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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11414 OF 2019

Miss Swaliha B. Sanadi	...Petitioner
V/s.	
State of Maharashtra & Ors.	...Respondents

Mr.D.V. Sutar for the Petitioner.

Mr.Karan S. Thorat, AGP for the Respondent – State.

CORAM : R.D. DHANUKA &
MADHAV J. JAMDAR, JJ.
DATE : 22ND DECEMBER, 2020.

P.C. :-

1. Rule. Rule made returnable forthwith by consent of parties. Learned AGP waives service on behalf of the respondent nos.1 to 3. Mr.Sutar, learned counsel appearing for the petitioner seeks leave to delete the respondent no.4. Leave granted as prayed.

2. The petitioner is a student and secured admission in degree course in Electronics and Telecommunication Engineering in the MKSSS's Cummins College of Engineering for Women, Karve Nagar, Pune.

3. By the present petition filed under Article 226 of the Constitution of India, the petitioner is challenging the order dated 25th April, 2019 passed by the respondent no.3 – Divisional Caste Scrutiny Committee – 2, Kolhapur by which the petitioner's caste claim as belonging to caste "Kasai" of OBC category was invalidated.

4. It is the main contention of Mr.D.V. Sutar, learned counsel appearing for the petitioner that the Vigilance Cell Report which is

produced at Exhibit – D, at pages 46 and 47 is not in accordance with Rule 13 of the Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste certificate Rules, 2012 (hereinafter referred to as “the said Rules”). Mr.Sutar also relied on the judgment of this Court reported in **2017(1) Mh.L.J. 797** in the matter of **Jamadar Mehaboob Ghudubai vs. State of Maharashtra & Ors.**

5. On the other hand Mr.Thorat, learned AGP appearing for the Respondents supported the impugned order. He pointed out that in the objection filed by the petitioner to the Vigilance Cell Report if is not considered that the Vigilance Cell Report is not in accordance with Rule 13 of the said Rules. He also pointed out that the documentary evidence which is produced by the petitioner before the Respondent No.3 do not show that the petitioner belongs to the caste “Kasai” and therefore, the writ petition be dismissed.

6. We have gone through the record of the case with the assistance of both the learned counsels. We have also perused the original record which has been produced before us pursuant to the order of this Court. The Vigilance Cell Report which is at pages 46 and 47 shows that the statement of only one witness was recorded and the Vigilance Cell Report is very cryptic and is only of two pages.

7. Rule 13 of the said Rules contemplate that the Vigilance Cell Officer shall submit the report by carrying out detail investigation in the claim of the applicant and the factors which are required to be taken while considering the enquiry. It is specifically mentioned in

Rule 13 that the Vigilance Cell Officer shall visit permanent place of residence of the applicants and shall conduct domestic enquiry. It is provided that the vigilance cell officer shall record statement of respected and responsible persons from concerned area, including representatives of Local Self Government, Police Patil etc. It is provided that the officer shall collect information as regards name, age, educational qualification, occupation, existing place of residence and information regarding properties (existing and disposed of) of family members of applicant. Rule 13 also contemplates collection of information including the sociological, anthropological, ethnological and genetical traits of the Scheduled Caste etc. It is further provided that the Vigilance Cell Officer shall personally visit the Competent Authority or revenue or school or other Offices. A bare perusal of the Vigilance Cell Report clearly shows that the same is not in accordance with the mandatory requirement of Rule 13 of the said Rules.

8. It is true that the petitioner has not raised the said objection before the respondent no.3 Scrutiny Committee however, as the same is required as per the rules framed under the Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste certificate Act, 2000 (hereinafter referred to as "the said Act") and is the requirement of law, the objection raised by the learned AGP is not proper.

9. Mr.Sutar is right in relying on the judgment in the matter of

Jamadar Mehaboob Ghudubai (supra). He placed reliance on paragraph 13 of the said judgment. The said paragraph 13 is reproduced herein below.

“13. We also find that Vigilance Cell has not carried out enquiry as required by clause (d) of Sub-Rule 1 of Rule 13 which provides that the Vigilance Cell should include information including sociological, anthropological, ethnological and genetical traits of the relevant Caste. In the present case, this exercise was necessary as there is no likelihood of any entry of caste recorded in old record in case of Mohameddians. It was necessary for the Vigilance Cell to make an enquiry in terms of clause (d). Perusal of the impugned order shows that the Committee has not applied the affinity test. This Court has already considered the provisions of Rule 13 of the said Rules in case of **Smt.Bismilla Mohammedsab Sayyed (Mujawar) @ Bismilla Allabaksh Shikkalgar** (supra). In this case also we find that entire approach of the Caste Scrutiny Committee is erroneous as in the facts of this case, the Caste Scrutiny Committee should have directed the Vigilance Cell to do the exercise under the provisions of clause (d) of Sub-Rule 1 of Rule 13 of the said Rules. The Caste Scrutiny Committee ought to have held appropriate enquiry in the present case.”

10. As the Vigilance Cell Report is not in accordance with the Rules and therefore, the impugned order suffers from illegality and irregularity.

11. As far as the second contention that none of the documents show that the petitioner belongs to caste “Kasai”, it is well settled that in case of Muslims, there was no practice of mentioning the castes in the record.

12. In view of above, we pass the following order :

i). The impugned order dated 25th April, 2019 passed by the respondent no.3 invalidating the caste claim of the petitioner as belonging to “Kasai” caste of OBC category is quashed and set aside

and the matter is remanded back to the respondent no.3.

ii). We direct the parties to appear before the respondent no.3 Caste Scrutiny Committee on 6th January, 2021 at 11.00 a.m. The Scrutiny Committee shall call for fresh Vigilance Cell Report in accordance with Rule 13 of the said Rules and the Caste Scrutiny Committee to make a fresh adjudication and pass order in accordance with the provisions of Act and Rules as expeditiously as possible and in any case within three months from today without being influenced by the impugned order dated 25th April, 2019 and also the Vigilance Cell Report dated 6th July, 2018.

iii). All contentions of the parties are kept open.

iv), Rule is made absolute in aforesaid terms.

v). Office is directed to forthwith return back the original record to the learned AGP.

(MADHAV J. JAMDAR, J.)

(R.D. DHANUKA, J.)