

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

WRIT PETITION NO.8687 OF 2015

Shri. Shahjahur Aminullah Momin	]
Age:- Adult, Occu: Nil,	]
R/at 754, Uttar Kasaba, behind Adv. Kelkar	]
Solapur, Tal. & Dist. Solapur	]..Petitioner

Versus

1] State of Maharashtra through its	]
Secretary, Social Welfare Department,	]
Mantralaya, Mumbai.	]
2] Divisional Caste Certificate	]
Scrutiny Committee No.1 Solapur,	]
having its office at Dr. Babasaheb	]
Ambedkar Samajik Nyay Bhavan,	]
1 st floor, Shobha Naga, near	]
Abdulpurkar Mangal Karyalay,	]
Solapur, District Solapur.	]
3] The Superintendent,	]
Solapur Municipal Corporation,	]
Transport Department, Transport Undertaking,	]
Solapur Municipal Corporation,	]
Solapur	]..Respondents

Mr. C. K. Bhangoji I/by Mr. Hamid D. Mulla, Advocate for the Petitioner.

Mr. N. K. Rajpurohit, AGP for Respondent Nos.1 & 2.

Mr. Yuvraj Gharal I/by Mr. Vijay Killedar, Advocate for Respondent No.3.

**CORAM : B. R. GAVAI &
N. J. JAMADAR, JJ.
DATE : 26th FEBRUARY, 2019**

ORAL JUDGMENT (Per N. J. Jamadar, J.)

1] Rule. Rule made returnable forthwith. With the consent of the counsels for the parties, heard finally.

2] The Petitioner challenges the order dated 12th August 2015, passed by the Respondent No.2 - Divisional Caste Certificate Scrutiny Committee No.1, Solapur, whereby the claim of the Petitioner of being a member of “Muslim Momin”, Other Backward Class (OBC) came to be invalidated.

3] The background facts can be stated in a nutshell as under:-

The Petitioner came to be appointed on the post of Vulcunizer on the establishment of Respondent No.3 – Corporation. The Petitioner claims to be a member of “Muslim Momin”, a caste recognized as OBC in the State of Maharashtra. The competent authority issued a caste certificate to the Petitioner on 18th June 2004. The Respondent No.3 – Corporation forwarded the same to the Respondent No.2 – Committee for scrutiny. The Respondent No.2 – Committee referred the claim for investigation by the BGP.

Vigilance Cell. The Police Inspector attached to the Vigilance Cell conducted the requisite investigation and submitted report on 19th August 2014. The Respondent No.2 - Committee served the said report upon the Petitioner, and gave opportunity of hearing to the Petitioner. After considering the documents tendered by the Petitioner in support of his claim and the other material, including the report of the Vigilance Cell, the Respondent No.2 – Committee was persuaded to invalidate the claim of the Petitioner observing, inter-alia, that the Respondent No.2 - Committee does not agree with the report of the Vigilance Cell and the Petitioner has failed to establish that the traditional occupation of the father and forefathers of the Petitioner was weaving. Being aggrieved by and dissatisfied with the aforesaid impugned order, the Petitioner has invoked writ jurisdiction of this Court.

4] We have heard Mr. C. K. Bhangoji, learned counsel for the Petitioner and Mr. N. K. Rajpurohit, learned AGP for Respondent Nos.1 and 2 at some length. We have also perused the impugned order and the material on record.

5] It was urged on behalf of the Petitioner that the

Respondent No.2 - Scrutiny Committee committed a manifest error in negating the claim of the Petitioner, despite a favourable Vigilance Cell report. The learned counsel for the Petitioner would urge that having observed that since the Petitioner professed Muslim religion and thus the caste and sub caste were not recorded in the concerned public documents, like birth certificate and school leaving certificates, the Respondent No.2 - Committee could not have discarded the claim of the Petitioner for want of documentary evidence to substantiate the said claim. It was further submitted that the Respondent No.2 - Committee could not have simply brushed aside the Vigilance Cell report, which categorically records that the local inquiry revealed that the forefathers of the Petitioner had come to Solapur from Tasgaon and their occupation was weaving and they belong to Momin caste. The learned counsel for the Petitioner submitted that this Court has held in a number of cases that the insistence upon the mention of the caste/sub caste in the public documents in respect of the claimants, who professed Muslim religion is not warranted and if the vigilance inquiry report supports the claim, it can be acted upon. Thus, the impugned order is unsustainable, urged the learned counsel for the Petitioner.

6] Per contra, Mr. N. K. Rajpurohit, learned AGP would support the impugned order. It was stoutly submitted that the Petitioner has miserably failed to substantiate the claim. In the absence of documentary evidence of clinching evidentiary value, the approach of the Respondent No.2 – Committee cannot be faulted at, submitted the learned AGP.

7] Evidently there are no pre-constitutional documents, which record the caste of the forefathers of the Petitioner as “Muslim Momin”. However, this factor does not seem to be decisive as even Respondent No.2 – Committee expressly observed that there was no practice of mentioning the caste/sub caste amongst the Muslims. The fact that the school leaving certificates of the paternal relations of the Petitioner simply record Muslim and do not find mention of 'Momin', does not detract materially from the Petitioner's claim. The Respondent No.2 - Committee was of the view that the claimant was required to place material indicating the occupation, and the Petitioner failed to do so.

8] In this context, the report of the Vigilance Cell assumes significance. It is pertinent to note that the Vigilance Cell report

refers to the local inquiry made with the witnesses and explicitly records that the grandfather and father of the Petitioner were handloom weavers and their traditional occupation was handloom weaving. It further records that the persons who were in the know of the things recognized the Petitioner and his ancestors as the members of the Momin caste. The Vigilance Cell report also refers to a certificate issued by the Momin Jamat Trust to the effect that the Petitioner is a member of the Momin community. Conversely, the vigilance inquiry did not find any contra material.

9] In the backdrop of the aforesaid Vigilance Cell report, it is necessary to note as to how the Respondent No.2 – Committee dealt with the said report. In the impugned order, the Respondent No.2 – Committee simply observed that it does not agree with the report of the Vigilance Cell. No reason was assigned by the Respondent No.2 – Committee to indicate as to why it found itself unable to agree with the Vigilance Cell report. This factor is of material significance for the reason that the Respondent No.2 – Committee was alive to the position that the insistence upon entries of the caste in the documents was not expected as the Petitioner

professed Muslim religion. The report of the Vigilance Cell which lent requisite support to the claim of the Petitioner could not have been thus brushed aside without assigning any justifiable reason.

10] In this context, the learned counsel for the Petitioner placed reliance upon a judgment of this Court dated 19th April 2018 in Writ Petition No.8144 of 2014 in the case of Kum. Fehmi Mushtak Mukadam Vs. The State of Maharashtra and others, wherein based on the report of the Vigilance Cell, this Court was persuaded to uphold the claim of the Petitioner (therein) to belong to “Gavali” Nomadic Tribe-B, who also happened to profess Muslim religion. Paragraph 7 of the said order is relevant and thus extracted below :-

“7. In the present case, the report of vigilance cell shows that the grand-father of the petitioner was in the business of grazing the cattle and selling the milk. He had cattle shed and maintaining 15-20 cows and buffaloes. Not only this but upon examination of the witnesses and vigilance cell further found that the relatives of the petitioner are having surnames which are normally found in Gavali Tribe. In that view of the matter, we are inclined to allow the Petition.”

11] In the aforesaid case, this Court had referred to two earlier Division Bench judgments and observed in paragraphs 5 and

6 of the said judgment as under :-

“5. The petitioner professes Muslim religion. A Division Bench of this Court in Writ Petition No.188 of 2014 (Coram : S. C. Dharmadhikari and G. S. Kulkarni, JJ) vide judgment and order dated 6th April 2016, while considering the claim of a candidate belonging to Machchimar Daldi (OBC), observed that if the traditional occupation of the family members of the petitioner therein had been fishing, then, there was no reason to discard his claim. The petitioner in the said case also professed Muslim religion.

6. Similarly, in another decision of a Division Bench of this Court in Writ Petition No.11394 of 2016 (Coram: N. H. Patil and M. S. Karnik, JJ.), the Bench quashed the order of scrutiny committee and remanded the matter to the committee for fresh adjudication.”

12] A useful reference can also be made to the observations of another Division Bench in the case of Shri. Imram A. Ajij Shaikh Vs. State of Maharashtra¹, which read as under :-

“5. In the present case, after hearing both the parties even considering the impugned order, we have noted that the Respondent – Committee failed to consider the facts and circumstances of the present case specifically when it refers to matters that the Petitioner belongs to “Muslim Julaha” caste. The requirement of documents of the community in question as insisted, in our view, is uncalled for. The very Vigilance Cell report, so prepared based on the material collected by the concerned Officer, at the relevant time, by recording reasons and/or statements of the people of the locality as well as community, unless a case of fraud and/or misrepresentation is made out, can only be required to be

¹ Writ Petition No.8044 of 2014 decided on 17th February 2014.

interfered with. There is no such reason and/or justification given. The justification given is by overlooking the findings of the Committee's report as recorded above. It is quite settle in Madhuri Patil's case (supra) that once the report is in favour of candidate found to be genuine and true, no further action needs to be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained or serious doubts are raised.”

13] In the backdrop of the aforesaid position, we find that in the absence of any contra material and cogent reason to disagree with the Vigilance Cell report, the Respondent No.2 – Committee could not have negated the claim of the Petitioner. The Respondent No.2 – Committee committed an error in lightly discarding the Vigilance Cell report and that too without assigning any justifiable reason. Thus, we are persuaded to allow the Petition.

14] Hence, the Petition stands allowed.

We hold and declare that the Petitioner belongs to “Muslim Momin”, Other Backward Class.

The Respondent No.2 – Committee is directed to issue validity certificate to the Petitioner within a period of three weeks from the date of uploading this order.

Rule is made absolute in the aforesaid terms. However,
there shall be no order as to costs.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]