

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8977 OF 2021

Smt.Jamadar Ashma Ibrahim. ... Petitioner.

V/s.

Shri Kashinath Shranappa Banjgol and others. ... Respondents.

Mr.Ashok B. Tajane for the Petitioner.

Mr.Vishwanath Patil with Mr.Laxmikant Patil i/b. Mr.Kewal B.
Ahya for Respondent No.1.

Mr.Ramdas Hake-Patil for Respondent No.2.

Ms.M.S.Bane, AGP for the State.

**CORAM: NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATE: 15 November 2022

PC :

Heard the learned counsel for the parties. The petition is taken up for disposal.

2. The Petitioner is aggrieved by the order passed by the District Caste Scrutiny Committee, Solapur dated 3 December 2021 invalidating the caste certificate of the Petitioner dated 19 September 2005 as belonging to Khatik (Other Backward Class-316 community). The Petitioner applied for and was granted a caste certificate as belonging to Khatik community, OBC by the Deputy Collector on 19 September 2005. On 25 December 2020, the Petitioner submitted an application for verification of the caste claim

to the Respondent- Scrutiny Committee. On 29 December 2020, the Petitioner contested the election of Gram Panchayat Galoragi, taluka- Akkalkot, district- Solapur. Respondent No.1 also contested the said election. The Petitioner was declared elected on 18 January 2021. On 29 January 2021, Respondent No.1 filed complaint against the Petitioner to the Scrutiny Committee that the caste certificate of the Petitioner is forged and bogus. Respondent No.2 also filed a similar complaint.

3. The Petitioner submitted documentary evidence in respect of the Petitioner's caste claim before the Scrutiny Committee. Vigilance enquiry was conducted and the report was submitted. An opportunity was given to the Petitioner and after considering the material on record and report of the Vigilance Cell, the Scrutiny Committee came to the conclusion that the report of the Vigilance Cell indicates that the traditional profession of the Petitioner and his family is not of Khatik (butcher) but agricultural. The Scrutiny Committee accordingly proceeded on the said basis invalidating the caste certificate. Challenging the order, the Petitioner has approached this Court. By a detailed interim order dated 15 December 2021 the Respondents were directed not to initiate any action pursuant to the impugned order.

4. The learned counsel for the Petitioner submitted that the Scrutiny Committee has rightly given emphasis on the factum of

profession in respect of ascertaining the genuineness of the Petitioner's claim, however, has not considered the Vigilance Cell report in its entirety and the material collected and the statements made in favour of the Petitioner are simply omitted from the consideration. According to the Respondents- Complainants, the material on record includes the statements of the residents of the locality that the Petitioner and his family were never carrying out the profession of Khatik.

5. On 13 September 2022, after hearing the parties we had passed the following order:

“ The Petitioner's claim as belonging to Khatic community (Other Backward Class) has been invalidated by the impugned order passed by the Scrutiny Committee. The Scrutiny Committee has concluded that evidence collected by the Vigilance Cell in its inquiry shows that the local persons have given statements that the Petitioner's family did not carry out the traditional occupation of Khatik (Kasai) and is engaged in agricultural activities. However, the Vigilance Cell has recorded statements of five persons which are referred in the report of the Vigilance Cell wherein it is asserted that the Petitioner's family was carrying out traditional occupation of Khatik and is belonging to Muslim Khatik community. We do not find any consideration to these affidavits in the impugned order. The learned AGP seeks time to produce the Vigilance Cell report along with its annexures and affidavits referred to at page Nos.357 to 372 of the report. Stand over to 29 September 2022.

2. *In light of the above, we continue the ad-interim order till the next date.”*

The learned AGP has produced the record before us. The Vigilance Cell report has annexed several statements recorded by the Vigilance Cell in respect of the enquiry made as to the profession of the Petitioner.

6. We have gone through the material produced on record. There are statement recorded of one Kashinath Prachande and affidavits of Gurupad Poojari, Bharmanna Dhangar, Shankarappa Prachande, Siddramppa Zagge, and Ibrahim Shaikh. These statements/ affidavits state that from 1960 to 1965, the family members of the Petitioner were conducting the profession of butchery and the deponent stated that they being members of Dhangar community, frequently utilized the services of the Petitioner family. What was to be considered whether the Petitioner's family traditionally has been conducting the profession of butchery (Khatik) and, therefore, it could not have been said that these statements were entirely irrelevant for adjudicating the caste claim. It is also not that the Scrutiny Committee has referred to this material and has come to the conclusion for some reasons the statements cannot be believed or that they do not support the caste claim. The material is simply removed from consideration. These statements have been referred to in the Vigilance Cell report. We find no consideration of the same in the impugned order. Neither the learned AGP nor the learned counsel for the Respondents-Complainants are able to show that the Scrutiny Committee has

considered this material which is in favour of the Petitioner and then passed the impugned order. While granting interim relief this Court also referred to part consideration of the material on record and the submission that the Scrutiny Committee is expected to assess the entire material on record.

7. The learned counsel for the Complainants strenuously tried to support the order and contended that there is other contrary material on record. A complaint can be made under the governing Act and Rules. It is for the Scrutiny Committee to decide the complaint. The procedure contemplated by the Scrutiny Committee for verification includes the participation of the Complainant, however, ultimately the Scrutiny Committee is entrusted with the task of taking a decision fairly and after considering the entire material on record. The status of the Complainant and the Applicant under the Act and Rules is not akin to the plaintiff and defendant in a civil suit. This complete omission in considering the relevant material will have to be redressed and the Scrutiny Committee will have to be directed to take an informed decision after considering all the material on record.

8. Accordingly, the impugned order dated 3 December 2021 passed by the Respondent No.3- Scrutiny Committee is quashed and set aside. The proceedings are restored to the file of Respondent No.3- Scrutiny Committee. The parties shall appear

before the Scrutiny Committee on 28 November 2022. Since the entire material is already on record and that we have observed that the Scrutiny Committee will have to consider the totality of the material on record, no further material is necessary to be produced on record. The Scrutiny Committee will take a fresh decision in light of what is stated above within a period of four weeks from the date the parties appear before it.

9. The learned counsel for the Petitioner and the Respondents- Complainants state, on instructions, that their clients will co-operate with the Scrutiny Committee for early disposal within time limit and will not seek needless adjournments.

10. We make it clear that our observations in this order are in respect of need to remand for consideration of the entire material and are not a reflection on the merits of the material for which the Scrutiny Committee will have to take decision considering the same in totality.

11. Writ petition is accordingly disposed of in the above terms.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)