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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6008 OF 2013**

Ayub Ali Mahmood Shaikh	..Petitioner
Vs.	
The State of Maharashtra & ors.	..Respondents
.....	
Sarang Satish Aradhye for the petitioner.	
V.M. Mali, AGP for respondent Nos.1 and 2.	
.....	

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

**RESERVED ON : 12th FEBRUARY 2019
PRONOUNCED ON : 28th FEBRUARY, 2019**

JUDGMENT (PER M.S.KARNIK, J.):-

Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

2. In this Petition under Article 226 of the Constitution of India, the petitioner is challenging an order dated 29th May, 2013 passed by the Caste Certificate Scrutiny Committee No. 1, Solapur, invalidating the petitioner's caste certificate as belonging to 'Shikkalgar' caste, which is recognised as Nomadic

Tribe.

3. The Caste Certificate was issued by the competent authority on 25th April, 2003. The petitioner is serving as an Assistant Teacher with respondent No.3 – Educational Institution. The petitioner's claim for verification of his Tribe/Caste Claim was forwarded to respondent No. 2 – Committee. The Vigilance Cell submitted its report on 12/7/2011. It is the petitioner's case that though the report comprises of 46 pages, the petitioner was supplied with only four pages of the report. As Vigilance Cell report was in favour of the petitioner, the respondent No.2 – Committee called upon the petitioner to submit his explanation in support of his Tribe/Caste Claim. The petitioner pointed out that there is an old entry of the year 1922 of 'Shikkalgar' Caste in respect of the petitioner's grandfather Ismail Abbas Shaikh. It was further pointed out that there is an entry of the year 1952 regarding petitioner's father showing his caste as 'Musalman Shikkalgar'. It was further brought to the notice of the Committee that a Caste

Validity Certificate of 'Shikkalgar' Caste has already been issued in favour of the petitioner's real nephew Irfan Abbas Ali Shaikh on 1/11/2011. The petitioner submitted genealogy on affidavit dated 28/12/2010 in support of his claim. Various other documents were relied by the petitioner including an affidavit submitted by the petitioner's nephew Irfan, who has already been granted a validity certificate affirming that he is a blood relative from the paternal side. By an order dated 29/5/2013, the caste claim of the petitioner was invalidated.

4. Learned counsel for the petitioner submits that the Committee has not at all dealt with the certificate of validity issued in favour of the petitioner's nephew Irfan. This approach of the Committee in ignoring the certificate of validity issued in favour of his blood relative from the paternal side while considering the caste claim of the petitioner is completely unsustainable in the teeth of the law laid down by the Division Bench of this Court in the case of **Apoorva d/o Vinay Nichale v/s. Divisional Caste Certificate Scrutiny Committee No.1**

and others reported in 2010 (6) Mh.L.J. 401. Learned counsel would submit that once the caste claim of the petitioner's close blood relation has been validated, the Committee could not have discarded the certificate unless the same is either obtained fraudulently or by suppressing material facts and issued without jurisdiction.

5. Learned counsel for the petitioner also relied upon the validity certificate issued in favour of close blood relations of the petitioner from the paternal side after filing of this Petition. Consequential amendments are carried out bringing these facts on record. It is further submitted by learned counsel that in the impugned order, while discarding the document at Serial No.2, the Committee has observed that the Headmistress of the school has produced the original records in respect of the said Register. Reliance is placed by the Committee on this Register produced by the Headmistress without confronting the petitioner with the said Register and giving an opportunity to the petitioner to examine the Headmistress. He furthermore points out that the

Committee itself has recorded that as regards the genealogy produced on record, the Inspector of Vigilance Cell has not conducted a detailed inquiry. In his submission, the appropriate course for the Committee was to have called for a further report from the Vigilance Cell after conducting a thorough inquiry.

6. Learned AGP on the other hand supported the order passed by the Committee. He submits that the Committee called for the original school general Register and upon verification, it is found that the word 'Shikkalgar' is written in different ink and different handwriting and therefore the Committee has rightly discarded the documents. Even in respect of other documents, it is found that the word 'Shikkalgar' is written in different ink and there is overwriting. Learned AGP further submits that the Committee recorded a finding that the documents on which the petitioner placed reliance are either tampered with or there is a overwriting. He invited our attention to the affidavit-in-reply of the respondent Nos.1 and 2 dated 6th August, 2018.

7. We have heard learned counsel for the parties. We

have gone through the Petition and the annexures. We have also gone through the affidavit-in-reply filed on behalf of the respondent Nos.1 and 2. We had called for the original record and perused the same.

8. We find that the Committee has not relied upon the Vigilance Cell report in favour of the petitioner, as according to the Committee, the Vigilance Cell has not conducted thorough inquiry into the genealogy submitted by the petitioner. In our opinion, having recorded thus, it was necessary, then, in the interest of justice for the Committee to have directed the Vigilance Cell to conduct a thorough inquiry in accordance with the procedure laid down under Rule 12 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 ('Rules' for short).

9. We further find that the petitioner relied upon the certificate of validity issued by the Committee in favour of the petitioner's nephew Irfan Abbas Ali Shaikh. In the affidavit-in-reply it is mentioned that in the genealogy submitted by the

petitioner, the name of Irfan Abbas Ali Shaikh is not shown and hence the petitioner has not proved his relation to Irfan Abbas Ali Shaikh. Therefore the Committee did not consider the validity certificate of Irfan. We, however, find that this reason for discarding validity certificate is not mentioned in the impugned order. Moreover, the affidavit-in-reply is filed by Shri Nagnath Revanppa Chougule, Member Secretary of the Committee, who was not a member of the Committee which passed the impugned order. In our opinion, it is not open for the Committee to supply reasons in support of the impugned order for the first time in the affidavit-in-reply filed by them, more so when the affiant was not even a member of the Committee which passed the impugned order.

10. The petitioner has brought on record subsequent events in the form of the certificates of validity issued in favour of his close blood relations from the paternal side and also brought on record the genealogy by amending the Petition. This Court in the case of **Apoorva d/o Vinay Nichale** (*supra*) has

clearly held that when during the course of inquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate.

11. We also find that the Committee has recorded a finding that the school Registers and other documents are tampered and overwritten. The tampering and overwriting is attributed to the petitioner without confronting the petitioner with these documents or by giving an opportunity to the petitioner to examine the concerned person who produced the register/ documents on record. This is completely contrary to the principles of natural justice.

12. For all the above stated reasons, it is necessary that a thorough inquiry needs to be conducted into the caste claim of the petitioner in accordance with law. It is also necessary for the Committee to examine the petitioner's claim with reference to all the validity certificates of the petitioner's close blood relatives

from the paternal side in the light of the law laid down by this Court in the case of **Apoorva d/o Vinay Nichale** (*supra*). Hence the following order.

ORDER

- i) The impugned order dated 29th May, 2013 passed by respondent No. 2 - Committee is quashed and set aside.
- ii) The matter is remitted back to respondent No.2- Committee for taking a fresh decision on the Tribe/Caste Claim of the petitioner in accordance with law as expeditiously as possible.
- iii) The Vigilance Cell to complete the inquiry and submit a fresh report in accordance with Rule 12 of the Rules.
- iv) The claim of the petitioner to be examined also with reference to the Caste Validity Certificates of his blood relatives produced on record by the petitioner by way of amendment to this Petition.
- v) Needless to mention that the petitioner's claim be decided by respondent No.2- Committee on its own merits and in accordance with law.

13. Rule is partly made absolute in the above terms with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)