

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

WRIT PETITION NO.398 OF 2016

Vaishali Diliprao Tidke

..Petitioner

V/s.

The Chairman/Member Secretary
& Research Officer & Ors.

.. Respondents

Mr.T.N. Sonawane for the Petitioner.

Mrs.M.P. Thakur, AGP for Respondent-State.

Mr.Rishikesh Gherade i/b Mr.H.G. Wakshe for Respondent No.3.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 8th JANUARY 2019

P.C.

1. Heard learned counsel appearing for the respective parties.

2. By this Writ Petition the petitioner is challenging the order passed by Respondent No.1 where the caste of Respondent No.3 came to be validated. The petitioner and respondent No.3 contested the elections from Ward No.87 of Navi Mumbai Municipal Corporation. Thereafter, as per the rules, the caste certificate of the respondent No.3 was forwarded to the Caste Scrutiny Committee for

verification and by the impugned order, the same is validated. The petitioner is aggrieved by this order.

3. The respondent No.3 claims to be belonging to Kunbi caste which is included in 'Other Backward Category'. In support of her claim, she relied upon documents of pre-constitutional period. The first document pertains to the respondent No.3's great great grandfather. This document is of the year 1887 and the caste of the great great grandfather of the respondent No.3 in birth and death Register is recorded as 'Kunbi'. Another document relied is of the year 1907 and pertains to the petitioner's great great grandmother where again the caste is recorded as 'Kunbi'.

In addition to the above two documents, there are other two documents of the year 1904. The first of these documents pertain to the petitioner's Cousin Grandfather and second is of her Cousin Grand aunt. In the said documents, the caste of the blood relatives of the respondent No.3 is recorded as 'Kunbi' and on the basis of these documents the respondent No.3 claimed that she belongs to caste 'Kunbi'.

4. The caste Scrutiny Committee scrutinized the said documents produced before it and placed reliance on the said

documents in light of its probative value. In light of the observations of the Hon'ble Apex Court in case of Kumari Madhuri Patil, further the respondent No.3 also produced documents to establish that her ancestors are residing in State of Maharashtra before the deemed date i.e. on 13.10.1967. The Committee has also relied on an affidavit in terms of Rule 14 supporting the information about the genealogy. The claim of the respondent No.3 was examined through the Police Vigilance Cell and the documents submitted by the claimant were physically verified by making an enquiry with the Tahsildar-Wai, District-Satara. All the relevant entries were scrutinized. Based on the aforesaid information, the Committee has conferred validity on the respondent No.3 and declared that she belongs to caste 'Kunbi'.

6. The submission of the learned counsel for the petitioner is that the respondent No.3 has also placed on record a document of her father Babar Shriram Babu and it is a school leaving certificate issued by the Headmaster, 'The Ideal Morning High School', Tahkur Dwar, Mumbai where the date of birth recorded as 01.06.1941 and the place of birth is recorded as Wai. However, in this document the caste according to the learned counsel for the petitioner is recorded as 'Maratha'. It is the specific submission of the counsel for the

petitioner that when the respondent No.3's father is "Hindu Maratha" and since the caste flows from the father, the Committee has erred in issuing the validity in favour of respondent No.3. He has placed reliance on the Division Bench judgment of this Court in Writ Petition No.8537 of 2015 and he relies on the paragraph No.3 of the said judgment where the Division Bench has recorded that no satisfactory explanation was submitted in support of a document where the caste was recorded as 'Maratha' and on this basis the Writ Petition was dismissed.

We are unable to agree with the submission of the learned counsel for the petitioner as the facts of the said case are clearly distinguishable and it was a case where the petitioner had challenged the validity of an order declaring the respondent as 'Kunbi' and therefore in the backdrop of the other circumstances which were narrated in the judgment, this circumstance was considered to be an adverse one.

7. It is now settled position in law that documents of pre-constitutional period should be given more weightage in light of its probative value and a stray document in favour of the respondent No.3's father would not make her claim doubtful since consistently the caste of the ancestors of the petitioners in the documents as

early as in the year 1887, 1907 and 1904 is recorded as 'Kunbi'. The said documents are found to be genuine and true and taking into consideration the totality of circumstances, the Committee has granted validity to respondent No.3.

In such circumstances, since there is no perversity or illegality in the order passed by the Scrutiny Committee, we are not proceeded to interfere with the said finding in exercise of Writ jurisdiction of this Court. The Writ Petition deserves to be dismissed and it is accordingly dismissed.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)