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

WRIT PETITION NO. 10527 OF 2016

Mulla Maher Parvin Nabisaheb ... Petitioner.

V/s.

State of Maharashtra & Ors. ... Respondents.

Mr. Prasad B. Kulkarni for the Petitioner.

Ms. Nisha Mehra, AGP for the Respondents 1 and 2.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.***

DATE : 3 JULY 2019.

P.C. :-

The Petitioner is challenging the order dated 5 August 2016 passed by the Divisional Caste Certificate Scrutiny Committee, Solapur. By the impugned order the Scrutiny Committee has invalidated the Caste Certificate issued to the Petitioner on 27 January 1990 as belonging to Kasab Community recognized as Other Backward Class in the State of Maharashtra.

2. The Petitioner submitted documents in support of his caste claim before the Scrutiny Committee. The Scrutiny Committee called for report from the Vigilance Cell attached to it. The Vigilance Cell conducted field enquiries and submitted reports on 6 December 2013, 7 May 2014, 23 June 2015 and 21 December 2015. The Scrutiny Committee gave hearing to the Petitioner and after assessing the documents and the reports of the Vigilance Cell, invalidated the Caste Certificate.

3. Turning first to the documents produced by the Petitioner. The extract from school records of the Petitioner's sister, brother and father showed the entry as Musalman, Muslim and Kasab. The Petitioner had also placed on record an explanation of the Petitioner's sister which referred to a Certificate Issued by the Kazi that right from the year 1830 the Petitioner's ancestors have been doing the work of Kasab. The Petitioner had also produced and relied upon the Validity Certificate issued to his sister Mahajabin Nabi Saheb Mulla on 5 May 2005. The Scrutiny Committee itself has recorded that in Muslim Community generally there is no practice of recording a caste or a name of the community. There is no dispute that the Petitioner belongs to a Muslim Community and therefore, there is nothing adverse in the entries as Muslim and Musalman and could be considered as neutral.

4. In this background, the Validity Certificate issued to the Petitioner's sister Mahajabin assume importance. The Scrutiny Committee has kept aside this Validity Certificate with a casual remark that the Validity Certificate has been obtained by misguiding the Scrutiny Committee. In what manner the Scrutiny Committee was misled, why the Validity Certificate was wrongly issued, has not been discussed at all.

5. The second aspect was of the report of the Vigilance Cell. The Vigilance Cell submitted a report stating that in the Kasab Community generally the dominant profession is of butchery. The Vigilance Cell interviewed the near relatives of the Petitioner who have stated the traditions of Kasab Community. After recording the interviews, the Vigilance Cell opined that the Petitioner's family in the past was doing work of butchering goats and chicken at the time of religious festival (Urus). The Scrutiny Committee has over ridden this report by criticizing the officer of the Vigilance Cell stating that this report is entirely incorrect.

6. Considering this position and the record, we are of the opinion that the manner in which the Scrutiny Committee has dealt with the case of the Petitioner is entirely unsatisfactory. The Validity Certificate issued to the sister of the Petitioner and favourable Vigilance Cell report and the fact that there are no adverse entries in

the record should have entail a detailed unbiased enquiry, which is completely missing.

7. In these circumstances, the impugned order passed by the Scrutiny Committee cannot be sustained and the proceedings will have to be remanded to the Scrutiny Committee.

8. Accordingly, the Writ Petition is allowed. The impugned order passed by the Respondent No.2 – Scrutiny Committee dated 5 August 2016 is quashed and set aside. The proceedings are remanded to the Respondent No.2 – Scrutiny Committee, Solapur to be considered as per law.

N.M. JAMDAR, J.

CHIEF JUSTICE