

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

Writ Petition No. 1455 of 2022

Rahima Balechand Momin ... Petitioner
V/s.
The State of Maharashtra & ors. ... Respondents

Ms. Leena Patil for the Petitioner.

Ms. R.M.Shinde, AGP for the State-Respondents 1 to 3.

**CORAM : PRASANNA B. VARALE
& SHRIKANT D. KULKARNI, JJ.**

1st July 2022

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Heard the learned Counsel for the Petitioner. The Petitioner is before this Court raising the challenge to an order passed by the Respondent No.2 District Caste Scrutiny Committee, Kolhapur dated 31st January 2022 whereby the claim for validity certificate is rejected by the Scrutiny Committee.

2. The learned Counsel for the Petitioner invited our attention to the documents placed on record. Perusal of the documents show that a Caste Certificate was issued in favour of the Petitioner Rahima

Balechanda Momin by the Sub-Divisional Officer of Ichalkaranji on 22nd December 2020. The Petitioner submitted her candidature for the elections of Gram Panchayat, Alas and as per the requirement, her claim was subjected to verification. Now in support of her claim, the Petitioner relies on the certain documents, the list of these documents finds place at page-40. The documents includes the photocopy of the School leaving certificate of the Petitioner dated 14th December 2020, the death certificate of the father of the Petitioner dated 29th December 2020, the school leaving certificate of uncle of the Petitioner dated 24th July 2010. Then there is a gazette notification in respect of change of name of the Petitioner. It seems that her maiden name was changed post her marriage. Then the copy of the caste certificate issued by the Sub-Divisional Officer. Then there is a photograph showing that a cousin brother of the Petitioner one Asgar is carrying out his profession of Fakir and then there is another document and it is submitted that a function of Fakiri diksha took place in the year 1968 and the father of the Petitioner Ghudu attended the function and signed as a panch in the said function/ceremony and there are copies of judgments of this Court in Writ Petition No. 8687/2015 and Writ Petition No.145/2021.

3. The perusal of the document further show that the Genealogical tree was submitted to the Committee showing that the family of the

Petitioner starts with grand father Yusuf and he is referred as the original generator of the family. Yusuf was having three sons; Ghudu-father of the Petitioner, Maqbool and Allauddin. Maqbool has a son namely Asgar and Allauddin has daughter namely Salmabi. The perusal of the claim further show that certain statements are made in support of the claim. Firstly, there is a Dargah at village Alas in the name of Hazrat Sayyed Sadad Sayyed Jaharuddin. The Dargah and its landed property is entered in the register of Wakf Board, Aurangabad (Needless to state that Wakf Board is the custodian of properties of such registered Dargahs). Then it is stated in the claim that a festival/urus/yatra of the said Dargah was conducted recently in the year 2022. Then there are other statements made in the claim to submit that the family members of the Petitioner namely cousins, uncles are engaged under the provisions of Fakiri. On receipt of the claim, the Committee as per requirement referred the claim to the Vigilance Cell for conducting home enquiry. Home enquiry was conducted by Vigilance Cell, copy of the report of the Vigilance Cell was also supplied to the Petitioner. The Petitioner was called upon to submit her say on the Vigilance Report. The perusal of the copy of the Vigilance Cell show that on enquiry it revealed that the caste certificate in favour of the Petitioner was issued by the Sub-Divisional Officer, Icchalkaranji and the corresponding outward numbers was referred to in the home enquiry. Then a reference is made to certain statements of

the Villagers of village Alas, Taluka Shirol, Dist. Kolhapur. Then there is a reference to the Genealogy submitted by the Petitioner on an affidavit as per the requirement of the Act.

4. The Respondent No.2 Scrutiny Committee by assigning various reasons invalidated the caste claim. The Committee observed in its order that the documents submitted by the Petitioner in respect of her claim particularly school leaving certificate show the nature of the caste as Musalman Sunni. The Committee also observed that a document dated 17th January 2022 is devoid of any necessary details. Then the Committee further observed that merely because of certain statements of the villagers, the Petitioner cannot establish her claim positively.

5. The learned Counsel for the Petitioner vehemently submitted before this Court that the document submitted before the Committee were referring to the religion of the Petitioner i.e Musalman and there is no casts or sub-caste in Musalman religion. By referring to these documents namely school leaving certificate, rejection of the claim of the Petitioner is not sustainable. Learned Counsel also made an attempt to submit that the father of the Petitioner attended a function in the year 1965 as a panch and such document is placed on record. The Counsel also submitted that a certificate dated 17th January 2022 issued on behalf of Shri Hazrat Sadad Peer Dargah, Alas was submitted

to the Committee in support of the claim of the Petitioner. Then the learned Counsel submitted that the Petitioner in her claim made a specific reference of an entry in the register of Wakf Board about the Dargah situated at Village Alas and this aspect is not considered by the Committee.

6. On perusal of the material placed on record qua the observations of the Committee, though we are of the opinion that though Committee was justified in making certain observations insofar as the latest documents submitted by the Petitioner and the said certificate dated 17th January 2022 issued by one Sayed Imtiyazpasha Patel, the copy of the said document show that there is no reference about the position occupied by the person signing document namely Sayed Imtiyazpasha Patel. But whether the said Dargah is duly registered with the Wakf Board would be an issue for consideration of this document. The Petitioner in her claim made a specific statement that the said Dargah and the landed property of the Dargah is registered with the Wakf Board, Aurangabad and there is an entry in the register. The learned Counsel for the Petitioner submits that if an opportunity is given to the Petitioner to submit these necessary documents, the Petitioner would place before the Committee the necessary documents and then the Committee be directed to decide the claim of the Petitioner afresh. It is also submitted by learned Counsel for the

Petitioner that such exercise would not cause any prejudice to the Committee but without giving a proper opportunity to the Petitioner, if the claim is rejected, the same would certainly cause prejudice to the Petitioner who is an elected member of the Panchayat. Considering this aspect only, we find a considerable merit in the submission of the learned Counsel on this aspect. It is not in dispute that the Petitioner referred to these facts in her claim and may be because of an inadvertence the supporting document or entry number is not mentioned in the claim. Accordingly, we deem it appropriate to permit the Petitioner to submit the necessary documents in respect of the statements made in the claim that

“मौजे आलास ता. शिरोळ या गावाचे ग्रामदैवत हे सय्यद सादात सय्यद जहिरुद्दीन हे असुन त्यांची दर्गाह मौजे आलास येथे आहे. सदर दर्गाह व दर्गाहची स्थावर मिळकत ही वक्फ बोर्ड औरंगाबाद यांच्याकडे नोंद आहे”

Such document/necessary material in respect of his statement be placed before the Committee by the Petitioner within four weeks from today. On placing these material before the Scrutiny Committee, the Scrutiny Committee to ascertain and verify the genuineness of the material and pass order on the claim of the Petitioner afresh within 16 weeks thereafter. Till the fresh decision is arrived at the Scrutiny Committee,

no coercive action pursuant to the order of the Scrutiny Committee be initiated against the Petitioner.

7. In case the Scrutiny Committee in its fresh exercise, as directed by this Court, rejects the claim of the Petitioner, the Petitioner is at liberty to avail appropriate remedies as available under the law. With these directions, the Petition is disposed of.

8. The interim protection granted to the Petitioner is only till the Committee passes order afresh.

(SHRIKANT D. KULKARNI, J) (PRASANNA B. VARALE, J)