

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10836 OF 2019

Ms. Saba Mohammad Ali MokashiPetitioner
vs.
The State of Maharashtra & Ors. ...Respondents

Mr. R.K. Mendadkar for the Petitioner.

Mr. S.B. Kalel, AGP for Respondent Nos.1 to 3.

**CORAM : S. C. GUPTA AND
SURENDRA P. TAVADE, JJ.**

DATE : 11 FEBRUARY 2021

P.C.

1. Heard learned counsel for the Petitioner and learned AGP for the Respondent-State. Rule. Rule taken up for hearing forthwith by consent of counsel.

2. The controversy in the present petition concerns validity claim in respect of the Petitioner's caste 'Mulani', which is treated as an Other Backward Class. It is submitted by the Petitioner before the Scrutiny Committee that she did not have documentary evidence in proof of her caste claim; she relied on several judgments of this Court delivered in different cases of Muslim applicants, which hold that in case of Mohameddians, there being no recognised caste or sub-caste, there was no likelihood of finding entries of caste in old records, unlike in the case of Hindus. The Petitioner's submission before the Scrutiny Committee includes references to atleast six cases on the point. Despite these

references and filing of hard copies of the judgments before the Scrutiny Committee, the Committee appears to have simply proceeded on the finding of unavailability of documents and rejected the Petitioner's caste claim. Non-consideration of this important aspect of the case calls for a remand of the case to the Scrutiny Committee for a fresh consideration in accordance with law.

3. In the premises, we make Rule absolute and allow the petition by quashing and setting aside the impugned order of Respondent No.2-Committee dated 08.05.2019 and remanding the Petitioner's application for validating her caste claim to Respondent No.2 for a fresh hearing in accordance with law. Respondent No.2 shall take into account and consider the effect of the various judgments referred to by the Petitioner in her reply to the Vigilance Cell Report dated 14.11.2018 while deciding her application on remand. Respondent No.2 shall consider the Petitioner's reply, hear her and pass appropriate orders on her application as expeditiously as possible and preferably within a period of eight weeks from today.

4. The petition is disposed of in the above terms.

(SURENDRA P. TAVADE, J)

(S.C. GUPTE, J.)