

Diksha Rane

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

WRIT PETITION NO. 6820 OF 2022

Yashwant Vithoba Sonar .. Petitioner
vs.
State of Maharashtra and ors. .. Respondents

Mr. R.K. Mendadkar for petitioner.
Mr. B.V. Samant, AGP for respondent nos. 1 and 2 (State).
Mr. Abhilash Mahapatra a/w Mr. Tannishtha Singh i/b. MCO
Legals for respondent no. 3 (Mumbai Port Authority).

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

HEARD ON : JUNE 10, 2022.

JUDGMENT ON : AUGUST 30, 2022.

JUDGMENT (Per M. S. Karnik, J.) :

1. An exception is taken to an order dated February 26, 2022 passed by the respondent no. 2 – District Caste Certificate Scrutiny Committee, Sindhudurg (hereafter ‘the Scrutiny Committee’ for short) invalidating the caste certificate of the petitioner as belonging to ‘Sonar’ - Other Backward Class (hereafter ‘OBC’ for short).
2. The facts of the case in a nutshell are as under: -
 - a) The petitioner was issued a caste certificate by the Executive Magistrate, Kudal, certifying that he belongs to Sonar, OBC, on December 21, 1992. The petitioner came to be appointed by the respondent no.3 – Mumbai Port

Authority (hereafter 'the employer' for short) to the post of 'Tally Clerk' on April 15, 1998, under the reserved category of OBC. In due course, he was promoted to the post of 'Labour Supervisor' on December 24, 2009, in which post the petitioner is presently working.

(b) The petitioner's employer forwarded his caste certificate to the Scrutiny Committee for verification in the year 2020. During the course of the enquiry before the Scrutiny Committee, the petitioner submitted all necessary documents in support of his caste claim which includes documents of his relatives from the paternal side prior to October 13, 1967. The petitioner mainly relied upon the school leaving certificate of his cousin grandfather namely Mahadev Laxmanshet Sonar showing his caste as 'Sonar' as on December 12, 1940. The death certificate of Mahadev Laxmanshet Sonar indicates the caste as 'Sonar' and the date of death is recorded as October 31, 1957. The petitioner submitted a school leaving certificate in respect of his real uncle namely Dattatray Yashwant Sonar indicating his caste as 'Sonar' as on May 29, 1957. The caste in the death certificate of his grandfather-Yashwant Laxman Sonar is recorded as 'Sonar', as on September 27, 1956. The petitioner also relied upon the Caste Validity Certificate dated April 28, 2006, granted in favour of his cousin sister by name Mamata Laxman Sonar.

c) The Scrutiny Committee forwarded his case to the Vigilance Cell for conducting school and home enquiry. The

Vigilance Cell submitted its report to the Scrutiny Committee on January 19, 2021 which was served on the petitioner along with a show cause notice dated March 16, 2021. The petitioner was called upon to submit a fresh caste certificate in requisite format and to file his explanation to the adverse remarks made by the committee in respect of the caste claim. The explanation was filed by the petitioner on March 17, 2021.

d) By way an explanation, apart from relying on the documents aforementioned, the petitioner pointed out that the traditional occupation of his family is that of 'Goldsmith'. He placed reliance on the Goldsmith license issued to his father by the Government of India. The petitioner also submitted the fresh caste certificate dated September 6, 2021 issued to the petitioner in the requisite format as belonging to Sonar, OBC, in terms of the liberty granted by the Scrutiny Committee.

e) The petitioner was called for a personal hearing by the Scrutiny Committee on January 27, 2022. The Scrutiny Committee, by the impugned order, for the reasons mentioned therein, invalidated the caste claim of the petitioner.

3. Assailing the order of the Scrutiny Committee, Mr. R. K. Mendadkar, learned counsel appearing for the petitioner, submitted that the Scrutiny Committee, failed to take into consideration the evidentiary value of the old documents in its correct perspective, negated the caste claim of the

petitioner based on the sole document of his cousin grandfather which school leaving certificate had an entry entry 'Daivadnya Bramhan (Sonar)'. The Scrutiny Committee did not advert to the pre-constitutional documents and documents prior to Notification dated October 13, 1967. The Scrutiny Committee failed to consider that the traditional name of the family is 'Sonar' and the proof of occupation being that of 'Goldsmith' is placed on record. Learned counsel submitted that the document in respect of cousin grandfather namely Mahadev Laxmanseth Sonar in the nature of school leaving certificate, shows his caste as 'Sonar', as on December 12, 1940, which is a pre-constitutional document.

4. Mr. B. V. Samant, learned AGP appearing for the respondents 1 and 2 – State, invited our attention to the findings recorded by the Scrutiny Committee while invalidating the caste claim of the petitioner. He submits that the petitioner wants this Court to re-appreciate the evidence on record in exercise of the writ jurisdiction of this Court under Article 226 of the Constitution of India, which is impermissible. He submits that there hardly is any perversity in the findings recorded by the Scrutiny Committee, as the Scrutiny Committee has, on due consideration of the materials before it, arrived at a conclusion which is reasonable and just. Learned AGP, therefore, prayed for dismissal of the writ petition.

5. With the assistance of learned counsel for the

petitioner and learned AGP, we have gone through the pleadings, the materials on record and the impugned order.

CONSIDERATIONS: -

6. The petitioner mainly relied upon the following documents before the Scrutiny Committee in support of his caste claim as 'Sonar (OBC)': -

a) The school leaving certificate of Ramchandra Laxmanshet Sonar, cousin grandfather of the petitioner, indicating the caste as 'Sonar';

b) The death record register of his grandfather indicating date of death as September 29, 1956 and caste as 'Sonar';

c) The school leaving certificate of the petitioner's uncle Dattatray Yashwant Sonar, who was born on April 21, 1950 and admitted to the school on May 29, 1957, which shows his caste as 'Hindu Sonar';

d) The Caste Validity Certificate dated April 28, 2006 issued in favour of petitioner's cousin sister - Mamata Laxman Sonar;

e) The school leaving certificate of the petitioner's cousin grandfather - Mahadev Laxmanshet Sonar, who was admitted in school on December 12, 1940 shows his caste as 'Sonar'; the birth-death register extract issued by the Tahsildar Kudal of Mahadev Laxmanshet Sonar, who died on October 31, 1957, indicating the caste as 'Sonar'.

7. In the light of the observations made by the Nagpur Bench of this Court in **Apoorva d/o. Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1**

and others¹, the Scrutiny Committee could have granted a caste validity certificate to the petitioner without calling for a Vigilance Cell report, considering that his cousin - Mamta was already granted a caste validity certificate. The Scrutiny Committee, however, was of the opinion that since the vigilance report in respect of the school entry of Ramchandra Laxmanshet Sonar - real grandfather of Mamata revealed that the entry as 'Daivadnya Bramhan (Sonar)', which fact has come on record during the course of the Vigilance Cell enquiry, it was *prima facie* of the opinion that false and fabricated caste entry as 'Sonar' in the school leaving certificate was made (the school leaving certificate of Ramchandra relied upon by the petitioner had the entry as Sonar) and by cheating the then Scrutiny Committee, Mamata Laxman Sonar has obtained Caste Validity Certificate of 'Sonar' caste. The Scrutiny Committee was of the opinion that the Caste Validity Certificate of Mamata Sonar is not binding on the Scrutiny Committee. It made a recommendation to take action for cancellation of Mamta's Caste Validity Certificate. In our opinion, the Scrutiny Committee has completely misread the decision of this Court in **Apoorva d/o. Vinay Nichale** (supra).

8. The Caste Validity Certificate was issued in favour of Mamta by the then Caste Scrutiny Committee upon examining the materials before it. According to the Committee, the fraud is played by Mamata. If during the

¹ W.P.No. 1504/2010 decided on July 27, 2010.

home enquiry before the present Committee revealed that the entry in the school leaving certificate of Ramchandra is 'Daivadnya Bramhan (Sonar)', the same exercise could have been carried out by the then committee, which was not carried out. The petitioner only relied upon the school leaving certificate of Ramchandra issued to him by the school authorities. The petitioner has merely produced the Caste Validity Certificate issued in favour of Mamata by the then Scrutiny Committee. No doubt, it is a well settled principle that fraud vitiates all solemn acts and that when an order has been obtained by practicing fraud, it would be a nullity. However, it is to be borne in mind that the then Scrutiny Committee, on the basis of the materials before it, issued a Caste Validity Certificate to Mamata.

9. The Scrutiny Committee's observation that Mamata has *prima facie* cheated the then Scrutiny Committee, virtually amounts to indicating that the then Scrutiny Committee had not carried out a proper enquiry. Suffice it to observe that the then Scrutiny Committee did not deem it necessary to have such enquiry being undertaken by the vigilance cell. The then Scrutiny Committee was in a position to discover the school leaving certificate of Ramchandra by due diligence which could have been done by holding an enquiry by the vigilance cell. A somewhat similar question came up for consideration before the Nagpur bench of this Court in **Ishwar & Ors. vs. The District Caste Certificate Verification, Committee &**

Ors.², where one of us (Chief Justice) was a member. This Court made reference to the decision of the Supreme Court in **Shrikrishnan vs. The Kurukshetra University**³ wherein it is observed that it is well settled that a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. This Court then went on to hold that "It would neither be a case of suggestio falsi or suppressio veri. In other words, it was open for the Scrutiny Committee while verifying the caste certificates of the petitioners to have conducted an inquiry by the Vigilance Cell. The Scrutiny Committee however did not deem it necessary to have such inquiry being undertaken by the Vigilance Cell". Present is a case where the caste claim of the petitioner is invalidated by concluding that Mamata practiced fraud on the then committee while obtaining the caste validity certificate. In our opinion, the approach of the committee is completely erroneous and without considering the well settled legal position. The Committee did not have the advantage of considering the decision of this Court in **Ishwar & Ors.** (supra) while invalidating the caste claim of the petitioner. It is therefore necessary for the Scrutiny Committee to re-examine the caste claim of the petitioner.

10. A useful reference may also be made to paragraph 6 of the decision in **Anil s/o. Shivram Bandawar vs. District Caste Certificate Verification Committee,**

² W.P. No. 472/2020 decided on July 26, 2021.

³ AIR 1976 SC 376

Gadchiroli and another⁴ of Division Bench of this Court where one of us (Chief Justice) is a member. In paragraph 6 Their Lordships held thus: -

“6. We find that it was not permissible for the Caste Scrutiny Committee to have re-examined the caste certificate and Caste Validity Certificate issued to the petitioner on the grounds on which it was so sought to be so re-examined as stated in the show cause notice. It is undisputed that there is no provision either in the Act of 2000 or the Rules framed thereunder to re-open/re-examine the matter of issuance of a Validity Certificate by it. This aspect as regards absence of statutory power to do so stands concluded by the decision of this Court in **Apoorva Vinay Nichale** (supra). It has been held in clear terms that merely because a different view on the same facts could be arrived at, the same would not entitle the Scrutiny Committee dealing with a subsequent caste-claim to reject such claim. As stated above, it is on the basis of fresh material in the form of old revenue records of the year 1920-24 that the exercise of re-examining the Caste Validity Certificate was undertaken by the Scrutiny Committee. We thus find that in absence of any statutory power either under the Act of 2000 or the Rules framed thereunder to re-examine a Caste Validity Certificate already issued, the exercise undertaken by the Scrutiny Committee pursuant to the show cause notice issued by it was without jurisdiction”.

11. We thus find that only on the basis of the school leaving certificate of Ramchandra showing the caste as ‘Daivdnya Bramhan (Sonar)’, the Scrutiny Committee has invalidated the caste claim of the petitioner without even considering the other pre-constitutional documents on record, that of Mahadev Laxman Sonar and the other

⁴ 2021(5) Mh.L.J.

paternal relatives already referred to hereinabove, which are prior to October 13, 1967. Merely because Ramchandra's document is unreliable is no ground to discard the other documents without even adverting to their evidentiary value in support of the caste claim. The order passed by the Scrutiny Committee calls for interference and the caste claim of the petitioner needs to be reconsidered by the Scrutiny Committee in accordance with law and in the light of what we have observed hereinabove.

12. As we are inclined to set aside the impugned order passed by the Scrutiny Committee, we may also note the additional affidavit dated June 7, 2022 filed by the petitioner. The petitioner claims to have found several documents which are in 'Modi' script pertaining to the transactions with regard to the immovable properties of his forefathers and upon translation, it reveals that the Caste of his forefathers has been described as 'Sonar' during the British Regime. We are of the opinion that the petitioner can be granted an opportunity to produce additional materials in support of his caste claim, subject of course, to its verification by the Scrutiny Committee. Hence, the following order: -

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order dated February 26, 2022 passed by the Scrutiny Committee is quashed and set

aside.

(iii) The caste claim of the petitioner is remitted to the Scrutiny Committee for a fresh decision on its own merits and in accordance with law.

(iv) The petitioner to remain present before the Scrutiny Committee on September 16, 2022. The Scrutiny Committee shall endeavor to decide the caste claim of the petitioner within a period of sixteen (16) weeks therefrom.

The Writ Petition is accordingly allowed in the above terms with no order as to costs.

13. In view of the impugned order being set aside, the consequence will be that the petitioner's employer would be interdicted from taking any adverse decision against the petitioner on the basis of the impugned order. In the event, however, the petitioner's caste claim is invalidated again by the Scrutiny Committee, the employer shall act in accordance with law.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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