

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

WRIT PETITION NO. 1508 OF 2017

Ms. Jasmin Jahir Shaikh
Age: Adult, Occu: Student,
R/o. M. Hisare, Post. Fisare
Taluka: Karmala, Dist: Solapur.

...PETITIONER

VERSUS

1. The Divisional Caste Scrutiny
Committee No. 1, Solapur,
having its office at
Dr. Babasaheb Ambedkar
Samajik Nyayva Sankrutik Bhavan
Opp. Abdul Kurkar Mangal Karyalay
Saat Rasta, Solapur.
2. State of Maharashtra
3. Eklavya Shikshan Sansh's Polytechnic
Pune- 4.

...RESPONDENTS

APPEARANCES-

For Petitioner- Mr. Surel Shah.
AGP for State- Mrs. R.A. Salunkhe

**CORAM : S. S. SHINDE &
V. G. BISHT, JJ.**

RESERVED ON: 05/03/2020.
PRONOUNCED ON: 13/03/2020.

JUDGMENT (PER S. S. SHINDE, J.)

1. Rule. Rule made returnable forthwith and heard with
the consent of learned counsel appearing for the respective
parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned order passed by Respondent No. 1 dated 27.06.2016 bearing No. SOJA. PRA. PAS-1 / Shaikshanik/Avaidya Nirnay/4899.

3. It is the case of the Petitioner that on 08.07.2008 the petitioner applied for the Caste Certificate as belonging to the Mulani (OBC-340) to the Sub Divisional Officer, Madha Division, Kurduwadi Division on 08.07.2008. Accordingly, on 08.07.2008, the Petitioner was issued certificate by the Sub Divisional Officer. On the basis of caste certificate, the petitioner secured admission in the Respondent No. 3-College and is presently studying in the Second Year 'Mechanical Course'. On 29.01.2016, the Principal of Respondent No. 3-College vide its proposal dated 29.1.2016 forwarded the caste certificate for the validation to the Respondent No. 1 and accordingly the Respondent No. 1 decided to hold an enquiry. Accordingly, the petitioner submitted application to the Respondent No. 1 along with all the annexures thereto including the caste validation certificate issued to her father as well as her paternal relatives. The Petitioner also filed an affidavit of her father where he has been granted caste certificate of Mulani (OBC-340). As per the procedure, the Vigilance Officer submitted his report and gave the finding that the Petitioner belongs to the Caste Mulani (OBC-340).

4. On 13.04.2016 the Respondent No. 1 issued a show cause notice to the petitioner as to why the caste certificate issued to the petitioner should not be invalidated. It was mentioned therein that the word “mulani” was added later on in different ink and different writing in the school record and called upon the petitioner to clarify about the same. It was further mentioned that the petitioner did not produce on record any document to show the profession of the family. Accordingly, on 30.04.2016 the petitioner replied to the show cause notice and in support of her contentions relied upon the documents. The statement of the witnesses were recorded during the enquiry, which are also part of the record.

The Caste Scrutiny Committee thereafter proceeded to hear the application filed by the petitioner and by the impugned order dated 27.06.2016 refused to grant a validity certificate on the ground that the evidence produced by the petitioner as well as school record shows the entry as ‘Muslim’ in the caste column. It was necessary to place on record material showing close relatives are belonging to the Mulani OBC-340. The Caste Scrutiny Committee refused to rely upon the validity certificate issued to the father of Petitioner as well as petitioner’s paternal relatives. Hence, this writ petition.

5. Learned counsel appearing for the Petitioner invites our attention to the pleadings and grounds taken in the petition,

annexures thereto and submits that the Petitioner filed various documents before the Committee which unequivocally show that the father of the Petitioner and other relatives are from Mulani cast which is included in other backward classes in the State of Maharashtra. Learned counsel further submits that the cousin of Petitioner Shaikh Yusuf Musa has been granted validity certificate by the Committee that he belongs to Mulani (OBC-340). Learned counsel submits that Vigilance Cell Report is in the favour of Petitioner, however, said report has not been taken into consideration by the committee. Therefore, learned counsel submits that, petition may be allowed.

6. On the other hand, learned AGP appearing for Respondent No. 1 and 2 invites our attention to the findings recorded by Respondent No. 1 in the impugned decision and submits that the Petitioner could not place on record satisfactory documentary evidence to show that his father and forefather belongs to Mulani community. It is submitted that on verification of school record of the Petitioner, there appears to be over writing and tampering and therefore, the Committee has rightly discarded the said documents from consideration.

7. We have given careful consideration to the rival submissions. With the able assistance of the learned counsel for the

parties, we have carefully perused the pleadings and grounds taken in the petition, annexures thereto and the reasons assigned by the Committee, so also the original record. At the outset, we express our dissatisfaction for taking following incorrect ground in the petition. Ground No. (I) reads as under:-

(I) That the Respondent No. 1 ought to have relied upon the caste validity certificate issued to the father of the Petitioner as well as to the paternal uncle and aunt of the Petitioner.

8. Upon careful perusal of the documents placed on record, so also original record, we do not find that the caste validity certificate is issued in favour of the father or paternal uncle or aunt of the Petitioner by Respondent No. 1.

9. Be that as it may, upon perusal of the impugned decision of the Committee, it appears that the Committee has kept Vigilance Cell Report out of consideration since it appears that the committee did not agree with the said report. In our opinion the course adopted by Respondent No. 1 to keep the vigilance cell report out of consideration cannot be countenanced and sustainable. The Respondent No. 1 ought to have considered the Vigilance Cell Report coupled with documents placed on record. Apart from it, the Committee has also negated the contention of the Petitioner that her brother Shaikh Yusuf Musa has been granted validity certificate that he belongs to Mulani (OBC-340)

which is included in the other backward classes in the State of Maharashtra. It appears that the Petitioner did not bring on record sufficient evidence showing her relation with said Shaikh Yusuf Musa. In that view of the matter, in our opinion the Petitioner needs to be given an opportunity to place on record document showing that Shaikh Yusuf Musa is in her relation. We are also of the opinion that the Committee was legally obliged to consider the report of the Vigilance Cell and should not have kept the said report out of consideration. In the light of discussion in forgoing paragraphs, we pass the following order:-

ORDER

- 1) The impugned order passed by Respondent No. 1 dated 27/6/2016 bearing No. SOJA. PRA.v PAS-1 / Shaishanik / Avaidya Nirmay/4899 is quashed and set aside.
- 2) The matter is remitted to the Respondent No. 1- Divisional Caste Scrutiny Committee No. 1, Solapur for *denovo* consideration.
- 3) The Respondent No. 1-Committee is directed to decide the caste claim of the Petitioner as expeditiously as possible, however within 6 months from today.

- 4) The Petitioner must be given opportunity to file further additional documents for showing that Shaikh Yusuf Musa is in her relation.
- 5) The Respondent No. 1-Committee is directed to consider the report of Vigilance Cell and then take the final decision.
- 6) The interim order passed by this Court in terms of prayer clause (e) dated 08.02.2017 shall remain in force till the caste claim of the Petitioner is decided afresh by Respondent No. 1-Committee.
- 7) Rule is made absolute to above extent and writ petition stands disposed of accordingly.

(V.G. BISHT, J.)

(S. S. SHINDE, J.)