

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3537 OF 2022

Ujama Usman Begulaji. ...Petitioner.
Versus
The State of Maharashtra & Another. ..Respondents.

Mr. Dilip Shinde for the Petitioner.
Smt. S. S. Bhende, AGP for the Respondent-State.

CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.

Date : December 12, 2022.

P. C. [Per Sharmila U. Deshmukh, J.] :

1. The Petitioner's caste certificate of "Dholi", which is recognized as Other Backward Class at serial no.30 of Government Resolution No.CBC/1467/M dated 13th October 1967 as amended from time to time, has been invalidated by the District Caste Certificate Scrutiny Committee, Kolhapur vide order dated 9th March 2022, which is the subject matter of the present petition.

2. It is the case of the Petitioner that the Petitioner belongs to "Dholi" caste (OBC). In the year 2020, the Petitioner had applied to the Respondent No.3 which had issued the caste certificate declaring that the Petitioner as belonging to "Dholi" caste (OBC).

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As the Petitioner had obtained admission in D. Pharmacy course, the caste certificate was sent for validation to the District Caste Certificate Scrutiny Committee. The Committee has evaluated the claim for caste verification and has invalidated the caste certificate of the Petitioner.

3. Heard Mr. Dilip Shinde, counsel for the Petitioner and Smt. S. S. Bhende, Assistant Government Pleader for the Respondent-State.

4. Learned counsel for the Petitioner submits that Respondent No.2-the Caste scrutiny committee has failed to appreciate that in case of Muslims, there is no practice to record or mention the specific caste of a person and hence there can be no document which can be produced by the Petitioner recording the caste as "*Dholi*". He further submits that the caste scrutiny committee has ignored the vigilance cell report which clearly states that the ancestors of Petitioner were engaged in the occupation of playing of *dhol-tasha* in the marriage ceremonies. He would further urge that the Petitioner's surname recorded as Bigulji is by reason of the Petitioner's predecessors' occupation of playing the traditional *bigul* instrument in the marriages and other traditional ceremonies

held in the villages.

5. Learned AGP, in support of the impugned order contends that the record shows that the Petitioner has not produced any document, wherein the caste is recorded as "*Dholi*" prior to the deemed date, i.e., 13th October 1967 and, that the documents which are submitted by the Petitioner have been rightly evaluated by Respondent No.2-Committee.

6. We have considered the rival submissions of the parties. The claim of the Petitioner is that the Petitioner belongs to *Dholi* caste. It cannot be disputed that in case of Muslims, there is no recognised caste or sub-caste and therefore there is no likelihood of finding any entry of the caste of a person professing the Muslim religion, in the old records. The Petitioner professing Muslim religion, the demand of the entry of the caste in the old record for the purpose of validation of the caste claim cannot be sustained. In such eventuality, reliance is necessarily to be placed upon the vigilance cell report which is submitted in compliance of Rule 13 of The Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification

of) Caste Certificate Rules, 2012. The vigilance cell report states that the enquiry in the village reveals that the father and uncle of the Petitioner are presently engaged in agriculture activity, however, the Petitioner's father used to play the instruments in the marriage ceremonies and other programs in villages and in particular the great-grand-father of the Petitioner used to play *bigul* instrument, which led to their surname as "*bigulji*". The scrutiny committee has discarded the vigilance cell report on the ground that the vigilance cell report is one of the factors while evaluating the tribe claim and the same is not binding on the scrutiny committee. We are unable to accept the reasoning given by Respondent No.2-the caste scrutiny committee, particularly in the case of Muslims when the indisputable position is that as regards the Muslim community in the school, birth and death records, caste is not mentioned. The status of OBC has been claimed based on occupation and in our view, it was necessary for the caste scrutiny committee to give due weightage to the vigilance cell report, which has not been done in the present case.

7. A perusal of the impugned order shows that the Petitioner has submitted school leaving certificate of her father and grandfather and agreement dated 11th October 1961 of Dilawar Ali

Bigulji, which was an agreement to play the instrument during nine enumerated ceremonies which were to take place in the village and the agreement dated 25th May 1974 executed by Baburao Ali Bigulji, purchasing the musical instrument from Laxman Hanmant Korvi. The school leaving certificate of the Petitioner's father and grandfather have been discarded by the Caste Scrutiny Committee as the same show the caste as Muslim. The said agreements have not been considered as supportive of caste claim on the ground that they are not the matter of public record and since they are not executed on the stamp paper are having no probative value. In our opinion, the Committee has failed to consider the documents in their proper perspective. The reasoning given by the Committee that the agreements are not matter of public record is flawed. It was necessary for the Committee to consider the documents after giving any opportunity to the Petitioner to prove her relation with the persons whose documents have been produced on record.

8. We find that the documents produced by the Petitioner and the vigilance cell report have not been properly appreciated by Respondent No.2-committee and in our opinion the matter is required to be remanded back to the committee for a fresh adjudication. Hence, the following order is passed :

:- ORDER :-

[I] The impugned order dated 9th March 2022 passed by Respondent No.2-the District Caste Certificate Scrutiny Committee, Kolhapur is hereby quashed and set aside.

[II] The matter is remanded back to Respondent No.2-Committee for fresh adjudication of the validity of the caste claim of the Petitioner.

[III] Parties to appear before Respondent No.2-Committee on 21st December 2022 at 11.00 a.m.

[IV] Respondent No.2-Committee to complete the process of adjudication, as expeditiously as possible and preferably before 31st January 2023.

[V] The petition is accordingly disposed of in the above terms.

[Sharmila U. Deshmukh, J.]

[Nitin W. Sambre, J.]