

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

CIVIL WRIT PETITION NO.12745 OF 2019

Suresh Dhondiram Sutar

Age : Adult, R/o Farale,

Taluka Radhanagri, District Kolhapur.

... Petitioner

Vs.

1. Sandip Jaywant Davar

Age : Adult, R/o Lingachi Wadi,

Radhanagri, District Kolhapur.

2. District Caste Scrutiny Committee

Kolhapur, Through its President/Member

Having Office at Dr. Babasaheb Ambedkar

Samajik Nyay Bhavan, 2nd Floor, Vichare Marg,

Kawala Naka, Kolhapur – 416 003.

3. Sub Divisional Officer,

Radhanagri-Kayal, District Kolhapur.

4. State of Maharashtra

Through Department of Social Justice.

... Respondents

Mr. Chetan G. Patil, advocate for the Petitioner.

Mr. Prashant Bhavake, advocate for Respondent No.1.

Ms.K.N. Solunke, AGP for Respondent Nos.2 to 4-State.

**CORAM : S.J. KATHAWALLA &
VINAY JOSHI, JJ.**

DATE : 11TH FEBRUARY, 2021

ORAL JUDGMENT (PER : VINAY JOSHI, J.) :

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The subject matter of challenge in this Petition is the order dated 15th February, 2019 passed by Respondent No. 2 – District Caste Scrutiny Committee, Kolhapur (Scrutiny Committee) validating the caste certificate of Respondent No.1 Sandip Jaywant Davar belonging to Kunbi caste, recognized as Other Backward Class (“OBC”), which is at Serial No. 83 under Government Resolution dated 13th October, 1967, as amended from time to time.

3. The brief facts of the Petition are that the election of the Gram Panchayat in village Farale of Radhanagari Tahsil, Kolhapur district was held on 28th May, 2018. As per the reservation policy, the post of Sarpanch for Village Farale was reserved for a candidate belonging to OBC. On the basis of the caste certificate issued by the SDO, Radhanagri-Kagal, dated 5th May, 2018, Respondent No.1 contested the election for the post of

Sarpanch and got elected. The Petitioner also belongs to OBC caste, who equally contested the election for the post of Sarpanch but could not succeed.

4. After the election, the Respondent No.1 has submitted his caste certificate to the Scrutiny Committee for the purpose of verification and validation of his caste claim. The Petitioner raised several objections before the Scrutiny Committee. The Petitioner interalia also alleged that the claim of the Respondent No.1 was based on false and fabricated documents. According to the Petitioner, the Scrutiny Committee has not considered the objections in its proper perspective, resulting into issuance of a validity certificate, which is ex-facie illegal. It is the Petitioner's case that the Respondent No.1 has relied on pre-constitutional documents of three persons, who were not related to him. It is contended on behalf of the Petitioner that initially Respondent No.2 – Caste Scrutiny Committee on the basis of the vigilance squad report and the documents on record, was not satisfied about the caste claim of the Respondent No.1 and accordingly, Respondent No.2 had issued a show cause notice dated 1st October, 2018 to

the Respondent No.1 calling upon him to prove his caste claim. However, the Respondent No.2 Committee by relying on some additional documents tendered, validated the caste claim of Respondent No.1. In short, it is the Petitioner's grievance that the Scrutiny Committee erred in issuing validity on the basis of tainted documents, resulting in the miscarriage of justice.

5. Per contra, the learned Advocate for Respondent No.1 submitted that his caste claim was well founded on pre-constitutional documents of his forefathers. The Scrutiny Committee has properly appreciated the old documents and on its complete satisfaction has validated his caste claim. The Respondent has also produced revenue documents to substantiate his caste claim and ultimately prayed for rejection of the Petition.

6. We have heard the rival submissions and carefully gone through the impugned order as well as the supporting documents filed by the parties. The Sub-Divisional Officer, Radhanagri-Kagal, District-Kolhapur has issued a caste certificate dated 5th May, 2018 in favour of the

Respondent No.1 showing his caste as Kunbi, which is recognized as OBC. The Respondent No.1 got elected for the post of Sarpanch, which was reserved for OBC category. As per requirement, the Respondent No.1 forwarded his caste claim to the Scrutiny Committee for verification and validation of the same. In turn, the Scrutiny Committee sent the papers for vigilance inquiry. Initially, the Respondent No.1 submitted a genealogical tree showing that the progenitor Balku @ Bala Ganu Davar was having only son, viz., Hari, who was his great-grandfather.

7. The Vigilance Cell inquired and investigated the caste claim and submitted its report dated 21st September, 2018 to the Committee. Thereafter, the Scrutiny Committee served a show-cause notice dated 1st October, 2018 on the Respondent No.1 contending that the documents were insufficient and therefore, directed him to produce additional documents if any in support of his caste claim. In response, the Respondent No.1 produced certain additional documents with extended genealogy originating from Balku @ Bala Ganu Davar. In this extended genealogy, the Respondent No.1 showed that Balku @ Bala Davar had another son besides

Hari, by the name of Govind, who was also included in Bala's branch. The Scrutiny Committee verified the genuineness of all the documents, considered the objections and ultimately came to the conclusion that the Respondent No.1 has proved his caste claim, which resulted in validation of his caste claim vide impugned order dated 15th February, 2019.

8. Though, the Respondent No.1 has produced several documents, his entire thrust was based on pre-constitutional documents, viz., the birth/death register extract of Bala Ganu Davar having old entry dated 30th May, 1920 showing his caste as 'Ku', i.e., Kunbi. The Petitioner has challenged the said entry by contending that the forefathers of the Respondent No.1 were residents of Village Farale, whereas the birth/death entry of Bala Ganu Davar was of Village Kudachi and hence the same cannot be trusted. This contention has no bearing, since both the villages are part of Radhanagri Tahsil and it is a known fact that the entry of birth/death is recorded at the place of a person's birth / death. The old documents cannot be brushed aside merely on the basis of conjectures and surmises unless otherwise proved.

9. Another objection is about the difference in the name of Bala Ganu Davar. According to the Petitioner, the name of the Respondent No.1's great-great-grandfather was Balku, therefore, the death entry of Bala may be of someone else, and therefore, the same cannot be relied upon. It has through out been the case of Respondent No.1 that Balku was also known as Bala. One should always be mindful of the fact that it is very difficult to recover the old documents presented in a rather traditional way. It is not unknown that in olden days, there existed a tradition of having nick names. The Petitioner has neither produced documents nor has the Vigilance Cell collected any documents which could show that Bala Ganu Davar was another person from Village Kudachi. Therefore, merely on the basis of a slight difference in the name, an old entry cannot be discarded. It is pertinent to note that the genuineness of the said old entry was verified by the Committee through the Vigilance Cell and it was found to be correct. The Vigilance Cell has not collected any adverse documents to negate the claim of Respondent No.1 that Bala and Balku were one and the same. Therefore, it is not possible to accept the Petitioner's contention based on **mere** assumptions.

10. On the contrary, the Respondent No.1 has relied on the birth/death extract showing an entry dated 6th June, 1919 pertaining to Govind Balu Davar (great-grandfather of Respondent No.1), who had begotten a son namely Shivram. The Petitioner disputed the said entry by stating that the name of Govind's son was Tukaram and not Shivram. According to the Respondent No.1, Govind's son Tukaram was also known as Shivram. The dispute regarding the name of Govind's son carries lesser significance given that the old entry discloses that Govind Balku Davar had infact begotten a son. In other words, the name of Govind's son could either be Tukaram or Shivram, but the said entry verifies that Govind did have a son and the said old entry dated 6th June, 1919 shows his caste as 'Kunbi'. Therefore, the said old entry squarely supports the claim of Respondent No.1 regarding entry of Kunbi caste in the record of his great-grandfather Govind.

11. In order to justify the relationship with his forefather, Balku@Bala and Bala's son Govind, the Respondent No.1 produced certain revenue extracts, which are also relied upon by the Committee. Ferfar Patrak (Page

159) discloses that Tukaram was the son of Govind Davar. Moreover, Gav Namuna No.6 extract (Page 166) reaffirms that Tukaram was son of Govind. Moreover, the said extract also bears the name of Hari as one of the heirs alongwith Govind. The said revenue entry dated 3rd June, 1960 clarifies that Balku @ Bala had two sons, viz., Hari and Govind, which supports the extended genealogy.

12. While disputing the relationship of Tukaram @ Shivram, the Petitioner relied on the affidavit sworn by son of Tukaram, viz., Bhau (Page 83). In his affidavit, Bhau denied that his father Tukaram was also known as Shivram and further denied Tukaram's relationship with the family of the Respondent No.1. Likewise, the Petitioner has relied on the affidavit of one villager Pandurang Santu Kamble (Page 85) to substantiate the said contention. On the other hand, the Respondent No.1 relied on the affidavit filed by the nephew of Tukaram, namely Shankar, who supported the case of Respondent No.1 that Tukaram was also known as Shivram and he was son of Govind Davar. In short, both parties have only made conflicting oral claims and, therefore, in the backdrop of the revenue records, the

Committee has rightly discarded the said material. Apart from that, the pre-constitutional entries dated 6th June, 1919 and 30th May, 1920 supports the case of the Respondent No.1 and hence, the statements made on oath cannot be given much importance as against the documentary evidence.

13. The Petitioner submits that Respondent failed to produce any documents to show that Tukaram was also known as Shivram. However, as the Respondent No.1 has established his relationship with Tukaram's father Govind, there is no necessity to establish the same. All this while, the Petitioner had submitted that Bala and Balku as well as Shivram and Tukaram were different persons. However, there is nothing to support the said stand except bare words. It is pertinent to note that during the vigilance enquiry, no adverse documents were collected. Therefore, mere submissions regarding difference in names would not come to the rescue of the Petitioner.

14. In short the Respondent No.2 - Scrutiny Committee has rightly appreciated the pre-constitutional documents, which have great probative

value. The Scrutiny Committee found that the Respondent No.1 had duly established his relationship with his forefathers and thereby relied on those entries. As against this, no material is placed or collected to discard the old entries. Therefore, it is not possible to accept the contention of the Petitioner in absence of any supporting material. On careful examination, we do not find that the Respondent No.2 - Scrutiny Committee made any error in validating the Respondent No.1 caste claim of 'Kunbi', which is recognized as OBC. In view thereof, the Writ Petition is devoid of merits and the same is accordingly dismissed.

(VINAY JOSHI, J.)

(S.J. KATHAWALLA, J.)