

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2484 OF 2015
ALONG WITH
CIVIL APPLICATION NO.2657 OF 2016

Ms. Jamadar Fatimabi Mohd. Hussen .. Petitioner

Vs

The State of Maharashtra & Ors. .. Respondents

...

Mr. C.S. Talkute for the Petitioner.

Ms. N.M. Mehra, A.G.P. for Respondent Nos.1 to 3-State.

Mr. I.M. Khairdi for Respondent No.5.

**CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATED : 05TH SEPTEMBER, 2019.

P.C:-

1. Heard learned counsel for the parties.
2. Challenge is to the Order dated 3rd March 2014 passed by the Caste Scrutiny Committee, Solapur invalidating the Caste Certificate which was issued by the Sub Divisional Officer.

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3. The documentary evidence considered by the Caste Scrutiny Committee are the Caste Certificate dated 19/11/2008 furnished by the Petitioner, the School Leaving Certificate when the Petitioner passed out on 01/06/2004 from Progressive Education Society, Urdu High School, Solapur, the School Leaving Certificate issued to the Petitioner's father, the School Leaving Certificate issued to the Petitioner's grandfather, two documents being revenue entries in the name of grandfather and two documents issued by a Weavers Society in the name of the grandfather.

4. Unfortunately for the Petitioner, except for the Caste Certificate, being the document at Sr.No.1, which recorded the Petitioner's caste to be Momin (Weavers' community) others either simply recorded the Petitioner's father and grandfather to be professing the Islamic Religion i.e. Muslim. None record the caste.

5. In the absence of a direct and primary evidence available, as required by the procedure of law, an enquiry was got conducted by the Caste Scrutiny Committee and in the instant case, the Vigilance Cell conducted the enquiry and submitted a Report dated 06th July, 2012. The Report favours the Petitioner. However, the Caste Scrutiny Committee has opined that it disagrees with the opinion recorded by the Vigilance Officer.

6. Sufficient would it be to highlight that no reasons have been

recorded by the Committee to disagree with the findings returned in the Vigilance Enquiry Report. Thus, we need to look at the Vigilance Enquiry Report.

7. The Vigilance Officer had visited the premises of the Kurdu Handloom Weaver's Trust at 14/24, New Paccha Peth, Solapur and accessed the Register with the Office Accountant. As recorded, the said Register was of foolscap paper and had 100 pages. The names of the Members between 1956 to 1965 were recorded therein. The Register had been filled up only till page No.40. The entries were handwritten. The instrument of writing used was a pen. The writing was in ink. The names of the members were written in order of challan. The Petitioner's grandfather's name was recorded at Nos.021 and 124. People in the localities were also contacted and the names and addresses have been noted. As per the said persons, the family of the Petitioner, commencing from his grandfather and his children were stated to be in the weaving business i.e. occupation of the caste Momin.

8. Under Section 90 of the Indian Evidence Act, 1872, every document purporting or proved to be thirty years old, if produced from any custody which the Court considers proper, the Court may presume the correctness of the entries in the document.

9. In the instant case, the record of Kurdu Handloom Weavers

Trust for the period 1956 to 1965 was accessed by the Vigilance Officer. The record was in the custody of the Accountant of the Trust and thus the Court would be compelled to presume that the custody of the documents was proper. The entries therein would also be entitled to the same benefit of presumption and thus we hold that the Caste Scrutiny Committee misdirected itself because it did not guide itself with the principles of law enunciated in Section 90 of the Indian Evidence Act, 1872. By no means, should we be understood to convey that the Indian Evidence Act, 1872 would govern the decision to be taken by the Caste Scrutiny Committee, but the principles laid down therein which are common principles should be considered by the Committee. There are thus two pieces of evidence. First is the record of the Kurdu Handloom Weavers' Trust and the second is the statements of two persons in the localities. Qua those statements, the Caste Scrutiny Committee has opined the evidentiary value thereof to be hearsay. Now, hearsay would be if said two persons said that somebody else told them that the family of the Petitioner i.e. the ancestors of the Petitioner were engaged in the trade of weaving. The two persons have not said this. They have said that they saw the ancestors of the Petitioner engaged in the avocation of weaving.

10. Thus, we hold that the view taken by the Caste Scrutiny Committee in its order dated 3rd March, 2014 is incorrect; being misdirected in law and fact.

11. We dispose of the petition quashing the Order dated 3rd March, 2014 and declare that the Petitioner is a member of the caste 'Momin'.

12. The authorities in the State of Maharashtra would treat the decision declaring the caste status of the Petitioner as Momin and extend such benefit to which the Petitioner would be entitled to as a member of the caste 'Momin'.

13. In view of the disposal of the Writ Petition, the Civil Application does not survive and is disposed of as such.

(SMT. BHARATI DANGRE, J.)

(CHIEF JUSTICE)