdi for Respondent 4.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.***

DATE : 11 JULY 2019.

P.C. :-

The Petitioners, brother and sister, claim to belong to Julah Community which is notified as Other Backward Class in the State of Maharashtra. The Petitioners Caste Certificate certifying them as belonging to Julah Community has been invalidated by the Caste Verification Scrutiny Committee by the impugned order. Hence, the Petitioners have filed the present Writ Petition.

2. The Petitioners applied for a caste certificate to the Deputy Collector, Solapur. The Deputy Collector issued a caste certificate to Petitioner No.1 Mihnaj Bano on 21 November 2018 and to Petitioner No.2 Shaikh Mohamad on 20 June 2011. The Petitioner No.1 took admission for Bachelor of Engineering in Respondent No.3 – College. The Petitioner No.2 also took admission in the same college for the Engineering Course. The caste certificates of the Petitioners were referred to Respondent No.2 – Caste Verification Scrutiny Committee, Solapur by the Respondent No.3. The Scrutiny Committee called for the report from the Vigilance Cell. The Vigilance Cell after conducting the field enquiry submitted the report. The Petitioners were called for interview for hearing before the Scrutiny Committee. Before the Scrutiny Committee the Petitioners' documents regarding themselves, their father, grand father and uncle. These documents show entries as Muslim. As regard Petitioner No.1, the Committee observed that the certificate was not issued and certificate appears to be bogus. Nevertheless the Scrutiny Committee considered the merits of caste claim of the Petitioners and held that the Petitioners have not produced any documents showing the entry Julah and that the Committee disagrees with the report of the Vigilance Cell. Accordingly, the Scrutiny Committee by the impugned order dated 26 November 2014 invalidated the caste certificates of the Petitioners.

3. We have heard the learned Counsel for the Petitioners and the Respondents.

4. As regards the Petitioner No.2, the Scrutiny Committee has recorded a single line conclusion based on a statement by the Tahsildar that there is no entry in the note-book and therefore, prima-facie the document appears to be bogus. There cannot be such a prima-facie opinion. Either the document was issued or it was not. The caste certificate of Petitioner No.1 - Minhaj Bano, a photo-copy, of the same, is on record. This caste certificate is identical to the caste certificate of Petitioner No.2 – Shaikh Mohamad and also includes a bar code and a serial number. If the Scrutiny Committee was of the prima-facie opinion that the caste certificate is not valid, then a detailed enquiry ought to have been made, with a final conclusion. Merely stating prima-facie that a caste certificate issued by the Government appears to be bogus, is no finding at all, and it appears to mentioned only to prejudice the mind of the reader.

5. As regard the documentary evidence, it is true that there is no entry of Julah in the records of the family members of the Petitioners. As noted by the Scrutiny Committee itself, in various cases, historically, sub-classes in Muslim Community in this part of

Maharashtra were not mentioned in the official records. The Division Bench of this Court in the case of *Smt. Bismilla Mohammedsab Sayyed (Mujawar) @ Bismilla Allabaksh Shikkalgar v/s. Divisional Caste Certificate Committee, No.1, Solapur through its Member Secretary and Ors.*¹ has also taken note of this fact.

6. This being the position, the report of the Vigilance Cell which carried out the field enquiry assumed importance. Reading of the Vigilance Cell report indicates that the traditional occupation of members of the Julah Community is weaving. As regard the family of the Petitioners, the report of the Vigilance Cell shows that enquiry was made with the neighbors of the Petitioners Mr. Nagnath Mahindrakar and Mr. Dattatray Velapure. Mr. Mahindrakar and Mr. Velapure asserted that they knew the Petitioners' grand father, uncle, father and that their caste was Muslim Julah and they were working as a weaver in various weaving factories.

7. Before the Scrutiny Committee the Petitioners had produced certificates given by the employer of the Petitioners' grand father Khwaja Husain. One certificate was for the period 1965 to 1985. Another certificate was for the period 1960 to 1975. The Scrutiny Committee discarded this evidence observing that it is not possible that Khwaja Husain to have worked at two different places. This is a hyper technical view of the evidence. The time span these

¹ Civ.WP 10577/13 dtd. 21.02.2014

certificates covered is long and the certificates were given by the private employers and not an official Government document. It was also not impossible for a weaver to work in two establishments, may be in different cities, over a period of 20 years.

8. The treatment of the report of the Vigilance Cell by the Scrutiny Committee is entirely unsatisfactory. In the factual backdrop of the case, where the report of the Vigilance Cell is of importance, an application of mind to the report was necessary. Since same has not been done we are constrained to set aside the impugned order to remand the proceedings to the Scrutiny Committee.

9. Accordingly, the Writ Petition is allowed. The order passed by the Respondent No.3 dated 26 November 2014 is quashed and set aside. The proceedings are remanded to the Scrutiny Committee to consider the case in light of what is observed by us. Considering the fact that the Petitioners have completed their education but their results have been withheld, the Scrutiny Committee will decide the proceedings within period of three months from the date the writ of this Court reaches it.

N.M. JAMDAR, J.

CHIEF JUSTICE