

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11417 OF 2016

Santosh S. Nalawade

...Petitioner

V/s.

The State of Maharashtra

....Respondent

Mr. Harshad Sathe i/by. Mr. Harshad Bhadbhade,
Advocate for the petitioner.

Ms. S.D. Vyas, 'B' Panel Counsel, Advocate for
respondents no.1 and 2-State.

CORAM : B.P. DHARMADHIKARI, &

SANDEEP K. SHINDE, JJ.

Tuesday, 27th August, 2019.

P.C. :

1. The matter has been heard because of express statement made by the learned Counsel for the petitioner that the petitioner should be given one more opportunity to produce relevant documents so that caste claim which may have far reaching effect is verified properly. Learned Counsel states that the petitioner is aware that he will not continue as Sarpanch or in any capacity in Gram Panchayat but for future such a full proof verification is essential.

2. Learned AGP is strongly opposing intervention by this Court. She submits that after due verification, the Scrutiny Committee has passed a reasoned order which does not suffer from any jurisdictional error. This Court therefore should

not intervene in the matter.

3. It appears that, petitioner claims to belong to Gaadiwadar community which is recognised as Vimukta Jati. The contention is, if petitioner is shown to be a resident of a particular area in Konkan region as on 1960, he becomes eligible to claim status as Vimukta Jati. Learned Counsel states that for that purpose, affidavits were filed and Vigilance Cell also conducted home enquiry. In home enquiry conducted behind the back of the petitioner, witnesses have disclosed that ancestors of petitioner have migrated to Khed area, seventy to eighty years before. This disclosure by witnesses is disbelieved because their ages are less than sixty to seventy years. Learned Counsel submits that, age of witnesses is not relevant since such witnesses may have got knowledge from his

father or even from his grandfather.

4. Counsel for the petitioner submits that, infact the grandfather of the petitioner, Sitaram Bhujang Nalawade was born at Village-Bharne in Khed Tahsil on 6th June, 1942 and the cousin brother of said grandfather was born on 7th June, 1942. Petitioner made efforts to obtain birth extracts of these two persons but the same were not available.

5. Next submission is, these efforts made by petitioner, prima-facie show that family had migrated to Village-Bharne in Tahsil-Khed before June, 1944.

6. Perusal of the impugned order of the Scrutiny Committee dated 3rd March, 2016 shows that the Committee has recorded a finding that

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petitioner has established his caste to be Gaadiwadar. It has further concluded that, petitioner could not establish that his ancestors were domiciled in existing State of Maharashtra on/or before 21st November, 1961. Discussion by the Committee shows that petitioner maintained that his family hails from Kolhapur district but did not disclose any particular village to enable the Vigilance Cell to verify the claim. As the family worships goddess Yelamma and temple of that goddess is at place, Saundatti in Karnataka State, Committee has expressed a doubt that petitioner comes from Karnataka State.

7. In this situation taking overall view of the matter and as petitioner has sufficiently shown his bonafides by accepting not to stake claim to elected post and for proper verification of his

caste claim, we are inclined to give him one opportunity.

8. It is to be noted that the Scrutiny Committee after receipt of Vigilance report, if it does not agree with the findings of the Vigilance Committee has to serve a specific notice as per Rule 17(11) of the Caste Certificate Rules, 2012 under Form No.25 mentioning its reasons for not accepting the findings of the Scrutiny Committee. Such notice was issued on 1st December, 2015 and it was replied to on 6th January, 2016. This notice or its reply has not been made available for our perusal.

9. Considering the fact that Scrutiny Committee has accepted the caste but denied validity only on account of domicile, we quash and set aside with order dated 3rd March, 2016.

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10. We direct the petitioner to appear before the Scrutiny Committee on 4th November, 2019. The Committee shall give petitioner an opportunity in terms of Section 8 of Article 123 of 2001 to substantiate his caste claim in the light of his reply to the show cause notice and pass fresh order within one year.

11. With these directions, we allow the Writ Petition and dispose it. No costs.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)