

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10042 OF 2019

Mr.Tanaji Mhatugade, for Petitioner.
Ms.R.M. Shinde, AGP for respondent No.1.

DATE : 5th OCTOBER, 2021

1] Heard learned counsel for parties.

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3] The learned counsel for the Petitioner invited our attention to the documents placed on record and more particularly Vigilance Cell report. It is submitted that in similar circumstances, the committee accepted the caste claim of Babasaheb Tarate by its order dated 27.07.2018, copy of the same is placed on record at Exhibit H (Page 54) to the Petition.

4] Learned counsel for the Petitioner also placed reliance on the Judgments of Division Bench of this Court, in the matter of **Aasiya Mahamadyunnus Gavandi vs. District Caste Certificate Verification Committee and Another, reported in (2021) 4 Mh.L.J. 160** and **Yunnus Abubakar Hawaldar vs. Divisional Caste Certificate Scrutiny Committee No.1, Solapur & Ors. Reported in 2016(5) All MR 285.**

5] Learned AGP on the other hand supported the order impugned.

6] On perusal of the material placed on record, it reveals that the Petitioner alongwith his application for verification submitted as many as six documents. The list is at Page 42. These documents include Caste Certificate issued in favour of the Petitioner by Sub Divisional Officer, Radhanagari, Kagal dated 21.11.2015, school leaving certificate issued by the Principal, Y.D. Mane Institute of Technology, Kagal, there is copy of extract of General Register issued by Headmaster, Vidya Mandar Savarde Budruk, Taluka – Kagal, another school leaving certificate dated 21.09.1988 issued by Headmaster, Shri Mahalaxmi Highschool, Savarde Budruk, Taluka – Kagal, then there are two private documents viz. A certificate issued by one of the office bearer of an organization viz. All India Muslim OBS Organization and a purchase receipt.

7] Admittedly, Vigilance Cell was asked to conduct inquiry and submit report. We have perused the Vigilance Cell report placed on record. It is in favour of the caste claim of the petitioner. The respondent rejected the caste claim of the petitioner on the ground that in all the documents submitted by the petitioner the caste is mentioned as Muslim. This Court while dealing with similar situation in the case of **Yunnus Abubakar Hawaldar vs. Divisional Caste Certificate Scrutiny Committee No.1, Solapur & Ors.** (*supra*) has observed

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)."

8] We are, therefore, of the view that respondent No.1 Caste Scrutiny Committee was not justified in rejecting the caste claim of the petitioner.

9] Apart from it, the learned counsel for the Petitioner was justified in placing reliance on the order of Scrutiny Committee itself in the

matter of Babasaheb Kashiram Tarate. Perusal of copy of order placed on record shows that the Scrutiny Committee granted validity certificate in favour of Babasaheb Tarate, by observing that the State Government by its various circulars has directed to decide the caste claim of applicants from Muslim religion on the basis of home inquiry as they do not make mention of their caste either in revenue record or school record.

10] Learned counsel for the Petitioner was also justified in placing reliance on the judgment of this Court in the matter of **Aasiya Mahamadyunnus Gavandi (supra)**. This court has observed :

“7. We have gone through the Vigilance Cell report dated 6 th June, 2020. It is pertinent to note that during Vigilance inquiry, the genuineness of all these documents were investigated and they were found to be correct. During Home Study inquiry, the statements of two persons were recorded from which it was found that Petitioner’s forefathers were carrying on weaving business and they belong to Momin caste. In other words, in local inquiry the Vigilance Cell found that the Petitioner’s forefathers’ traditional occupation was weaving and they were known and recognised as members of Momin caste. Contextually, it is to be noted that the Scrutiny Committee has simply observed that it does not agree with the report of the Vigilance Cell. It is pertinent to note that no reasons were assigned by the Respondent No. 1 Committee to indicate as to why they are unable to agree with the Vigilance Cell report. True, the Vigilance report cannot be held as a decisive factor. However, in the above context and as parties are Muslims, unless contrary is shown, the Committee ought to have given proper weightage to the Vigilance report. It is not the case that during Vigilance inquiry it was found that either documents were tainted or they have collected some adverse documents to disprove the Petitioner’s claim.”

11] Considering all these facts, we are of the opinion that the order impugned in the Petition is clearly unsustainable. Resultantly,

following order is passed :

- i] Writ Petition is allowed.
- ii] The impugned order dated 12.07.2019 passed by the Respondent No.1-Caste Scrutiny Committee is quashed and set aside.
- iii] The Respondent No.1-Caste Scrutiny Committee is directed to issue Caste Validity Certificate in favour of the Petitioner as expeditiously as possible and not later than six weeks from the date of receipt of copy of this order.
- iv] Writ petition is disposed of accordingly.

12] All concerned to act on an authenticated copy of this order.

[N.R.BORKAR, J]

[PRASANNA B. VARALE, J]