

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

CIVIL WRIT PETITION NO. 2674 OF 2016

Kumari Shaikh Shashim Mhamulal,	]	
Adult, Occup : Teacher,	]	
R/o In front of MSEB, Roshni Manzil,	]	
Malshiras, Taluka Malshiras,	]	
Dist. Solapur	]	...Petitioner

VERSUS

- | | | | |
|----|--------------------------------------|---|--|
| 1. | The State of Maharashtra |] | |
| | (Through Principal Secretary, |] | |
| | Social Justice & Special Assistance |] | |
| | Department, Mantralaya, |] | |
| | Mumbai – 400032. |] | |
| 2. | Member Secretary |] | |
| | Scheduled Caste, Scheduled Tribe, |] | |
| | De-notified Tribe (Vimukt Jatis), |] | |
| | Nomadic Tribe, Other Backward |] | |
| | Class and Special backward Class |] | |
| | Category Caste Scrutiny Committee |] | |
| | No. 1, Solapur Having office at |] | |
| | Solapur. |] | |
| 3. | Shree Hanuman Shikshan Prasarak |] | |
| | Sanstha, Malshiras, Taluka Malshiras |] | |
| | Dist. Solapur. |] | |
| | Through its Chairman |] | |
| 4. | The Head Master |] | |
| | Marutinana Kulkarni Primary School |] | |
| | Having Office at |] | |
| | Malshiras, Taluka Malshiras |] | |
| | Dist. Solapur |] | |

5. Sub Divisional Magistrate]
 Malshiras, Taluka Malshiras]
 Dist. Solapur]

Mr. Jagdish G. Reddy for the Petitioner.

Mrs. R.A. Salunkhe, AGP for Respondent – State.

Mr. S.P. Shivalkar Law Officer, District Caste Scrutiny Committee, Solapur present.

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

**RESERVED ON : 03rd MARCH 2020
 PRONOUNCED ON : 09th MARCH 2020**

JUDGMENT (PER S. S. SHINDE, J)

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

2. By this Petition under Article 226 of the Constitution of India petitioner is challenging legality, validity and propriety of the impugned judgment and order dated 29th January, 2016 passed by the Respondent No. 2 – Scheduled Caste, Scheduled Tribe, De-notified Tribe (Vimukt Jatis), Nomadic Tribe, Other Backward Class and Special Backward Class Category Caste Scrutiny Committee No. 1, Solapur thereby invalidating the caste claim of the Petitioner as belonging to Mulani (OBC).

3. It is the case of the Petitioner that, Petitioner belongs to Mulani

(OBC) caste, which is recognized as Other Backward Caste and listed at Sr. No. 340 in the State of Maharashtra vide Government Resolution dated 25.05.2006 as amended from time to time. Petitioner is qualified as M.A./D.Ed and considering her qualification and caste certificate the Petitioner was appointed as Assistant Teacher on the post reserved for OBC category which has been duly approved by the Education Officer (Primary) ZP Solapur vide order dated 24.09.2012 w.e.f. 1.12.2011 in the Respondent No. 4 – School, which is run by the Respondent No. 3 – Institution. The appointment of the Petitioner is on reserved post for OBC category. The Respondent No. 3 forwarded her caste certificate for verification to the Respondent No. 2 – Caste Scrutiny Committee. In support to this, petitioner submitted various documentary evidence before Respondent No. 2 – Caste Scrutiny Committee as she belongs to Mulani Caste (Muslims) including school leaving certificate of his father and real uncles which shows his caste as Musalman. Even Petitioner has produced certificate issued by village Talathi of Akuj and Grampanchayat, Akuj, Taluka Malshiras that she belongs to Muslim Mulani caste. All India Muslim OBC Organization also issued a certificate to the effect that Petitioner belongs to Muslim Mulani caste which is recognized as OBC.

4. It is the case of the Petitioner that Petitioner submitted affidavit as required under the Maharashtra Scheduled Tribe (Regulations of Issuance

& Verification) of Caste Certificate Rules to the Caste Scrutiny Committee. Thereafter, the Caste Scrutiny Committee referred the matter of the caste claim of the Petitioner to the Vigilance Cell for verification and after thorough inquiry and considering the documentary evidence produced before the Vigilance Cell, the Vigilance Cell submitted its detailed report to the Respondent No. 2 – Caste Scrutiny Committee on 12.06.2013 by which the Vigilance Officer recommended to the committee that the Petitioner is entitled to get the caste certificate to the effect that Petitioner belongs to Mulani caste. The Vigilance Cell recorded the statements of two witnesses from the village which also support the case of the Petitioner that the petitioner belongs to Mulani caste. Petitioner produced various documentary evidence even from the erstwhile residence of the Petitioner's ancestors from village Raveri, Taluka Man, Dist. Satara and even the caste scrutiny committee referred those documents to the vigilance cell attached to the caste scrutiny committee at Kolhapur. Pursuant thereto even the officer of the vigilance cell of Kolhapur committee also investigated the matter and found that the Petitioner's caste claim is genuine and all the documents produced by the Petitioner in support of her caste claim as well as the registered sale deed of the year 1916, are authentic.

5. Even though the two vigilance cells reports are in favour of the petitioner, the caste scrutiny committee issued show cause notice to the

Petitioner on 27.07.2015 alleging that all the documents produced by the Petitioner shows that the Petitioner belongs to Muslim caste and not Mulani caste and even the Petitioner failed to prove her relationship with Bandu Babanbhai Mulani. Thereafter, the Petitioner submitted detailed reply on 21.08.2015 to the caste scrutiny committee pursuant to the show cause notice issued to her. The Caste Scrutiny Committee by its impugned order dated 29.01.2016 rejected the caste claim of the Petitioner. Hence, this Writ Petition.

6. Learned counsel appearing for the Petitioner submits that Petitioner is professing Islam religion and therefore, her school records do not show her caste or caste of her forefathers as belonging to Mulani caste. It is submitted that the Vigilance Cell submitted two reports which are in favour of the Petitioner and Vigilance Cell recommended to the Caste Scrutiny Committee that the Petitioner is entitled to get the caste certificate of Mulani (OBC). Learned counsel invites attention of this Court to the Vigilance Cell report and submits that Petition deserves to be allowed. In support of aforesaid contentions, learned counsel for the petitioner pressed into service following expositions of law in the case of Kumari Madhuri Patil and Anr v. Additional Commissioner, Tribal Development and Others¹, Jamadar Mehabood Ghudubai v. State of Maharashtra and Others², Imram

1 (1994) 6 Supreme Court Cases 241

2 2017 (1) Mh.L.J. 797

A. Ajij Shaikh v. State of Maharashtra and Others³ and Ashvini Ramchandra Bhogam v. State of Maharashtra and Others⁴.

7. On the other hand, learned AGP appearing for the Respondent - State relying upon the findings recorded by the Respondent - Committee submits that the committee has rightly negated the claim of the Petitioner, therefore this Court may not interfere in the impugned decision of the committee.

8. We have given anxious consideration to the submissions made by the learned counsel appearing for the parties. With their able assistance perused the ground taken in the Petition, annexures thereto, reasons assigned by the Committee in the impugned decision and also the original record made available by the learned AGP.

9. It is true that the caste certificate dated 05.07.2010 issued by the competent authority in favour of the Petitioner mentions the caste of the Petitioner as Muslim-Mulani (OBC-340). It is required to be noted that in spite of two Vigilance Cell reports in favour of the Petitioner, the Committee in the impugned decision observed that since the Committee is not agreeing to the report submitted by the Vigilance Cell and therefore, said report is kept out of consideration. Said findings of the Committee is unacceptable

3 2015 (4) Mh.L.J. 901

4 2017 (2) Mh.L.J. 53

for the simple reason that when such vigilance cell's report is their the Committee is bound to consider the same and there was no reason for the Committee to disbelieve the vigilance cell report which is in favour of the Petitioner.

10. The Division Bench of this Court in the case of Imram A. Ajj Shaikh v. State of Maharashtra and Others (Supra) in paragraphs 6 and 7 held as under:

"6. There is nothing on record to show any contra material and/or any objection by any one on record. The inquiry report itself supports the case of the Petitioner based on all the traits, traditions, characteristics and customs of his caste. There is nothing to disbelieve the inquiry conducted by the Vigilance Cell. Respondent No. 2 wrongly rejected the documents placed by the petitioner as caste is mentioned only as Musalman. In the Muslim community, there are few cases in which the caste is recorded regularly and/or properly in any Government record. Therefore, the Committee ought to have considered the Vigilance Cell report instead of relying solely upon the documents placed on record by treating it to be unreliable. The Committee must consider in such situation that unless contrary material is placed on record and other documents are not clear as not available in the particular community, the Vigilance Cell report needs to be respected. There is no question of discarding the Vigilance Cell report, the purpose for which is well reconsidered and even recorded

by the Apex Court in Madhuri Patil's case and Dayaram's case (supra).

7. Therefore, taking an overall view of the matter, we are inclined to set aside impugned order dated 29 May, 2013 with direction to re-consider the same, in accordance with law, in view of the above observations, including the Supreme Court judgments refereed to above. It also means that the concerned respondents, in case the caste is validated in favour of the petitioner, to pass consequential order at the earliest."

11. In that view of the matter, the impugned order 29th January, 2016 passed by Respondent No. 2 i.e. Scheduled Caste, Scheduled Tribe, Denotified Tribe (Vimukt Jatis), Nomadic Tribe, Other Backward Class and Special Backward Class Category Caste Scrutiny Committee No. 1, Solapur, by which order Respondent No. 2 – The Committee invalidating the caste claim of the Petitioner as belonging to Muslim-Mulani (OBC-340) is hereby quashed and set aside and the matter is remanded back to Respondent No. 2 – The Committee for a de novo consideration in terms of the directions as contained herein below:-

- A) The caste claim of the Petitioner as belonging to Muslim-Mulani (OBC-340) caste is remanded back to Respondent No. 2 for a de novo consideration.

- B) On remand, Respondent No. 2 is directed to dispose of the claim / case of the Petitioner as expeditiously as possible and preferably within a period of three months from today by giving opportunities to all the parties.
- C) The parties to appear before Respondent No. 2 on 23/03/2020. Thereafter the caste claim of the Petitioner shall be adjudicated latest by 30th June 2020.
- D) It is seen that this Court by order dated 14th March, 2016 restrained the Respondent from taking any coercive steps against the Petitioner on the basis of the impugned order passed by the Respondent No. 2. The said ad-interim relief granted earlier vide dated 14th March, 2016 would continue to operate till the caste claim of the Petitioner is adjudicated upon by Respondent No. 2.
- E) The above Writ Petition is accordingly allowed. Rule is accordingly made absolute to the aforesaid extent with parties to bear their respective costs of the Petition. The Writ Petition is accordingly disposed of.

(V.G.BISHT, J.)

(S. S. SHINDE, J.)