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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3202 OF 2019

Reshma Sikandar Patel

... Petitioner

Versus

State of Maharashtra & Ors.

... Respondents

Mr. R.K. Mendadkar, i/b B.A. Lawate, for the Petitioner.
Mrs. R.A. Salunkhe, AGP for the State.

CORAM: S.C. DHARMADHIKARI &
R. I. CHAGLA, JJ.
DATED: 13TH NOVEMBER 2019

PC:-

1. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner challenges the order of the Caste Scrutiny Committee dated 29th May, 2015 invalidating her claim towards Kasar – Other Backward Classes.

2. This Writ Petition was placed before a Bench of this Court on 18th March, 2019. This Court passed the following order:-

- 1. Issue notice to the Respondents, for final disposal, returnable on 1st April, 2019.*
- 2. Learned AGP waives service of notice on behalf of Respondent Nos.1 to 4 – State.*
- 3. Hamdast granted for Respondent No.5.*

In accordance with this order, we have heard this Petition finally.

3. The argument of the Petitioner's counsel is that the Scrutiny Committee has failed to follow the mandate 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 (for short "Maharashtra Act No. XXIII of 2001") as also the Rules framed thereunder.

4. He would submit that the Vigilance Cell submitted its report to the Committee. The Committee while discarding it has not issued a show cause notice to the Petitioner calling upon her to show cause as to why the findings of the Vigilance Cell should not be discarded. Secondly, the Committee has failed to assign reasons for discarding the finding in the Vigilance Cell Report.

5. Mr. Mendadkar, appearing for the Petitioner would submit that, the Committee has disbelieved the Petitioner's version that her family was in the traditional occupation of selling bangles. The Vigilance Cell made inquiries and in the home inquiry it found that in the village where the Petitioner and her forefathers have been residing, they indeed sell bangles from door to door. In such circumstances, when this community engages in the traditional

occupation of selling of bangles then the committee should have accepted the Petitioner's version. The Petitioner has been non suited on flimsy grounds. There are no reasons assigned to discard the Vigilance Cell Report. In such circumstances, the impugned order is perverse and deserves to be set aside. To appreciate this argument, it is necessary to note the facts.

6. The Respondent No.1 is the State of Maharashtra through the Secretary, Department of Social Justice, Respondent No.2 is the District Caste Scrutiny Committee, whereas the Respondent Nos.3 and 4 are Director of the Technical Education, Maharashtra State and Joint Director, Technical Education, Government of Maharashtra. The Respondent No.5 is the Principal of the College to which the Petitioner was admitted in the second year Bachelor of Technology – Information Technology Course in the academic year 2014 – 2015. The Petitioner says that the caste certificate dated 30th December, 2011 on the strength of which the Petitioner was admitted in the reserved seat, was forwarded for scrutiny and verification of the Committee. The school leaving certificate dated 7th August, 2008, caste certificate dated 30th December, 2011, primary school leaving certificate of the father dated 30th September, 2010 and primary school leaving

certificate of the grandfather dated 28th July, 2008, so also those of uncles on the paternal side may not carry the entry Kasar as caste against column, but in Muslims, caste and sub castes are not mentioned. They are not at par with Hindus. Therefore, there is a guiding principle and that it is these authorities who must assist candidates like, the Petitioner to establish their claim. The appropriate inquiries should be made with regard to the traditional occupation, traits, characteristics, rituals customs, ceremonies, etc. After an overall view is taken, claim should either be accepted or rejected.

7. It is no doubt true that, the Petitioner produced these school leaving certificates which do not mention the name of the other backward class but the religion. It is undisputed that the State Government notified the other backward classes for the State way back in the year 1967. It is further surprising that the school records of the Petitioner's father and uncle which are admittedly issued after the 1967 notification did not carry the name of the caste or the other backward classes. Therefore, from inception, the claim was doubtful. Further, the mandate of the Act is that, the Petitioner will have to establish and prove that, she belongs to the

caste. Section 8 of the Maharashtra Act No. XXIII of 2001 reads as under:-

8. Where an application is made to the Competent Authority under Section 3 for the issue of a Caste Certificate in respect of Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes for Special Backward Category and in any enquiry conducted by the Competent Authority and Scrutiny Committee or the Appellate Authority under this Act or any trial of offence under this Act, the burden of proving that the person belonged to such Caste, Tribe or Class shall be on such claimant applicant.

8. As far as Rules are concerned, they are issued under the Rule making power conferred by Section 18 of this Act. So far as the Rules are concerned, it is evident that the process of verification has to be in accordance therewith. There is constitution of a Vigilance Cell contemplated by Rule 12 and the Report of Vigilance Cell and issues to be dealt with is set out in Rule 13 of the Rules. Therefore, though the information derived from home inquiries by this Cell is not decisive or conclusive and the report even if in favour of the candidate can be discarded, there is a procedure which is required to be followed. In the present case, the argument is no show cause notice had been issued by the Committee after the Vigilance Cell submitted a favourable reply way back in 29th September, 2014.

9. It is fallacious to suggest that no such show cause notice was issued. In the order itself this Scrutiny Committee says that it was not in agreement with the report of the Vigilance Cell and therefore, issued a show cause notice to the Petitioner. The Petitioner was called for a personal hearing and on 5th December, 2014, 17th January, 2015, 7th March, 2015 and 17th April, 2015, this candidate, the Petitioner before us remained present and gave an explanation to the contents of the show cause notice. Thus it is fallacious to suggest that the Petitioner was not given an opportunity to satisfy the Committee that her claim was genuine and bonafide. The Committee found that though the Petitioner has obtained a caste certificate carrying the entry Kasar in the same, the school records of the Petitioner show that the entry in the caste column is Musalman / Muslim. That is also the entry in relation to the caste column of the father of the Petitioner. The entry in the caste column of the Petitioner's father's school leaving certificate has been made on 27th June, 1968. Prior thereto there is a paternal uncle to whom as well school leaving certificates have been issued. In that as well the entry is Musalman / Muslim. It is in these circumstances and when grandfather also did not enter the caste or community in his

school records nor did he take steps to correct the records of the Petitioner's father, yet the Petitioner's assertion that she is Kasar – Other Backward Class was rightly disbelieved. It was also disbelieved because the Petitioner found that on 27th August, 2013 an Affidavit was tendered by the Petitioner's father annexing therewith the family tree / genealogy. In that it is stated that the Petitioner's forefathers were purchasing bangles in retail / wholesale from Daulatram Shivdayal, wholeseller bangles merchant. These are receipts as recent as of 10th May, 2008 and 25th May, 2008. However, the Committee closely scrutinized these vouchers / bills and found that the bills / receipts do not evidence any purchases for the purpose of retail sale. Besides that Mr. Mendadkar argued directly contrary to what was the Petitioner's assertion before the Committee and to the effect that the forefathers of the Petitioner were selling bangles from door to door. In Taluka – Sangola District – Solapur, there are 11 villages. In which of these villages the forefathers were selling bangles and for what duration has never been stated before us. A vague and general statement, therefore, contradicting the stand of the Petitioner before the Committee has to be disbelieved. Further, in paragraph 8 of the impugned order, the Committee had assigned cogent and satisfactory reasons for not accepting the findings in

the report of the Vigilance Cell. These reasons are not only germane and relevant but have a direct bearing to the claim. It is clear that the Committee has observed that if amongst the Kasar - Muslims, the traditional occupation is of selling of bangles, then such sellers are referred to as 'Maniyar', 'Maner' and 'Maneri'. There are no such names emerging from any of the records or documents placed before the Committee. It is in the Hindu religion that the bangle sellers are known as Kasar. It is in these circumstances presuming that, if in Muslims, caste and sub castes are not mentioned, still if there are other material denoting the involvement and engagement in traditional occupation, following of typical characteristics and traits, rituals, customs, practices, then, ordinarily the assertions of the Muslim community members are not rejected outright. These corroborative materials are always produced in support of such assertions. Even if the Committee was to disbelieve the report of the Vigilance Cell, the Petitioner had enough time to produce such corroborative material. That is admittedly not produced, therefore, the report of the Vigilance Cell has lost its probative value.

10. There is a finding of fact rendered in paragraph 8 of the order of the Committee which can neither be termed as perverse

nor vitiated by any error of law apparent on the record. The procedure prescribed in the Act and Rules has been followed in letter and spirit. None of the judgments cited by Mr. Mendadkar are of any assistance. In the first order which is merely for remand, the Bench had before it, the materials referred in the Vigilance Cell Report which denoted that the grandfather of the Petitioner before this Court in that Petition was in the business of grazing cattle and selling milk. He had a cattle shed and was maintaining 15 to 20 cows and buffaloes. The relatives of the Petitioner therein had surname only found in the tribe (Gawli). The traditional occupation, therefore, of selling of milk was sought to be established by independent material which had probative value. In these circumstances, the order of remand was passed by this Court.

11. As far as the dictum in the case of *Ashwini Ramchandra Bhogam Vs. State of Maharashtra*¹, there is no quarrel with the procedure prescribed in the Rules. That has to be followed and if there is absolutely no adherence thereto in the necessary details, then, the finding of fact would get vitiated. That is why this Court observed that the findings in the Vigilance Cell Report may not

1 2017 (2) Mh.L.J. 53.

bind the Committee but Rule 17 (7) casts a duty on the Scrutiny Committee to record reasons for discarding the report of the Vigilance Cell. They have indeed been recorded in the instant case.

12. The other judgment cited from the compilation is rendered in the case of *Ansar Abdul Rashid Manchekar Vs. State of Maharashtra & Ors.*². That is also distinguishable because the Petitioner produced several documents and certificates which denoted that the forefathers carried on traditional occupation of fishing. Even the language, is that of the fishermen community. There was a visit by the Vigilance Cell which confirmed this aspect. Yet the Committee assigned no reasons to discard the findings in the Vigilance Cell Report. Hence, the order in that case was set aside and remand was directed.

13. The anxiety of this Court in the other order rendered in the case of *Smt. Bismilla Mohammedsab Sayyed vs. Divisional Caste Certificate Committee*³ is understandable. It is seriously noted by us. True it is that members of the Muslim community start with a

2 Writ Petition No.188 of 2014 decided on 6th April, 2016.

3 Writ Petition No.10577 of 2013 dated 21st February, 2014.

handicap in as much as anthropological data in relation to caste and sub caste in that religion is not available easily. The caste and sub castes are not mentioned in this religion. Yet, there is other material which would support the fact that a particular community in Muslims was otherwise backward. In other words, it was socially and educationally backward and therefore, included in the notification pertaining to Other Backward Classes. The anxiety of the State is benefit and concession so also relaxation meant for the members of the Muslim community should not be denied to them only because they do not have documents in their possession such as school leaving certificate etc, denoting the specific caste or sub caste or class. With all these handicaps, today, we find that there is no dearth of information that is available and consistently with that information it is possible for the community to establish and prove the claim in accordance with the mandate of Maharashtra Act No. XXIII of 2001. Once that is not been done, then, all the orders cited before us are distinguishable on facts.

14. As a result of the above discussion, the Writ Petition fails. It is dismissed without any order of costs.

15. The prayer made by Mr. Mendadkar is that the Petitioner has completed her education and is now awaiting a degree and in this situation she should not be unseated. We cannot accept this request for the Maharashtra Act No. XXIII of 2001 sets out the consequences, if the claim is not found to be genuine. If the claim is not substantiated then the consequences as set out in the law have to be suffered. It is in these circumstances, we find that the Petitioner having obtained the admission against reserved seat but is not able to establish and prove her claim, then the caste certificate itself is false as it contained a false statement. In the circumstances, the Petitioner cannot, therefore, be allowed to get the benefit of earlier education. Section 10 is categorical in terms and Section 11 directs such person to suffer the penalty. Producing a false document including false caste certificate and relying upon a false statement is an offence. In these circumstances, we cannot accede to the request of the Petitioner's counsel Mr. Mendadkar. Even otherwise in terms of the judgment of the Hon'ble Supreme Court in the case of *Chairman & Managing Director, Food Corporation of India & Ors. Vs. Jagdish Balaram Bahira*⁴, this request cannot be accepted.

4 AIR 2017 SC 327.

16. We cannot issue a direction contrary to the mandate of the Act.

17. The request having been refused, the Petitioner must suffer all the consequences in terms of the Maharashtra Act No. XXIII of 2001.

(R. I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)