

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3534 OF 2012

Momin Mohammad Ilyas s/o Mohd.Yusuf,
Age-36 years, Occu-Service,
R/o Pathrud, Tq. Majalgaon,
District - Beed

-- PETITIONER

VERSUS

1. Divisional Caste Certificate Verification
Committee No.1, Aurangabad Division,
Aurangabad,
Through its Research Officer and
Members Secretary,

2. Zilla Parishad, Beed,
Through its Chief Executive Officer

-- RESPONDENT

Mr.C.K.Shinde, Advocate for the petitioner.
Mr.U.B.Bondar, Advocate for respondent No.2.
Mr.S.B.Yawalkar, AGP for State.

**(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ.)**

DATE : AUGUST 12, 2021

ORAL JUDGMENT : (Per Ravindra V.Ghuge, J.)

1. By this petition, the petitioner has put forth prayer clause B, C, BB and DD as under :-

"B. By issue of writ of certiorari or any other appropriate writ, the impugned order dated 23.02.2012, passed by the respondent No.1- the Divisional Caste Certificate Scrutiny Committee No.1, Aurangabad Division, Aurangabad may kindly be quashed and set

aside and it be declared that, the petitioner belongs to Momin-OBC and accordingly, the Committee be directed to issue caste validity certificate of being Momin-OBC to the petitioner.

C. Pending hearing and final disposal of the petition, the operation and effect of the impugned order dated 8.2.2012, passed by respondent No.1- Divisional Caste Certificate Scrutiny and Verification Committee No.1, Aurangabad and issued on 23.2.2012, may kindly be stayed.

BB. The impugned order dated 18.4.2012 issued by the respondent No.2, thereby directing removal from services of the petitioner from Zilla Parishad as Attendant may kindly be quashed and set aside.

DD. Pending hearing and final disposal of the writ petition, the impugned order dated 18.4.2012, issued by the respondent No.2, thereby removing the petitioner from Zilla Parishad services as Attendant may kindly be stayed."

2. The petitioner was appointed as an "Attendant" in the class IV category on a post reserved for the OBC candidates, on 26/02/2009. On 14/08/2009, his caste claim was referred by his employer to the competent scrutiny committee. The petitioner had tendered his caste certificate dated 27/05/1996 showing that he belongs to the Momin caste, which is recognized as OBC. During the course of the proceedings before the Committee, the petitioner appeared and produced the documents relating to the school records of his grand father, father, and uncle. The caste validity certificate issued on 28/06/1994 to the real brother of the petitioner namely Mohd.Riyaz, was also produced. Documents prior to 1967 were also placed on record to establish that the Momin Caste falls in the

OBC category.

3. The petitioner submits that he had then produced the school admission extract of his real cousin grand father Amiroddin Balesab Momin which shows the caste entry as Momin-OBC. The school admission extract of his real cousin grand father Karimoddin Balesab Momin, also indicates his caste entry as Momin OBC.

4. As the petitioner's caste validity claim was turned down by the competent committee vide the impugned order dated 22/02/2012, he approached this Court by filing this petition setting out the above reproduced prayer clauses. By the first order dated 24/04/2012 passed by this Court, the employment of the petitioner was protected. Vide order dated 09/05/2012, this Court noted that after this Court had passed the ad-interim order earlier, the petitioner had been terminated and thereafter the ad-interim order was served on the respondent. By further interim protection, this Court directed that no adverse action should be taken against the petitioner and by granting ad-interim relief in terms of prayer clause DD, the petitioner was reinstated in service. By an order dated 13/08/2012, the petition was admitted and interim relief was continued.

5. The petitioner relies upon Rule 16(h) to contend that amongst the

various documents that the petitioner has to supply to the competent Committee for inviting a decision on his claim, he is bound to produce the attested copy of the decision of the scrutiny committee and of the validity certificate of his father or blood relations or real uncle or any other relative of the applicant in blood relation from the paternal side.

6. The petitioner then relies upon explanation III below Rule 16 which reads as under :-

"(3) If an applicant submits the application alongwith the caste validity certificate of his father in blood relation or real uncle or any other blood relative from paternal side and if he has applied for the same caste of which above mentioned validity certificate is issued, in such case the name of such applicant alongwith the caste validity certificate of his father in blood relation or real uncle or any other blood relative from paternal side submitted by him will be displayed on the web site of Dr.Babasaheb Ambedkar Research And Training Institute, Pune (BARTI) as well it will be displayed on the notice board of the concerned District Caste Certificate Scrutiny Committee. It will be conveyed to register objection if any about the request of an applicant within 15 days from such publication.

If no objections or complaints are received with regard to such application then District Caste Certificate Scrutiny Committee will issue caste validity certificate without asking for other documents of proof by considering that validity certificate as an important evidence.

If any objections or complaints are received on the application, the District Caste Certificate Scrutiny Committee will

make an enquiry within the maximum period of sixty days from the receipt of such complaints or objections.

If no substance is found the District Caste Certificate Scrutiny Committee will issue the validity certificate to the applicant. If any substance is found in objections or complaints the District Caste Certificate Scrutiny Committee will take decision about claim of the caste verification of concerned applicant by following prescribed office procedure and the decision about the caste validity will be taken."

7. He then contends that there were no objections as regards the caste validity certificates of closest relatives produced by the petitioner, in as much as, the competent committee did not find any of the caste validity certificates of his close blood relations to be objectionable. He draws our attention to page no.65 which is an additional affidavit filed by him indicating that his real paternal uncle Mohd. Issa was granted a caste validity certificate on 25/04/2018 confirming that he belonged to the Momin-191 (Other Backward Class). The son of his said real uncle Mohd.Issa, namely Mohd. Mushtaq s/o Mohd.Issa (first cousin brother), was also granted a validity on 19/09/2018 upholding that he belonged to the Momin-191 (Other Backward Class). The petitioner further submits that his real brother Mohd.Riyaz s/o Mohd.Yusuf was granted a validity certificate as early as on 28/06/1994 upholding his claim of belonging to the Momin-191 (Other Backward Class category). His real sister Fatema Begum was also granted a validity certificate dated 19/07/2019 concluding that she

belonged to Momin-191 (Other Backward Class).

8. The learned Advocate then submits that he has fully co-operated with the Committee and the Vigilance Cell conducted the Vigilance inquiry and did not find any adverse material against the petitioner or any of his closest relatives. There is no dispute that the caste Momin, the petitioner being a Muslim, was recorded as Momin-191 (Other Backward Class). The judgment delivered by the Hon'ble Apex Court in Ku.Madhuri Patil Vs. Additional Commissioner Adivasi Vikas [AIR 1995 SC 94] is cited. However, the Committee relied upon a school certificate of his father Mohd.Yusuf and held that it does not indicate the Momin Caste, but reflects Musalim Religion. The Committee has also held that the petitioner did not produce the caste certificates of his paternal uncles, paternal aunts or the grand father to establish that he belongs to the Momin-191 (Other Backward Class). The Committee relied upon the view taken in peculiar facts and circumstances in Ravindra Dnyandeo Solanki Vs. State of Maharashtra, 2006(6) ALL MR 605, Raju Mansing Basave Vs. Mahesh Deorao Bhevapurkar 2008 AIR SCW 6184 and Mahesh Prahladrao Lad Vs. State of Maharashtra and others 2009(3) ALL MR 301.

9. The learned AGP representing respondent No.1 and the learned Advocate representing respondent No.2 Zilla Parishad, have opposed this petition. Their contention is that by merely placing before the Committee,

the caste validity certificate of his real brother, which was granted on 28/06/1994, was not enough. The caste certificate of the petitioner dated 27/05/1996 is not a clinching piece of evidence and the whole exercise of caste validation 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, is to test the merits of such a caste certificate. There are instances when caste certificates are obtained fraudulently or through authorities not competent to issue such certificates and the Committee has the power to direct the confiscation of a caste certificate if it is found to be baseless or issued by a wrong authority or is an unreliable document.

10. The learned Advocate for the petitioner places reliance upon paragraph No.5 of Mahesh Prahladrao Lad Vs. the State of Maharashtra and others [2009(3) ALL MR 301] which reads as under :-

"5. In Kum. Madhuri Patil vs. Additional Commissioner, A.I.R. 1995 S.C. 94 the Supreme Court was considering the probative value of entries in the school register preceding the Constitution the Court noted that in terms of the then census Rules the caste status of the people was insisted upon and that hierarchical caste stratification of Hindu social order has its reflection in entries in public record. Similarly the Court observed that the entries in the school register preceding the Constitution do furnish great probative value. The Supreme Court in Madhuri Patil (supra) has not laid down as a matter of law or even as an obiter that documents post Constitution or

post Presidential notification cannot be considered. On the contrary the direction in the judgment contemplates the constitution of Vigilance Cell to investigate into the social status claim. The Vigilance Officer has to personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian as the case may be from the school records and birth register records, if any and consider the same. The statement of parents or guardian of the candidate in relation to their caste or such other persons who have knowledge of the social status of the candidate had to be received and then a report submitted. If the Director on receipt of the report from the vigilance officer found that the claim of social status to be not genuine or doubtful or spurious or falsely or wrongly claimed, the Director was to issue show cause notice supplying the copy of the report of the vigilance officer to the candidate. It is thus clear from the judgment in Madhuri Patil (supra) that the Supreme Court itself noted that the Vigilance Officer would consider the school, and birth register records, if any, thereby acknowledging the fact that in many cases there may not be record either in the school or birth register either on account of parent being not admitted to the school or the birth not being registered in the relevant records. The other aspect of the matter is that if from the report of the Vigilance Cell only in the event the Director (the Committee herein) formed the opinion based on the report that the claim for social status was not genuine or doubtful or spurious or falsely or wrongly claimed would a show cause notice be issued to the applicant. Where the committee accepts the report then there will be no need for further enquiry.

For documents which have come into existence subsequent to the Presidential notification and their evidentiary value, we may gainfully refer to the judgment of the Supreme Court in Gayatrilaxmi Baburao Nagpure vs. State of Maharashtra, 1996 (3) SCC 685. In that case what was under consideration were documents of Halba Scheduled Tribe. The

documents were of recent origin and not pre-presidential notification. The Supreme Court noted that the Committee failed to consider all the relevant materials placed before it and did not apply its mind to the important document there which was a document in respect of one Abinash Prabhakar Nagpure verifying his caste claim. This judgment was considered by this Court in Prabhu Narayan Survase vs. State of Maharashtra & Ors. 2004 (4) All M.R. 815 where this Court in no uncertain terms set out that it was not open to the Committee to reject the documentary evidence on the ground that it is of recent origin. This judgment was followed by another Division Bench of this Court in Surajsingh s/o.Jaisingh Maher vs. The State of Maharashtra, Writ Petition No.4589 of 2003 decided on 13th November, 2003."

11. Reliance is then placed upon paragraph No.7 in Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others [2010(6) Mh.L.J. 401], which reads as under :-

"7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it."

12. Further reliance is placed on paragraph nos.2 and 3 of an unreported judgment of this Court delivered in WP No.2423/2012 filed by Syed Salman Siddiqui Vs. The State of Maharashtra and others, which read as under :-

"2. *Petitioners who are real brothers, are taking exception to orders passed by Scheduled Castes, Scheduled Tribes, Nomadic Tribes, Other Backward Classes and Special Backward Classes Divisional Caste Certification Committee, Aurangabad Division, Aurangabad, passed on 29.11.2011, thereby invalidating caste claim of petitioners. Petitioners claim that they belong to "Julah" caste, recognised as Other Backward Class. Certificate issued by competent authority was referred to Scrutiny Committee. Petitioners laid documentary evidence to support their claim. Committee also called for report of Vigilance Cell and on consideration of report of Vigilance Cell and documentary evidence produced by petitioners, Committee proceeded to invalidate claim of petitioners.*

3. *We have perused judgment and order passed by Scrutiny Committee and heard arguments advanced by learned Counsel for parties. Apart from placing reliance on documentary evidence including school record of respective petitioners, they have also placed reliance on school record pertaining to their blood relations. Petitioners placed on record a copy of validity certificate issued by Divisional Caste Certification Committee, Aurangabad on 6.5.2008 in favour of one Siddiqui Syed Sarfaraj s/o Syed Aijaj. This validity certificate is of real brother of petitioners and it has been issued after following procedure prescribed in that behalf by very same committee prior to rendering decision in claim raised by petitioners. Petitioners have also placed reliance on certified copy of sale deed executed in favour of great grand father of petitioners by name Gulam Gaus s/o Sarafraj Hussain Julah wherein there is reference to his caste. Petitioners also placed reliance on copy of first page of service book of one Siddiqui Syed Harun, who is real uncle of petitioners wherein, his caste is recorded as Julah. We have also perused Vigilance Cell report submitted to Scrutiny Committee on 10.11.2009. Vigilance Cell on conducting home enquiry, reported that petitioners appear to be belonging to "Muslim Julah" caste. Vigilance Cell did not come across any contrary evidence in form of*

documents or oral testimony of any witness so as to cast doubt as regards claim of petitioners. Scrutiny Committee proceeded to turn down claim raised by petitioners solely on ground that petitioners have failed to place on record documentary evidence in respect of caste of their father, paternal uncle, grand father and other blood relations prior to 13.10.1967. Committee has overlooked evidence placed on record in the form of validity certificate issued in favour of real brother of petitioners and copy of unregistered sale deed executed in favour of great grand father of petitioners, which is a document prior to 1967. Committee has also overlooked the report of Vigilance Cell and did not consider aspect that there is no evidence contrary to claim raised by petitioners.”

13. We find from the record that the impugned order was passed on 22/02/2012 when the caste validity certificate of the real brother of the petitioner granted on 28/06/1994, was available. This certificate did have presumptive value. From the material that was placed before the Committee, we find that the caste certificate of the petitioner showed Momin-191, his father's certificate showed Julaha Momin and his real brother's certificate also showed Momin. The Committee was swayed by the religion of his father having been mentioned in his school record as Muslim and the religion of his cousin brother being shown as Musalman. The Committee therefore had ignored one entry of his father available from his service book as Julaha Momin and also the validity certificate as Momin-191 (OBC) issued in favour of his real brother Mohd.Riyaz. The respondents may contend that the real brother of the petitioner was

granted a caste validity certificate prior to the introduction of the 2000 Act and the said certificate could be ignored. However, this is not a finding of the Committee in the impugned order.

14. Be that as it may, it is conceded by the Committee that while rejecting the claim of the petitioner, the Committee did not re-open the proceedings vide which the real brother of the petitioner was granted validity almost 18 years prior to the impugned order. The Committee did not find it necessary as there was no suspicion as regards the validity granted to his real brother. In doing so, the Committee has created an anomaly of accepting the claim of the real brother and rejecting the claim of the petitioner. Considering the case of the petitioner as it stands today before us, any doubt about the claim of the petitioner has been removed by subsequent developments that have taken place during the pendency of this petition. The real paternal uncle Mohd.Issa was granted validity for his caste Momin-191 (Other Backward class) on 25/04/2018. The first real paternal cousin brother of the petitioner was granted validity as Momin-191 (Other Backward Class) on 19/09/2018 and his real sister Fatema Begum was granted validity as Momin-191 (Other Backward Class) on 19/07/2019. The claim of the petitioner was lodged on 14/08/2009. While granting validity certificates to his first cousin, real uncle and his real sister, the Committee did have an occasion to test the claims of these persons in the light of the rejection of the claim of the petitioner. While considering the

claim of the petitioner, the Committee could have tested the validity granted to his real brother almost 18 years ago. We had adjourned this matter on 05/08/2021 to enable the learned AGP to take instructions as to whether, considering the rejection of the claim of the petitioner, the caste scrutiny committee had re-opened proceedings in relation to the real paternal uncle Mohd.Issa, the first cousin Mohd.Mushtaq, s/o Mohd.Issa or of his real brother Mohd.Riyaz and his real sister Fatema Begum. The learned AGP submits that the committee has not re-opened their proceedings.

15. In view of the above, taking into account the caste validity certificates issued to close blood relatives of the petitioner, and in the light of Rule 16(h) and explanation 3, of the 2012 Rules and the GR dated 22/08/2007, this petition is allowed. The impugned order dated 08/02/2012 and the communication dated 23/02/2012 are quashed and set aside.

16. We direct respondent No.1 Committee to issue the caste validity certificate for Momin-191 (Other Backward Class) in favour of the petitioner, as expeditiously as possible and preferably on or before 15/09/2021. Consequentially, we further grant prayer clause BB and the order of reinstating the petitioner passed by us on 09/05/2012, stands confirmed. The petitioner would be entitled to continuity of service and

all consequential service benefits inclusive of all monetary / emoluments.

17. Rule is made absolute in the above terms.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)