

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

Writ Petition No. 5618 of 2018

Shri Mohammad Hussain Ishaque Khan

R/at: Survey No.55, Lane No.28,
Bhagyudayanagar, Kondhawa Khurd,
Tal. Haveli,

Dist. Pune 411 048.

... Petitioner

v/s.

1. Shri Abdul Gafoor Ahmad Pathan

R/at: Survey No.46,
Vajir Cascade,
Kaondhwa Khurd,
Pune 411 048.

2. Caste Certificate Validity Committee

Pune, Jail Road,
Behind Commerzone I.T. Park
Yerwada, Pune-6.

... Respondents

WITH

Writ Petition No.7717 of 2018

Madan Dnyanoba Shinde & anr.

R/at: 194, Kondhwa Khurd,
Pune 411 048.

2. Anuradha Madan Shinde

R/at: 194, Kondhwa Khurd,
Pune 411 048

... Petitioners

v/s.

1. State of Maharashtra

2. The District Caste Certificate Scrutiny Committee

Pune

3. Abdul Gafur Ahmed Pathan

r/at: Survey No.46,
Vazir Cascade, Kondhwa Khurd,
Pune 411 048

... Respondents

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Mr. Sugandh B. Deshmukh for Petitioner in WP No.5618/2018.
Mr. Sandeep M. Phatak for Petitioner in WP No. 7717/2018.

Mr. Jayesh Kotecha for Respondent No.1 in WP No.5618/2018 and for
Respondent No.3 in WP No.7717/2018.
Mr. P.P.Kakade, GP a/w. Ms. R.M.Shinde, AGP for the State.

**CORAM : A.A.SAYED &
S.G.DIGE, JJ.
DATE: 24 FEBRUARY 2022
(THROUGH V.C.)**

JUDGMENT (Per S.G.Dige,J)

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

2. Both the Writ Petitions are directed against an order dt.17.7.2017 passed by Respondent No.2- Caste Scrutiny Committee, Pune, (for short 'Scrutiny Committee') validating the caste claim of Respondent No.1(Respondent No.3 in W.P.No.7717/2018) as 'DagadPhodu' (Vimukta Jati), We are disposing of both the petitions by way of this common Judgment.

3. The Divisional Officer, Junnar issued a caste certificate in favour of Shri Abdul Gafoor Ahmad Pathan ('Respondent No.1') on 16.10.2016 as 'DagadPhodu caste' (V.J.N.T.). On the basis of said certificate, Respondent No.1 contested the general election of the Pune Municipal Corporation (for short 'Corporation') for the period 2017-2022 against whom Mohammad Hussain Ishaque Khan, Petitioner No.1 in W.P. No.5618/2018 and Anuradha Madan Shinde, Petitioner No.2 in

W.P.No.7717/2018 have contested the said election. Respondent No.1 was declared elected as a Councillor from Ward No.27A of the Corporation which was reserved for the Other Backward Class.

4. The Corporation asked Respondent No.1 to approach the Scrutiny Committee,Pune for validation of caste certificate. Respondent No.1 accordingly applied for validation of the caste certificate. The Petitioners objected to the same. The Scrutiny Committee directed the Vigilance Cell to verify the caste certificate of the Respondent No.1. After conducting local enquiry and verification of documents submitted by Respondent No.1, the Vigilance Cell submitted its Report to the Scrutiny Committee. After receipt of Vigilance Cell Report, the Scrutiny Committee called say of Respondent No.1. Considering the submissions of Petitioners' and Respondent No.1 and documents produced on record and Vigilance Cell Report, the Scrutiny Committee was pleased to pass the impugned order thereby declaring that caste certificate issued in favour of the Respondent No.1 belonging to 'DagadPhodu' is valid. The said order is under challenge in present Petitions.

5. The contention of both learned counsel for Petitioners is that caste validity certificate of Respondent No.1 is wrongly issued. In Vigilance Cell Report, it is mentioned that there was no documentary evidence to support caste claim of Respondent No.1, but this fact was not considered by Scrutiny Committee. The Nikahnama of father of Respondent No.1 was considered while issuing caste validity certificate but it shows caste as "Sangatrash". It is a fabricated document. An application was given to the Scrutiny Committee to allow the petitioners to cross-examine the

concerned person from whose custody the said Nikahnama was produced but said application was rejected by the Scrutiny Committee. Therefore, the impugned order passed by Scrutiny Committee is illegal and needs to be set aside. They have placed reliance on the decision of Hon'ble Apex Court in the case of *Ayaaubkhan Noorkhan Pathan v/s. State of Maharashtra & others*¹

6. It is the contention of learned Counsel for Respondent No.1 that the Petitions are not maintainable as Petitioner No.1 in W.P.No.7717/2018 -Madan Dnyanoba Shinde had not contested the election against the Respondent No.1, hence, he has no *locus standi* to file the present Petition. Petitioner No.2 is the same person who has contested election against Respondent No.1, however, she has not signed or verified the Petition. The Petitioner No.2 was also not the Applicant in the Application filed before Scrutiny Committee in relation to the verification of Caste Certificate of Respondent No.1. Learned counsel further submitted that the Petitioner in companion Petition i.e. Civil Writ Petition No.5618/2018 contested the election on several occasions but got lowest votes every time. The learned counsel further submitted that the Caste Validity Certificate was granted to Respondent No.1 by following the due procedure. The Vigilance Cell conducted the enquiry with local people. In the said enquiry it was found that Respondent No.1 belongs to 'DagadPhodu' caste. The impugned order came to be passed after considering documents produced before the Scrutiny Committee which were verified by Vigilance Cell and after giving opportunity of hearing to concerned parties. As such the impugned order does not require any interference.

1 (2013) 4 Supreme Court Cases 465

7. Learned counsel for Respondent No.1 has placed reliance on the following case laws:

i) Jamadar Mehaboob Ghudubai v/s. State of Maharashtra & ors.²

ii) Smt. Farzana Ayub Shaikh vs. The District Caste Certificate Validity Committee & ors.³

iii) Smt.Bismilla Mohammedsab Sayyed (Mujawar) & Bismilla Allabaksh Shikkalgar vs. Divisional Caste Certificate Committee No.1,Solapur⁴

8. It is the contention of learned AGP appearing for the State that Scrutiny Committee has passed the impugned order after considering the material on record and after giving an opportunity to all the parties.

9. We have considered the submissions of learned counsel for the parties. Learned counsel for respondent no.1 has raised issue of maintainability of petitions. Firstly we would deal with this issue. Admittedly, Petitioner No.2 in W.P.No.7717/2018 and Petitioner in W.P.No.5618/2018 had contested election against Respondent No.1. Petitioner No.1 in W.P.No.7717/2018 had objected for caste validity certificate of Respondent No.1 before Scrutiny Committee.

10. It is a settled principle of law that a stranger cannot be permitted to meddle in any proceedings unless he satisfies the authority/Court, that he

2 2017(1) Mh.L.J. 797

3 WP No.8074/2017 dt. 9.8.2017

4 WP No.10577/2013 dt.21.02.2014

falls within the category of aggrieved persons. Only a person who has suffered or suffers from legal injury can challenge the act/action/order etc. in a Court of law. A 'legal right' means an entitlement arising out of legal rules. In the case of *Subash Babu v. State of A.P*⁵ the Hon'ble Apex Court has observed as under:

“25.The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant.”

11. In view of the above in the present case, out of three Petitioners, two Petitioners have contested election against the Respondent No.1 and Petitioner No.1 in W.P.No.7717/2018 had objected for validity of caste certificate of Respondent No.1. Respondent No.1 had not taken objection against him before Scrutiny Committee. Rule 19 of the Government Notification dt. 3rd September 2012 states that any complaint against whom caste certificate is given shall be inquired into by Caste Scrutiny Committee. As per this rule there is no bar to any person to file complaint against caste certificate holder, as such, in our view the Petitioners can challenge the caste validity of Respondent No.1. Hence the petitions are maintainable.

5 (2011) 7 SCC 616

12. We have gone through the Vigilance Cell Report and impugned order of Caste Scrutiny Committee as well as documents produced on record. The School leaving certificates of Respondent No.1 and his father simply records Muslim. In Mohammedans there is no practice of mentioning caste or sub-caste. The documents produced by Respondent No.1 does not show his caste as 'DagadPhodu'. In this context, report of Vigilance Cell assumes significance. Our attention is invited to 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 (hereinafter referred to as 'the said Rules'). Rule 12 provides for the constitution of Vigilance Cell. Rule 13 deals with contents of the report upon investigation made by the Vigilance Cell. Sub Rule (1) of the Rule 13 reads thus:

“13 Report of Vigilance Cell and Issue to be dealt with-

(1) Vigilance Cell Officer(s) shall submit report upon investigating into the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backwards Classes or Special Backward Category claim referred to it-

- (a) by visiting permanent place of residence and conducting domestic inquiry, or
- (b) by recording statements of respected and responsible persons from concerned area, including representatives of Local Self

Government, Police, Patil, etc; or

- (c) by collecting information, as part of recording statement, as regards to name, age, educational qualification, occupation, existing place of residence and information regarding properties (existing and disposed) of family members of applicant or claimant; or
- (d) by collecting information including the sociological, anthropological and ethnological (anthropological moorings and ethnological kinship), genetical traits of the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, if any; or
- (e) by personally visiting office of the Competent Authority or revenue or school or other concerned offices.”

13. These rules cast a duty on the Vigilance Cell to make enquiry of caste claim by following above procedure. In the present case the Vigilance Cell recorded the statement of 3 witnesses of Village Belhe, Tal. Junnar, Dist. Pune. These witnesses have stated that Respondent No.1 is Muslim DagadPhodu by caste. Vigilance Cell verified documents produced by the Respondent No.1. In respect of these documents it is stated in the report that they found the entry of some documents in the official record of that office. The Vigilance Cell has given report, the concluding part of which reads as under:-

“witnesses in the area of the Respondent No.1 are saying in their reply that the caste of the Respondent No.1 is DagadPhodu, however, no documentary evidence of pre-1961 year DagadPhodu caste in Maharashtra has been found.”

14. In the backdrop of the Vigilance Cell Report, it is necessary to note that after getting Vigilance Cell Report, the Scrutiny Committee issued show-cause notice to the Respondent No.1 and called his Written Say. The Respondent No.1 placed his Say and documents before the Scrutiny Committee. Out of these documents, the Nikahnama and some documents were considered by the Scrutiny Committee while validating the caste certificate of Respondent No.1. The Scrutiny Committee also considered report of Vigilance Cell and has come to the conclusion that Respondent No.1 belongs to ‘DagadPhodu’ caste.

15. In the impugned order the Scrutiny Committee has observed that:

“In the case of the present Applicant, the officers of vigilance cell has personally visited the residential place of the applicant and the place of their ancestors and gathered the information about customs, rituals, birth ceremonies, death rituals, occupation, clothing, languages and functions and after enquiring about caste claim of the applicant, the statements have been given by the locals before the vigilance cell that the applicant is identified as Dagafodu caste.

The enquiry report of the vigilance cell is positive and if the enquiry report of the vigilance cell is positive, then the Honourable Supreme Court in the matter of Kumari

Madhuri Patil v/s. Additional Commissioner, Tribal Department, Thane has given the following guidelines to the committees.

In case the report is in favour of the candidate and found to be genuine and true, no further action need to be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event, the same procedure as it envisaged in para 6 be followed.”

16. In the Vigilance Report, it is mentioned that there are no documents prior to year 1961, regarding Dagadfodu caste but Scrutiny Committee has observed that vigilance report is positive. We have gone through the judgment of Hon’ble Supreme Court in the case of *Kumari Madhuri Patil & anr. v/s. Addl. Commissioner, Tribal Development & others*⁶. The sub- paras 5,6,7 and 8 of paragraph 13 read as under:

“5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all

6 (1994) 6 SCC 241

particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, daiety, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Addl. Secretary as Chair-person who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/ guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.”

On perusal of above observations of the Hon'ble Apex Court and Caste Rules of 2012 it is clear that when Vigilance report is in favour of candidate, no further action need to be taken and if the Vigilance report found that caste claim is not genuine or doubtful or spurious or falsely or wrongly claimed then Committee should issue show-cause notice supplying copy of report. In present case Scrutiny Committee had issued show-cause notice to Respondent No.1 and directed him to file his Say. It indicates Scrutiny Committee was initially not prima facie satisfied about the caste claim upon consideration of the Vigilance Report.

17. From perusal of Vigilance Cell report, we find that though the Vigilance Cell appears to have verified documents produced by Respondent No.1, but those documents were not properly verified nor statements of concerned persons were recorded by Vigilance Cell to prove genuineness of those documents. Reference may be made to the letter dt.07/09/1985. The letter dt. 07.09.1985 was issued by the Chairman – Belheshwar Labour Co-operative Society, Balhe, Tal. Junnar, Dist. Pune in the name of Shri Ahmadkhan Nazirkhan Pathan, the father

of Respondent No.1 and uncle Shri Mohd. Pathan. In the said letter it is mentioned that Respondent No.1's father and uncle were doing the work of stone cutting and stone formation before 1980 and they were working in their society till 1982. Record shows that this Society was formed and registered in 1980. The question is how both these persons were working in the Society prior to formation of the said Society. This letter is typed on computer. The issuance date of this letter is 07/09/1985. It is hard to believe that in the year 1985 computer was available in the said Society which was in the remote area. In the Report of Vigilance Cell Committee, it is not mentioned as to when it was issued and whether it tallies with the entries of said Society. Moreover, Shri Mohamadkhan Nazirkhan Pathan cannot be said to be working during the period of 1980 to 1982 because record shows that he died on 23rd November 1973. These facts were not verified by Vigilance Cell.

18. The Respondent No.1 is claiming that he belongs to 'DagadPhodu' caste which comes under VJNT. In some of the documents father of Respondent No.1 Shri Ahmad Khan and uncle of Respondent No.1 Shri Mohammad Khan are referred as 'xoaMh' (Gavandi) (English meaning brick layer or mason), in these documents it is only referred as Gavandi. So it is not clear that if it is referred as caste or profession or otherwise. 'Gavandi' is mentioned as Other Backward Class in Government Notification. In the Government notification in clause 12(e) caste is shown as 'oMkj' (Vadhar) and sub-caste is shown as DagadPhodu/Sangtarash. There is no documentary evidence of 'DagadPhodu' caste on record, as father of Respondent No.1 is referred as 'गवंडी'. We are of the view that the Vigilance Cell ought to have held proper enquiry in reference of word

“Gavandi” if it is referred as caste or profession or otherwise. Scrutiny Committee has also not considered this aspect while passing the impugned order. We find that the Vigilance Cell has not carried out enquiry as required by clause (d) of Sub-Rule 1 of Rule 13 of said Rules which provides that the Vigilance Cell should include information including sociological, anthropological, ethnological and genetical traits of the relevant Caste. In the present case, this exercise was necessary as there is no likelihood of any entry of caste recorded in old record in case of Mohameddians. It was necessary for the Vigilance Cell to make an enquiry in terms of clause (d). We also find that the entire approach of the Caste Scrutiny Committee is erroneous as in the facts of this case, the Caste Scrutiny Committee should have directed the Vigilance Cell to do the exercise under the provisions of clause (d) of Sub-Rule 1 of Rule 13 of the said Rules.

19. The Scrutiny Committee has observed in order that in local enquiry by Vigilance Cell, it is revealed that Respondent No.1 belongs to ‘DagadPhodu’ caste. We are of the view that local enquiry is one of the modes of ascertaining caste claim and the validation of caste certificate should be supported by appropriate evidence.

20. The Scrutiny Committee has considered Nikahnama of the father of Respondent No.1 dt.8.3.1956 as an important document for validation of caste certificate of Respondent No.1. It was objected by Petitioners. In this regard the Scrutiny Committee has observed that the Committee had called for original records of Nikahnama and given opportunity to the Complainants (Petitioners herein). The Scrutiny Committee found that the

Nikahnama is genuine document which shows the caste of Respondent No.1's father as 'Sangatarsh'. We are unable to understand as to how on the basis of the evidence on record the Scrutiny Committee has come to the conclusion that said Nikahnama is genuine document when it was not produced before the Vigilance Cell for verification or before Sub-divisional Officer, Junnar while obtaining caste certificate. If Respondent No.1 had said Nikahnama with him, then the question remains why it was not given to the Vigilance Cell for verification. Merely on the basis of perusal of record, the Scrutiny Committee cannot decide the genuineness of document unless it is verified, particularly when the Petitioners have raised an objection that the Nikahnama is a fabricated document and in said Nikahnama it was not necessary to mention caste of father of Respondent No.1 as 'Sangatarsh'. The Petitioners' objections in respect of some of the documents were not properly verified.

21. We have gone through the case laws cited supra by learned Advocate for Respondent No.1. The facts of the cited case and case at hand are different, as in the present case some of the documents verified by Vigilance Cell refer to the father of Respondent No.1 as 'Gavandi' whereas the caste certificate issued is of 'DagadPhodu' caste. Therefore, the ratio of the judgment relied by learned Counsel for Respondent No.1 cannot apply to the present case.

22. As observed above, the approach of Scrutiny Committee is erroneous. 'Nikahnama' ought to have sent for proper verification to Vigilance Cell. No proper enquiry was made in respect of caste claim of 'DagadPhodu' and the word 'Gavandi'. The enquiry as contemplated by the said Rules has not been properly held, therefore, the impugned order

suffers from illegality and irregularity. Considering peculiar facts of the case, we are of the view that Respondent No.1's caste certificate needs to be considered afresh by Respondent No.2 Committee within a time bound schedule. Hence, the following order:

ORDER

(i) The impugned order dated 17th July 2017 passed by Respondent No.2 Committee is quashed and set aside. The matter is remitted back to the Respondent No.2-Committee.

(ii) The Vigilance Cell shall conduct a fresh enquiry in light of the aforesaid observations made by us.

(iii) The Respondent No.2-Committee shall pass a fresh order on its own merits, after considering objections of Petitioners, within twelve weeks from the date of receipt of the copy of this judgment and order. Respondent No.2 Committee shall decide the objections by granting opportunity of hearing to both parties.

(iv) Rule is made absolute in the aforesaid terms with no orders as to costs.

(S.G.DIGE, J)

(A.A.SAYED, J)

Lata Panjwani, P.S.