

**BASAVRAJ
GURAPPA
PATIL**

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

WRIT PETITION NO.4398/2018

Nikhil Chiman Waghela

..... Petitioner

Vs.

State of Maharashtra & Ors.

..... Respondents

**Mr. C. K. Bhangoji for the Petitioner
Mr. Vikas M. Mali, AGP for the State**

**CORAM: R.D.DHANUKA &
ABHAY AHUJA, JJ.**

DATED : OCTOBER 20, 2021

P.C.

1 The learned counsel for the Petitioner seeks liberty to delete Respondent No.4 from the cause title of the petition. Liberty granted. Amendment shall be carried out forthwith. Re-verification is dispensed with.

2 Rule.

Rule is made returnable forthwith.

The learned counsel for the Respondents waives service.

By consent, the petition is taken up for final disposal.

3 By this petition under Article 226 of the Constitution of India, the Petitioner has impugned the order dated 24.03.2017 passed by Respondent No.2 Scrutiny Committee

invalidating the caste claim of the Petitioner in respect of the caste certificate dated 05.07.2002.

4 The Petitioner claims to belonging to Rukhi caste which is not notified as a Scheduled Caste. The learned counsel for the Petitioner invited our attention to the impugned order and also to the letter dated 01.09.2016 produced before Respondent No.2 Committee in respect of the grandfather of the Petitioner. It is the case of the Petitioner that the grandfather of the Petitioner was working as a Sweeper prior to 1950. He invited our attention to the document at Page No.25 dated 12.09.1995 issued by the Administrative Officer of Sir J.J.Group of Hospitals, Mumbai certifying that the grandfather of the Petitioner was working in the hospital since 01.01.1949 till 01.07.1988 as a Sweeper and retired on 01.07.1988. It is further certified that in the service book, his caste is recorded as *Harijan*. It is submitted by the learned counsel for the Petitioner that though the said document of prior to 1950, it has not been considered in the impugned order.

5 Mr. Mali, the learned AGP could not dispute this position.

6 In our view, if the said document was relied upon by the Petitioner and if the said document would have been considered by Respondent No.2 Committee, the Petitioner would have been issued a caste validity certificate. Since the said crucial document is not considered in the impugned order, we set aside the impugned order dated 24.03.2017

passed by Respondent No.2 committee and remand the matter back to Respondent No.2 Committee to decide the caste claim of the Petitioner, afresh, without being influenced by the observations and conclusion drawn in the impugned order and pass a fresh order in accordance with law, after considering the document dated 12.09.1995 issued by the Administrator Officer of Sir J.J. Group of Hospitals, Mumbai and other related documents of pre 1950 to be produced by the Petitioner.

7 The Respondent No.2 Committee is directed to refer the said documents to the Vigilance Cell for consideration and submit a report before Respondent No.2 Committee within six weeks from the date of referring the said document to the Vigilance Cell.

8 The Petitioner is directed to remain present before Respondent No.2 Committee on 28.10.2021 at 11.00 am.

9 The learned AGP to communicate this order to Respondent No.2 - Committee for records and compliance.

10 The Respondent No.2 Committee shall pass an appropriate order within 3 months from the date of receipt of Vigilance Cell Report.

11 Ad-interim relief granted by this Court on 19.04.2018 to continue till fresh order is passed by Respondent No.2 Committee and for further three weeks from the date of communication of the said order, if the said order is against the Petitioner.

12 If the order is passed against the Petitioner, the Petitioner would be at liberty to take out appropriate proceedings.

13 If the order is in favour of the Petitioner, the Caste Scrutiny Committee shall issue a caste certificate within 2 weeks from the date of passing the said order.

14 The Writ Petition is allowed in the aforesaid terms.

15. Rule is made absolute accordingly.

16 Parties to act on an authenticated copy of this order.

(ABHAY AHUJA, J.)

(R.D.DHANUKA, J.)