

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 6190 OF 2015

Arbaz Jaweef Mallabadkar ... Petitioner.
V/s.

The State of Maharashtra, through its
Secretary, Social Justice Department & Others ... Respondents.

Mr. Balwant Salunkhe i/b Mr. Hamid D. Mulla for the Petitioner.
Mr. Mandar Limaye for the Respondent Nos.6 and 7.
Mr. S. B. Kalel, AGP for the Respondent-State.

**CORAM : NITIN JAMDAR AND
AMIT BORKAR, JJ.**

**DATE : 31 JANUARY 2022.
(Through Video Conferencing)**

P. C. :

Heard learned counsel for the parties.

2. The Petitioner has challenged the order passed by the Respondent-Scrutiny Committee dated 7 March 2015 invalidating the caste certificate of the Petitioner dated 2 June 2010 as belonging to Muslim-Julaha community, other backward caste.

3. The Petitioner, a student, applied for grant of the caste certificate as belonging to Muslim-Julaha community (OBC) to the Deputy Collector, Solapur. The Competent Authority granted the

caste certificate to the Petitioner on 24 June 2010 as belonging to Muslim-Julaha community (OBC). The Petitioner was desirous of pursuing higher studies and his caste certificate was sent for to the Scrutiny Committee. The Director of Technical Education and the Competent Authority granted admission to the Petitioner in the Mechanical Engineering course for the Academic Year 2014-15.

4. By the impugned order the Scrutiny Committee has invalidated the caste certificate. Before passing the impugned order, an enquiry by Vigilance Cell as per the Rules framed under the The Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 was conducted. The Vigilance Cell submitted its report to the Scrutiny Committee. Evidence produced by the Petitioner of the school records of the Petitioner's father, uncle and grandfather showed the entry in the caste column as "Muslim". The Scrutiny Committee noted that these documents showed "Muslim" as the entry. However, the Scrutiny Committee itself observed that in this religion there was no practice of recording the caste and therefore it is necessary that the evidence regarding tradition, occupation, profession should be adduced by the candidate. The Scrutiny Committee also observed that weaving activity is the traditional occupation/profession of the Muslim-Julaha community. The Scrutiny Committee has referred to the document

of the year 1974 i.e. the service record of the grandfather wherein the Petitioner's grandfather was working in a spinning mill. This document was discarded on the ground that merely because the Petitioner's grandfather was working in a spinning mill, it could not establish the claim of the Petitioner as belonging to Muslim-Julaha community. The caste validity certificate issued to the Petitioner's cousin - Atik A. Munaf was also discarded holding that it cannot be considered since there is no reasoned order.

5. We find that apart from the validity certificate given to the Petitioner's cousin, which it has simply discarded, the Scrutiny Committee has also not taken into consideration the report of the Vigilance Cell submitted on 15 March 2014. The Vigilance Cell has conducted home enquiry wherein it is stated that the relatives of Petitioners were doing the profession of weaving. In service book and gratuity Register the entry of Umer M. Husain showed the appointment date is 23 April 1958 i.e. prior to 1960 when "other backward class" were not defined in the State of Maharashtra. Once the Scrutiny Committee has itself observed that the evidence regarding traditional occupation would be of importance to ascertain the caste, the Vigilance Cell enquiry report could not have been omitted from consideration and ought to have been considered in totality.

6. Since a vital piece of evidence, that is the Vigilance Cell

enquiry report is kept out of consideration, the impugned order is vitiated for non application of mind cannot be sustained and the Scrutiny Committee will have to pass a fresh order considering the implications of the Vigilance Cell report and the enquiry conducted.

7. As a result the petition deserves to be allowed. The impugned order dated 7 March 2015 is quashed and set aside. Reference made to the Scrutiny Committee in respect of the Petitioner's caste claim stands restored to the file of the Respondent-Scrutiny Committee. The Petitioner will appear before the Respondent-Scrutiny Committee on 14 February 2022. The Scrutiny Committee will make an endeavour to dispose of the caste claim of the Petitioner within a period of twelve weeks thereafter.

8. The ad-interim protection granted by this Court in the petition shall continue till the disposal of proceedings before the Scrutiny Committee and four weeks after the order is communicated to the Petitioner.

(AMIT BORKAR, J.)

(NITIN JAMDAR, J.)