

Ajay /Amberkar

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

WRIT PETITION NO. 2035 OF 2021

Ranjit Prakash Gaikwad,
Aged 28 years, resident of Shinde Wadi,
Kasar Sai, Tal. Mulshi,
Dist. Pune - 412 115 .. Petitioner
Versus

1. State of Maharashtra
Through its Secretary, Social Justice
Department, Mantralaya, Mumbai - 400 032
2. District Caste Certificate
Certificate Scrutiny Committee Pune District,
Pune, through its Member Secretary, having
its office at Jail Road, Commerce zone,
behind IT Park, Yerwada,
Dist. Pune - 411 003
3. Collector, Pune. Dist . Pune
4. Vinayak Sunil Raut,
Resident of Kasar Amboli,
Tal. Mulshi, Dist. Pune - 412 115 .. Respondents

.....
Mr. R.K. Mendadkar, Advocate for the Petitioner
Mr. R.S. Pawar, AGP for Respondent Nos. 1 to 3
Mr. T.D. Deshmukh, Advocate for Respondent No.4
.....

**CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : 14 FEBRUARY, 2022

ORDER [Per S.J. Kathawalla & Milind N. Jadhav, JJ.]:

. By the present Writ Petition, the Petitioner has prayed for the
following reliefs:

"(a) This Hon'ble Court be pleased to issue Writ of Certiorari and or any other Writ, Order or Direction in the nature of Certiorari thereby quashing and setting aside the impugned order dated 9-4-2021 passed by the Respondent no.2 committee with further direction to reconsider every aspects in accordance with law.

(a-1) That this Hon'ble Court be pleased to quash and set aside the order dated 16th July, 2021 passed by the Respondent No.3 Collector thereby disqualifying the petitioner as a Member of Grampanchayat, Kasar Amboli, Tal. Mulshi, District Pune."

2. Briefly stated the facts are as under:-

2.1. Petitioner contested election from Ward No.1 of Grampanchayat Kasar Amboli, Tal. Mulshi, District Pune, reserved for Other Backward Class (for short "**OBC**"). Petitioner claims to belong to "Kunbi" caste which is recognised as OBC in the State of Maharashtra. The Divisional Officer, Maval - Mulshi Sub-Division, District Pune issued Caste Certificate dated 9th December, 2020 to the Petitioner as belonging to Kunbi caste.

2.2. Respondent No.4 contested Grampanchayat election from Ward No.4 of Grampanchayat Kasar Amboli. Petitioner was declared elected in the election held in January, 2021 from Ward No.1 whereas Respondent No.4 stood defeated from Ward No.4.

2.3. Respondent No.4 filed a complaint with Respondent No.2 - District Caste Certificate Scrutiny Committee (for short "**Committee**") against the Petitioner and challenged the Caste Certificate dated 9th December 2020 issued to the Petitioner by raising various issues pertaining to

the genealogy of the Petitioner and the validity and genuineness of the documents filed by the Petitioner in support of his caste claim.

2.4. In view of the complaint, the Committee referred the case of the Petitioner to its Vigilance Cell for a detailed home, school and other enquiry as prescribed by law and called for its report. The Enquiry Officer submitted a detailed report dated 15th March 2021 to the Committee.

2.5. The Committee issued show cause notice dated 16th March 2021 to the Petitioner and directed the Petitioner to appear before the Committee for a hearing on 25th March 2021. Petitioner was given a copy of the Vigilance Cell Report. Petitioner was specifically called upon to file his reply to the show cause notice to prove his caste claim and the documents filed in support thereto with respect to the birth and death extract of his two cognate ancestors in village Form No.14 dated 9th December 1924 and 2nd January 1925 showing their caste as "Kunbi", as these documents were not traced during the enquiry conducted by the Vigilance Cell in the Revenue record of Village Kasar Amboli.

2.6. Petitioner filed reply dated 9th April 2021 to the show cause notice and appeared before the Committee. He submitted that the extracts pertaining to the year 1924 and 1925 in respect of his cognate ancestors were issued by the concerned Revenue Authority i.e. Tehsil Office, Mulshi on the basis of record available in the Tehsil office.

2.7. On 9th April 2021, the Committee passed the impugned order invalidating, cancelling and directing confiscation of the caste certificate

dated 9th December 2020 issued to the Petitioner on the grounds mentioned in the said order.

2.8. Being aggrieved Petitioner filed the present Writ Petition on 21st June 2021 challenging the order dated 9th April 2021 passed by the Committee.

2.9. On 21st June 2021, this Court after hearing the Petitioner on his grievance regarding the disqualification proceedings initiated by the Collector against him passed the following order:

“ Respondent No. 3 - Collector, Pune may proceed with the hearing fixed on 22.06.2021 at 11.00 a.m. However, in the event of the Collector passing an order which is against the Petitioner, the same shall not be implemented for a period of two weeks from the date of service of the same on the Petitioner or his Advocate.

2. Stand over to 5th July, 2021.”

2.10. Respondent No.3 - Collector, Pune after hearing the Petitioner in the disqualification proceedings passed order dated 16th July 2021, disqualifying the Petitioner as Member of Grampanchayat Kasar Amboli, Tal. Mulshi due to invalidation of his caste certificate by the Committee.

2.11. Petitioner has impugned both orders dated 9th April 2021 and 16th July 2021 in the present Writ Petition.

3. Mr. Mendadkar, learned Advocate appearing for the Petitioner submitted that the impugned orders be set aside and the matter be remanded back to the Committee for reconsideration. In support thereof, he has submitted as follows :

(i) that the impugned order dated 9th April 2021 passed by the Committee is not sustainable as the Vigilance Cell enquiry has not been conducted as prescribed under Rule 13 of the Maharashtra Schedule Castes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (for short "**the Rules**");

(ii) that Rule 13(e) obligated the Vigilance Cell Officer to personally visit the office of the Tahasildar, Mulshi in order to enquire and examine the original village Form No.14 copy of which was relied upon by the Petitioner pertaining to his cognate grandfather and great grandfather as the said documents mentioned their caste as 'Kunbi' and thus were vital to the decision of the caste claim of the Petitioner;

(iii) that the home enquiry conducted by the Vigilance Cell in respect of the Petitioner's claim as belonging to Kunbi caste and the interviews conducted with the villagers supported the Petitioner's claim as belonging to 'Kunbi caste', which cannot be discarded without recording any reasons as required under Rule 17(7) of the said Rules;

(iv) that there is a gross breach of natural justice in the impugned decision of the Committee as no show cause notice is issued to the Petitioner in respect of the various other findings rendered by the Committee, save and except on the two issues stated in the show cause notice dated 16th March 2021 pertaining to the validity of the

birth extract dated 9th December 1924 and the death extract dated 2nd January 1925 in Village Form No. 14 of the Petitioner's ancestors which showed their caste as 'Kunbi';

(v) that the enquiry conducted by the Committee was not fair and recorded an incorrect finding that the Vigilance Officer has personally visited and recorded that the genealogy was not proved by the Petitioner and the Petitioner has not submitted any document / record prior to 13th October 1967 in support of his claim as belonging to 'Kunbi' caste;

(vi) that the show cause notice dated 16th March 2021 did not call upon the Petitioner to give his reply to the home enquiry, affinity test, statement of the Petitioner on the point of affinity test and statement of independent witnesses recorded by the Vigilance Cell;

(vii) that in view of the letter dated 15th April 2021 issued by the Tahsildar subsequent to the passing of the impugned order dated 9th April 2021 the enquiry relating to the entries of 1924 and 1925 needed to be further probed by the Vigilance Cell as the Tahsildar, Mulshi after enquiry at his end has confirmed that the said entries in village Form No.14 of the ancestors of the Petitioner are now found in the revenue record of Village Nande and not village Kasar Amboli; hence in view of this subsequent development after the passing of the impugned order on 9th April 1921, the Committee be directed to re-consider the case of the Petitioner afresh;

(viii) that the letter dated 15th April 2021 is issued by the Tahsildar, Mulshi, after the passing of the impugned order dated 9th April 2021 and being a subsequent development needs to be considered to establish the validity of the Petitioner's claim.

4. Mr. Deshmukh, learned Advocate appearing for the Respondent No. 4 arguing in support of the impugned order has drawn our attention to paragraph Nos. 7 to 10 of Respondent No. 4's Affidavit-in-Reply dated 16th July, 2021 which is reproduced as under:-

"7. I say that the Petitioner had submitted entries dated 9.12.1924 and 2.1.1925 in village form no. 14 in support of his caste claim. It is clear from the vigilance cell report dated 15.3.2021 that the members of vigilance cell had personally verified births and deaths register of village Kasar Amboli. However, the entries dated 9.12.1924 and 2.1.1925 relied upon by the Petitioner could not be found in the register of village Kasar Amboli. Therefore, it goes without saying that the entries dated 19.12.1924 and 2.1.1925 are false and fabricated. I say that the Petitioner has submitted such false and fabricated entries only with an intention to mislead the Scrutiny Committee in granting caste validity to the Petitioner.

8. I say that the Petitioner did not stop here in misleading the Scrutiny Committee. To cover up his earlier act of submitting false and fabricated documents before the Scrutiny Committee, the Petitioner obtained another letter dated 15.4.2021 purportedly issued by the Tahsildar, Mulshi. I say that said letter dated 15.4.2021 purportedly issued by Tahsildar, Mulshi mentions that the entries dated 19.12.1924 and 2.1.1925 relied upon by the Petitioner in support of his caste claim are found in births and deaths register of another village i.e. Mauje Nande and not in register of village Kasar Amboli. I say that

from the bare perusal of letter dated 15.4.2021 purportedly issued by the Tahsildar, Mulshi reveals that the signature of Tahsildar, Mulshi has been forged thereon. I say that the signature on said letter dated 15.4.2021 can be compared with the signature of Tahsildar, Mulshi on letter dated 12.3.2021 addressed to the vigilance cell. Hereto annexed and marked as **Exhibit 'A'** collectively are copies of letters dated 15.4.2021 and 12.3.2021.

9. I say that the Petitioner relying upon said letter dated 15.4.2021 has submitted an application with the Scrutiny Committee on 20.4.2021 for rehearing. Therefore, the Petitioner has left no stone unturned in misleading the Scrutiny Committee. Hereto annexed and marked as **Exhibit 'B'** is copy of application submitted by the Petitioner on 20.4.2021 along with annexures.

10. I say that the letter dated 15.4.2021 obtained by the Petitioner purportedly from Tahsildar, Mulshi is self-destructive to the caste claim of Petitioner. It was the case of Petitioner since inception that he and his forefathers are permanent residents of village Kasar Amboli. It was the case of Petitioner that the entries dated 19.12.1924 and 2.1.1925 relied upon by the Petitioner in support of his caste claim are from births and deaths register of village Kasar Amboli. However, when the members of vigilance cell after personally verifying the births and deaths register of village Kasar Amboli observed that the entries relied upon by Petitioner could not be found therein the Petitioner obtained a letter dated 15.4.2021 purportedly from Tahsildar, Mulshi to say that the entries are found in births and deaths register of another village Nande, which completely demolishes the caste claim of Petitioner. It appears that the Petitioner after realizing that the letter dated 15.4.2021 is self-destructive to his caste claim, the Petitioner has deliberately suppressed the same in present Writ Petition."

4.1. Mr. Deshmukh has made the following submissions :-

- (i) that the letter dated 15th April, 2021 is self destructive to the caste claim of the Petitioner as the Petitioner has always maintained that his forefathers were permanent residents of village Kasar Amboli, hence the plea of the Petitioner that there has to be reconsideration of the Petitioner's claim by the Committee *denovo* is not well founded;
- (ii) that the Petitioner has deliberately suppressed letter dated 15th April, 2021 from the Court at the time of filing of the petition;
- (iii) that if the contents of the said letter are true, then it is evident that the Petitioner's ancestors i.e. the Petitioner's grandfather's brother and great grandfather were never residents of village Kasar Amboli;
- (iv) that the impugned order has been correctly passed.

5. Mr. R.S. Pawar, learned AGP appearing on behalf of the Respondents has drawn our attention to the Affidavit-in-Reply dated 3rd August 2021 filed by Smt. Hira Shantaram Gadhe, Research Officer, District Caste Certificate, Scrutiny Committee Pune and made the following submissions :-

- (i) that the order dated 9th April 2021 is a reasoned order giving cogent reasons and is passed after following the due process of law;

- (ii) the Vigilance Cell has conducted a detailed enquiry and submitted its report on 15th March 2021;
- (iii) that the Committee has held that two other vital documents namely the school leaving certificate of the Petitioner and the school leaving certificate of the Petitioner's father i.e. Prakash Bhau Gaikwad have stated their caste as "Hindu Maratha" and not 'Kunbi' and these documents did not support the caste claim of the Petitioner;
- (iv) that investigation of verification of the entries pertaining to 1924 and 1925 by the Vigilance Cell Officer was done by personally inspecting the office record of the village Kasar Amboli but the same were not found in the revenue record of the said village;
- (v) that except the aforesaid documents Petitioner has not submitted any other document in support of his caste claim as belonging to 'Kunbi' caste;
- (vi) that the said entries are not genuine and are false and fabricated;
- (vii) that save and except the said entries of 1924 and 1925, there is no other evidence relied upon by the Petitioner certifying that any of the Petitioner's relatives or ancestors in his genealogy belonged to 'Kunbi' caste.

6. We have perused the pleadings on record and heard the learned Advocates appearing for the parties. Submissions of the parties are on

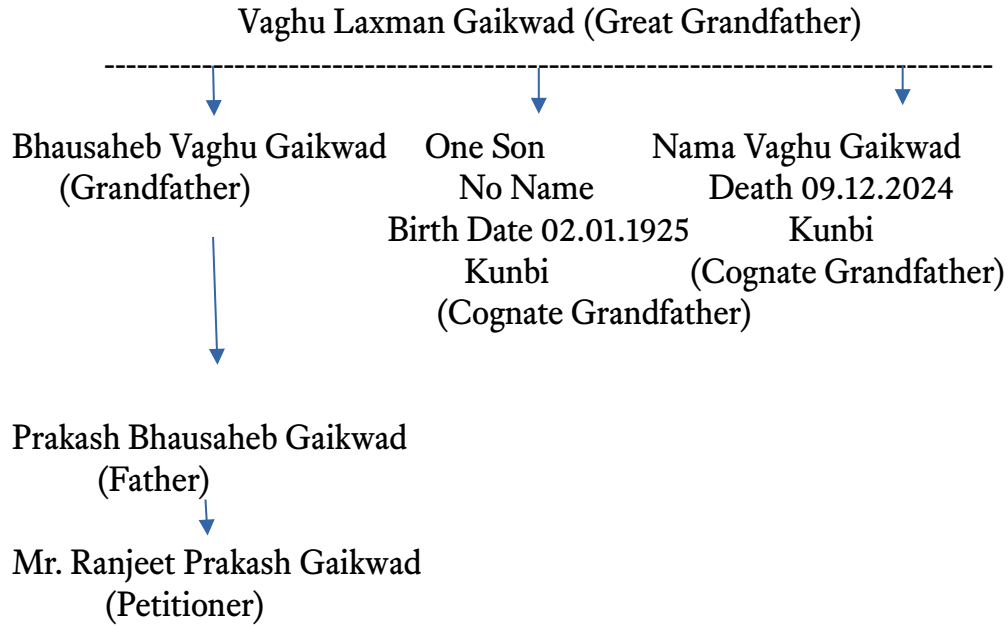
pleaded lines. Written submissions tendered by the parties have been considered.

7. We have also perused the letter dated 15th April 2021 issued by Tahsildar Mulshi and called for the original file. We are satisfied that the letter dated 15th April 2021 has been issued by the Tahsildar since an office copy of the said letter is filed in the office record file maintained by the Tahsildar.

8. We may now outline our observations and findings as under:-

8.1. The show cause notice dated 16th January 2021 is issued to the Petitioner on the ground that the documentary evidence produced by the Petitioner, viz extract of Form No. 14 bearing date of birth as 2nd January 1925 of a son born to Vaghu Laxman Gaikwad (Great Great Grandfather of the Petitioner) and extract in Form No. 14 bearing date of death as 9th December 1924 of Nama Vaghu Gaikwad (brother of Petitioner's grandfather) are not found by the Vigilance Cell in the village record maintained in village Kasar Amboli. In the said show cause notice, the Petitioner is called upon to give his explanation in respect of the complaint made by Respondent No. 4 that the Petitioner did not belong to Kunbi caste and in fact belonged to Maratha caste and is further called upon to furnish documentary evidence in support of the Petitioner's caste claim.

8.2. In support of his claim, Petitioner has relied upon the following family tree (genealogy):

FAMILY TREE

8.3. Perusal of the family tree shows that the Petitioner has not placed on record or shown any documentary evidence of himself, his father or his grandfather in support of his caste claim. The school leaving certificates of the Petitioner and his father show their caste as 'Hindu Maratha' which in fact contradicts the Petitioner's claim. Before the Committee, Petitioner relied on the following 13 documents in support of his caste claim :-

Sr.N o.	Particulars of Evidence	Mention of Caste	Relationship with Applicant
1	Caste Certificate issued by Dy. Collector / Dy. Regional Officer, Mulshi, Dist. Puane to the Applicant - Ranjit Prakash Gaikwad dated 09.12.2020	Kunbi	Self
2	School Leaving Certificate issued to the Applicant by the Principal, Pirangut English School, Tal. Mulshi, Dist. Pune	Hindu Maratha	Self

	Date of Birth 27.07.1993 & Date of Admission 14.06.2004		
3	School Leaving Certificate issued to the father of the Applicant Prakash Bhau Gaikwad issued by the Principal, Pirangut English School, Tal. Mulshi, Dist. Pune Date of Birth 01.06.1955 & Date of Admission 13.06.1969	Maratha	Father
4	Birth extract in Village Form No. 14 showing date of birth 02.01.1925	Kunbi	Great Great Grandfather
5	Death extract in Village Form No. 14 showing date of death 09.12.2024	Kunbi	Cognate Grandfather
6	Copy of the Village Extract Seven showing the names of Jaysingh Bhaguji Gaikwad, Prakash Bhau Gaikwad, Bharat Bhaguji Gaikwad and Ramchandra Bhaguji Gaikwad	-	-
7	Seven Twelve Extract showing the name of Bhau Vaghu Gaikwad	-	-
8	Seven Twelve Extract No. 653 showing the names Bhaguji Bhau Gaikwad, Sadashiv Bhau Gaikwad and Prakash Bhau Gaikwad	-	-
9	Pherphar Patrak No. 2638 showing the name of Bhaguji Bhau Gaikwad as deceased on 11.03.2021 having legal heirs Jaysingh Bhaguji Gaikwad, Ramchandra Bhaguji Gaikwad and Bharat Bhaguji Gaikwad	-	-
10	Pherphar Patrak showing the names of heirs as Bhaguji Gaikwad, Sadashiv Bhau Gaikwad and Prakash Bhau Gaikwad after the death of Bhau Vaghu Gaikwad	-	-

11	Kabjedar Phalani Bara Nond after the death of Bhau Vaghu Gaikwad	-	-
12	Copy of ration card showing the name of Prakash Bhau Gaikwad	-	-
13	Sworn Affidavit of the Genealogy / Family Tree submitted by the Applicant on 14.12.2020	-	-

8.4. Perusal of the order dated 9th April 2021 shows that the Petitioner has relied upon 13 documents before the Scrutiny Committee. Out of 13 documents, documents at Sr. Nos. 2 and 3 referred to by the Petitioner are his own school leaving certificate and his father's school leaving certificate which mention their caste as "Hindu Maratha" and "Maratha". Hence, these two documents militate against the Petitioner's caste claim. However the only two other documents relied upon by the Petitioner (at Sr. Nos. 4 and 5) in support of his caste claim as 'Kunbi' pertain to the years 1924 & 1925 in respect of the Petitioner's grandfather's brother and his great grandfather. According to the Petitioner both these documents show their caste as "Kunbi". The Vigilance Cell inquiry reveal that these documents are not found in the village record of Village Kasar Amboli. To this, the Petitioner has now sought to contend that after passing of the impugned order, the Tahsildar by his letter dated 15th April 2021 has conveyed that the aforesaid documentary evidence pertaining to his two ancestors is now found in the revenue record of Village Nande and the original documents in 'Modi' script are produced in Court along with a Marathi translation of the original.

8.5. In order to satisfy ourselves as to the veracity of the aforesaid two documents / extracts namely the birth extract at Sr. No. 4 and the death extract at Sr. No. 5, we called for a true translation from an expert translator of "Modi" script. Accordingly, Shri. Vilas B. Kadu, a "Modi" handwriting Researcher and Translator having certification from the Government of Maharashtra in respect of translation from "Modi" script to "Marathi" Devanagari script has submitted his report dated 11.01.2022.

8.6. In the said report, the translation in "Devnagari Marathi" of the relevant entries referred to and relied upon by the Petitioner of his cognate ancestors has been given after verification of the original "Modi" script records. It is pertinent to note that the said entries do refer to the caste of the cognate ancestors of the Petitioner as "Kunbi". A copy of the said report is taken on record and marked "X" for identification.

8.7. The Vigilance Cell report dated 15.03.2021 states that the aforesaid entries referred to and relied upon by the Petitioner are not found in the record / register maintained in the Revenue and Tahsildar office of village Kasar Amboli. The subsequent fact which has now come on record in the letter dated 15th April, 2021 of the Tahsildar that the original record with respect to the above entries has now been found in the record of village Nande therefore needs to be investigated thoroughly.

8.8. Further, the two extracts do refer to the caste as "Kunbi". However, merely on the basis of the said entries, it can neither be ascertained or derivated that the Petitioner belongs to the 'Kunbi' caste. For that

consideration, a detailed inquiry, *inter alia*, pertaining to the origin of the cognate ancestors of the Petitioner hailing from village Nande and their subsequent migration to village Kasar Amboli needs to be probed and investigated, because the case of the Petitioner all throughout is that his entire family hails from village Kasar Amboli.

8.9. Hence, we are of the considered opinion that a detailed vigilance inquiry in the present case is therefore required for ascertaining the Petitioner's claim in accordance with the provisions of the Caste Certificate Rules, 2012. We state that the Vigilance Enquiry should be a complete inquiry and should not only relegate itself to the subject documents which have now been found in the Revenue record of Village Nande. Hence, the report of the Vigilance Cell dated 15.03.2021, therefore, needs a reconsideration.

9. In the present case, it is seen that Shri. Prakash Bhau Gaikwad, the father of the Petitioner is born on 01.06.1955 and enrolled in the school on 13.06.1969. The Petitioner has referred to and relied upon several documents after 1955, however, none of the documents mention the caste of the Petitioner's immediate ancestors as "Kunbi". Hence, to resolve this dichotomy and have a complete and correct ascertainment of the Petitioner's claim of belonging to "Kunbi" caste, the impugned order needs to be interfered with.

9.1. Hence we pass the following order :-

(i) The impugned order dated 09.04.2021 of the

Respondent No. 2 - District Caste Certificate Scrutiny Committee, Pune District, Pune stands quashed and set aside;

- (ii) The Committee is directed to conduct a fresh vigilance inquiry in respect of the claim of the Petitioner about the origin of his cognate ancestors from Village Nande as also the existence of the Petitioner's immediate ancestors in Village Kasar Amboli by following the due process of law;
- (iii) Copies of the Vigilance Report and any material that will be relied upon by the Committee shall be given to the Petitioner and / or his Advocate and Respondent No. 3 - Collector, Pune and / or Advocate for Respondent No. 4 before hearing the parties;
- (iv) The Petitioner's caste validity claim be decided afresh by the Committee after following the due process of law as contemplated by the provisions of the Caste Certificate Rules, 2012 within a period of four weeks from the date of uploading of this order;
- (v) The Committee shall pass a speaking order after hearing the parties and taking on record the written submissions, if any filed by the parties in accordance with law;

- (vi) Consequently, the order dated 16th July, 2021 passed by the Respondent No. 3 - Collector, Pune also stands set aside;
- (vii) All contentions of the parties are kept open.

10. In view of the above directions, Writ Petition stands disposed of. However, there shall be no order as to costs.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]