

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

WRIT PETITION NO.4580 OF 2014

Miss Mulla Ayesha Saheblal .. Petitioner

Vs

State of Maharashtra and Ors. .. Respondents

Ms.S.V.Sonawane a/w Ms.Trisha Singh for
the Petitioner.

Mr.S.S.Panchpor, AGP for the State.

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

DATE :- MARCH 4, 2019

P.C. :-

1. Heard. Perused the original record.
2. Rule. Respondents waive services. By consent, Rule is made returnable forthwith.
3. The Scrutiny Committee in the instant case has rejected and invalidated the claim of the petitioner. Her claim is that she was issued a caste validity certificate by the competent authority. That competent authority says that she belongs to 'Kasab' caste which is recognised as Other Backward Class. The petitioner, at the relevant time and on the date of filing of this petition, was

studying in the last year of the Engineering Diploma Course in V.V.P. Engineering College at Solapur.

4. If the caste certificate was issued and which was relied upon to claim the admission to this Diploma course, then, under the law, namely, 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, 2001 (For short, "the Maharashtra Act No.XXIII of 2001), such a certificate came to be referred to the competent Scrutiny Committee for verification and scrutiny of the caste claim. The petitioner states that her religion is 'Muslim' and her father belongs to 'Kasab' caste. The family resides in village Kunnur, Taluka Akkalkot, District Solapur. The ancestors were holding agricultural land at that village and after the death of her grandfather, her father's name was inserted in the land records. Then, the petitioner relied upon the family tree and also a Government Resolution dated 9th August, 1995 which clarify that those persons who are uneducated and illiterate, but engaged in slaughtering of animals and part and parcel of the Muslim religion, are now included in the list of Other Backward Class. Thus, they are the OBC-257.

5. The petitioner states that her caste certificate and entry in the caste column would denote that she has validly and legally claimed this concession or relaxation by relying on the caste certificate. Further, her elder sister Kum.Shayesta was also issued a similar caste certificate. That she forwarded for scrutiny and the very Scrutiny Committee accepted the claim of the elder sister. She was issued a certificate of validity certifying her as belonging to 'Kasab-OBC'.

6. Even her first cousin Mr.Mulla Mohamadshafi Hujur was also granted a validity certificate by the Committee. However, when her caste certificate was forwarded for scrutiny and verification, a show cause notice was issued to her and a doubt was expressed as to whether she really belongs to this community. In fact this community, according to the Scrutiny Committee and as found in the impugned order, is relying upon the similarity in surnames and trying to take advantage. In fact, according to the Committee, members of the Muslim religion/community did not ever insist on entering the name of sub-caste in the school record. Therefore, the entries in the caste/tribe column are 'Musalman'. Then, 'Mulla' is also a surname in 'Kasab' and there is another surname 'Mulani'. However, 'Mulla', 'Mulani' and 'Kasab' are surnames to be found

even in the other communities. It is, therefore, not safe to hold that these are the members of 'Kasab-OBC'. They may be trying to pass off themselves as Kasab's. Mulla like Maulvi are taken to be the members of a higher category or class. They are equated in the Scrutiny Committee's order with Brahmins of Hindu religion, who are in a advantageous position. They have privilege to perform the religious functions and ceremonies and also to take charge of the temples and religious affairs. Therefore, these persons and with surname 'Mulla' are not necessarily 'Kasab'. For the purpose of survival, some of them may be engaging themselves in traditional occupation of 'Kasab', meaning thereby, slaughtering of animals. The petitioner's surname being 'Mulla', the petitioner should not be held to be belonging to 'Kasab-OBC'. These and similar findings are entered in the Scrutiny Committee's order.

7. However on perusal of that order, we find that the Scrutiny Committee has not applied its mind to the issue raised at all. The petitioner stated that there are two certificates of validity and which have been issued, one to her elder sister-Shayesta and another to Mulla Mohamadshafi Hujur, who is the first cousin from the paternal side.

8. In order to understand and appreciate, in a better manner, the reliance placed on these certificates of validity, we called for the original records and we find that the petitioner had relied upon these two certificates of validity at Sr.Nos.6 and 7 in the list of documents. Then, her father affirmed an affidavit on 24th February, 2012 annexing therewith a genealogy and family tree. The petitioner also relied upon the statement recorded during the vigilance cell/home inquiry which revealed that an independent third party has also stated that the traditional occupation of the petitioner's family was slaughtering of animals. It is in these circumstances that there was indeed a validity certificate of her elder sister and that is to be found in the records of the Scrutiny Committee. The true copy of the validity certificate of the first cousin is also on record together with the relevant documents. The relevant documents also include the affidavit of father of the petitioner and her family tree. The petitioner's grandfather, namely, Allauddin Rasul Mulla had in all six sons. One of the son is Saheblal. Saheblal is the petitioner's father and he indeed has three daughters, including the petitioner. The other son of Allauddin Rasul Mulla, namely, Hujurso has one son, namely, Mulla Mohamadshafi Hujur. It is, therefore, accurate to say that he is the first cousin from the paternal side.

9. In the teeth of this overwhelming material, in our opinion, the Scrutiny Committee has fell in error in refusing to issue the certificate of validity to the petitioner. All the documents relied upon, including the true copies of the certificate of validity issued to the family members have, therefore, great probative value. Their veracity and genuineness is not shaken and rather it is reinforced by the statements in support of the villagers knowing this family. It is in these circumstances that we find that the Committee has strangely refused to issue the certificate of validity. The Scrutiny Committee relied upon the surname 'Mulla'. Even if the petitioner is a 'Mulla', not necessarily all Mullas are Kasab. The reasoning in the Committee's order is that Mullas are knowledgeable and such people cannot be expected to be indulged in such menial job of slaughtering of animal. It relies upon one of the words or statements of a elder researcher, but does not challenge the assertion of the petitioner that there are some Mullas, who have fallen in bad times and on account of the financial crisis, are in the occupation of slaughtering animals. Hence, without a proper inquiry and relying upon only such statements, the documents having high probative value could not have been brushed aside by the Committee. The order of the Scrutiny Committee is, thus, perverse and vitiated by error of law apparent on the face of the record. It deserves to be quashed and

set aside. It is accordingly quashed and set aside. Rule is made absolute in terms of prayer clause (a). The writ petition is disposed of. No costs. A certificate of validity be issued to the petitioner within 15 days from today.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)