

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 13095 OF 2018
ALONG WITH
WRIT PETITION NO. 582 OF 2019**

Shri Munir Mansur Sanade ... Petitioner

Versus

District Caste Scrutiny Committee, Kolhapur
and Ors. ... Respondents

Mr. A.V. Anturkar, Sr. counsel a/w Mr. Tanaji Mhatugade for the petitioner.

Adv Drupad Patil a/w Mr. Balasaheb Ligade for respondent no. 6 in WP No. 582 of 2019.

Mr. Mayur Jadhav i/by Mr S.B. Shetye for respondent no. 4 In WP No. 582 of 2019.

Mr. Tanaji jadhav i/by Mr. R.K. Mendadkar for respondent no. 3 in WP No. 13095 of 2018.

Ms. K.N. Solunke, AGP for respondent nos. 1 and 2.

**CORAM : B.P. DHARMADHIKARI &
SMT. SADHANA S. JADHAV, JJ.
DATE : NOVEMBER 14, 2019**

JUDGMENT (Per Dharmadhikari,J.) :

Heard by issuing Rule and making it returnable forthwith with consent.

2. Contention is Scrutiny Committee has adopted double standards inasmuch as two circulars issued by the State

Government to facilitate appreciation of caste claims of Mohammedan community which have been accepted and acted upon in the month of July, 2018, the same have been ignored in the case of the petitioner.

3. The other contention is the petitioner has placed on record the documents which show either religion or sect, and none of these documents militate with the caste claim. Third contention is the family of the petitioner still continues in the traditional business of fishing and therefore, the validation as 'Machchhimar daldi' ought to have been given. Lastly it is argued that though the report of Vigilance cell is in favour of petitioner, Committee has proceeded further as if it is against him

4. Learned AGP for the Committee and learned counsel appearing for respondent no.3 complainant has strongly opposed the petition. They point out that the complete family tree was not disclosed and therefore, the vigilance enquiry could not be conducted in relation to other family members. The documents pertaining to the caste are inconsistent and the names of all relatives are not disclosed in the family tree. The community machchhimar daldi is restricted to Ratnagiri coastal area and there is nothing on record to show that the petitioner migrated from that region to Kolhapur. Thus merely because the family of

the petitioner is in the business of fishing, they do not qualify as machchhimar daldi.

5. The Scrutiny Committee has found the report of the Vigilance cell to be against the petitioner. Perusal of the said report particularly conclusions recorded therein show that the documents produced by the petitioner mention the caste as Musalman or Musalman Sunni. Only in case of one relative, Munir Mansur Sanade, the caste has been recorded as Machchhimar Daldi.

6. According to the petitioner, this report is not against him while the respondents state that because the report is found to be adverse, show cause notice in accordance with the rule 17 sub rule 11 of Maharashtra Schedule Caste and Schedule Tribes, De-Notified Tribe (Vimukta jati), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rule, 2012 was issued to the petitioner. Petitioner was given opportunity and after taking his reply on record, the impugned order has been passed.

7. Perusal of vigilance report shows that in case of the petitioner, only in certificate as issued by the SDO on 15/9/2017, caste has been recorded as Machchhimar Daldi. There is no other document in his favour for this purpose. In so far as the

certificate issued to Mansur Maqbul Sanade, father of the petitioner, it shows that in the year 1965, caste was recorded as Musalman. In the school leaving certificate of the said father's brother in 1962, again the caste is recorded as Musalman Sunni. Thus there is only one document i.e. caste certificate which has been submitted for verification in which the caste has been recorded as Machchhimar Daldi.

8. However, there is no dispute about two circulars mentioned by the petitioner. In case of Musalman community, normally caste or sect is seen mentioned in the column in which caste has to be recorded. The Committee has in its order dated 27/7/2018 while giving validity to the candidate as darjee, relied upon the document issued by Gramsevak or Gavkamkar.

9. In case of the present petitioner, however, the Committee has observed that in the modern times, only on the basis of family business, it is not possible to determine the caste.

10. The Committee has also observed that the petitioner or his family has not shown their origin from coastal area in Ratnagiri district and there is no evidence that they were carrying out fishing operations there.

11. This finding has come on record for the first time and in vigilance cell report there is no reference to it. Even in show

cause notice issued to the petitioner under rule 17(11), there is no mention of this fact. The Committee has only pointed out that the petitioner has not produced any document prior to 13/10/1967 recording the caste as Machchhimar daldi. Thus the finding of the Committee that this community was restricted to coastal area in Ratnagiri district is not preceded by the show cause notice.

12. The proviso of rule 17(11) require the Committee to give specific reasons if it is not accepting the finding of the vigilance cell. We therefore, find the show cause notice served upon the petitioner dated 7/3/2018 itself not in accordance with law. Petitioner was not given opportunity to demonstrate the fact that his ancestors were from coastal area.

13. In this backdrop, we are inclined to place the matter back before the Scrutiny Committee for taking a fresh decision in accordance with law.

14. The petitioner had won the election earlier as a person belonging to Machchhimar Daldi community and as he could not submit the validation in time, by operation of law, he has been disqualified. The writ petition was mentioned pointing out the urgency that the fresh election process is to commence by tomorrow. In the light of the findings reached supra, it is

apparent that the fresh election process has to go on independently and caste of the petitioner or his caste claim cannot have any relevance in so as that process is concerned.

15. Accordingly with these observations, we quash and set aside the order of Committee dated 25/10/2018 and restore the matter back to it.

16. We direct the parties to appear before the said Committee on 18/12/2019 and to abide by its directions. The Committee shall serve suitable show cause notice upon the petitioner on that date and after giving him opportunity in terms of section 8 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 proceed further to decide the caste claim. The fresh decision shall be taken within six months.

17. With these directions, we partly allow and dispose of Writ Petition No. 13095 of 2018.

18. In so far as Writ Petition No. 582 of 2019, learned counsel for the petitioner does not press the petition which is accordingly disposed of.

(SMT. SADHANA S. JADHAV, J.)

(B.P. DHARMADHIKARI, J.)