

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

WRIT PETITION NO.10262 OF 2016

Habib Babu Jamadar

...Petitioner

vs.

The Divisional Caste Scrutiny Committee
No.1, Solapur and Anr.

...Respondents

**WITH
CIVIL APPLICATION NO.602 OF 2018
IN
WRIT PETITION NO.10262 OF 2016**

Kiran Bharat Patil

...Applicant

vs.

Habib Babu Jamadar

...Respondent

Mr. Shrishail Sakhare for the Petitioner.

Mr. Tejesh Dande a/w Mr. Bharat Gadhavi a/w Vishal Navale for the
Intervener.

Mr. Y.S. Khochare, AGP for the Respondent/State.

**CORAM : B. P. DHARMADHIKARI &
MRS. SWAPNA S. JOSHI, JJ.
DATE : 14/08/2019.**

P.C.:

. Civil application is preferred by an elected member of grampanchayat. Submission is the petitioner who is functioning as a Sarpanch has managed to obtain certificate of validity as OBC by practicing fraud.

2. After hearing respective counsel we find that caste of the petitioner was opposed by one person who lost the election however that person later on has given up. According to intervenor/ applicant since the

petitioner obliged that person with some contract that person did not prosecute his objection. In this peculiar situation we have heard learned counsel for the applicant.

3. Short contention of learned counsel for the petitioner is that vigilance report is in favour of the petitioner, scrutiny committee could not have disbelieved it. He contends that the scrutiny committee has acted as a prosecutor in the matter.

4. Learned APP as also learned counsel for the applicant invited our attention to provisions of Rule 17(11) of 2012 Rules read with Form 25 to submit that after receipt of vigilance report, show cause notice dated 12/2/2016 in prescribed format was served upon the petitioner. He was given time and thereafter impugned order has been passed.

5. Submission is during vigilance inquiry the petitioner did not produce work data extract or any evidence in relation to family business. On the basis of oral statement effort was made to stake the claim to caste 'Julah'. After receipt of that notice the petitioner presented three documents which were found doubtful by the committee. As such according to them there is no jurisdictional error or perversity.

6. The fact that vigilance report is in favour of petitioner is not in dispute. The committee in such situation can disagree with the vigilance report but then as mandated under Rule 17(11) or Form No.25, it has to communicate its reasons for disagreement to the petitioner. In the present matter, the reason given is in all documents, school documents "Musalman" is recorded as caste. The petitioner has been called upon to explain it. The other circumstances are the petitioner has not submitted any document regarding caste or showing profession as Julah for period prior to 1967.

Again the petitioner has been called to explain it. Third reason is receipt of complaint informing that the petitioner does not belong to Julah. Again the petitioner has been asked to explain it.

7. Thereafter he has also been informed about the burden cast upon him by section 8 of (Act No. 23 of 2001) 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 and his written explanation has been called for. The petitioner accordingly submitted his explanation and along with it he has given 4 old bills which show that his father has supplied some material to Co-operative Federation by name Rashtriya Hatmag Kapad Utpadak Shakari Sangh, Niyamit. These 4 documents are of the year 1957, 1958 and 1959. One PF receipt of a spinning mill in the name of Sikander Appalal Jamadar is also supplied.

8. The Committee has disbelieved supply bills given. It found that the candidate is resident of Ekrukh, Post Ule, North Solapur while bills were of establishment at Maindargi, Taluka Akkalkot, District Solapur. We fail to understand any connection between native place and place of establishment. When the documents were supplied, the committee could have ignored documents as false or could have then observed that at the relevant time the father of the petitioner was not residing at Maindargi or could not have supplied material to that establishment. There is no such reason. In any case, the Committee ought to have informed the petitioner its reasons for not accepting these documents and then called for his explanation. That was not done. In the present matter, when the relatives of the petitioner in house inquiry made a responsible statement to the vigilance authorities, prima facie at this stage we do not see any reason for the Scrutiny Committee to doubt it.

9. However, considering complaint made by intervenor we are inclined to keep all these issues open. We find that the petitioner should have been given an opportunity to explain those 4 documents and the authenticity thereof.

10. Hence, only for the said purpose we place the matter back before Respondent No.1 Committee. We also permit the applicant Mr.Kiran Patil to appear before the committee to oppose the caste claim.

11. The committee shall give the petitioner an opportunity to explain documents filed by him along with his reply to show cause notice and then proceed further with verification.

12. To facilitate that exercise we quash and set aside the order dated 9/8/2016.

13. The petitioner as also Mr. Kiran Patil to appear before the Committee on 23/9/2019 and to abide by its further directions in the matter. The Committee shall pass fresh orders thereafter within next three months. Accordingly, the Petition and the Civil Application are allowed and disposed of.

(MRS. SWAPNA S. JOSHI, J.)

(B. P. DHARMADHIKARI, J.)