

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

WRIT PETITION NO.8758 OF 2016

Gadwal Ayesha Mohd. Gaffar Petitioner
Vs.
The State of Maharashtra and Ors. Respondents

Mr. Harshad M. Inamdar for the Petitioner.
Mrs. S. S. Bhende, AGP for Respondent Nos.1 and 2 -State.

**CORAM: S. B. SHUKRE &
G. A. SANAP, JJ.**

DATED : 11 APRIL 2022.

P. C.

Heard.

2. Leave to file affidavit in reply is granted to the learned AGP who submits that reply is ready but due to inadvertence it could not be filed earlier although a copy has already been furnished to learned counsel.

3. Rule. Rule is made returnable forthwith by consent of the parties.

4. The Scrutiny committee has rejected the caste claim of the petitioner as she belonging to Jullah, OBC caste on the ground that the documentary evidence produced by the petitioner in support of her claim was unreliable and that even the validity

certificate issued to Gadwal Muzmmil Mohd. Gaffar, real brother of the petitioner showing him to be belonging to OBC caste was unworthy of credit because in the opinion of the scrutiny committee it was obtained by brother of the petitioner by deceiving the scrutiny committee which issued that validity certificate.

5. It is rightly submitted by learned counsel for the petitioner that none of the grounds taken by the scrutiny committee in refusing the validity certificate to the petitioner's caste claim holds any water especially when no action has been initiated by the scrutiny committee in cancelling the validity certificate granted to brother of the petitioner by issuing a show cause notice to him.

6. The petitioner has relied upon certificate issued in the name of her grandfather Mastansab Nabisab Gadwal. The scrutiny Committee rejected this certificate on the ground that working of grandfather of the petitioner in a weaver's society as worker would not be indicative of the fact that the caste of that person is Jullah which is the caste professed by the weavers community. In the opinion of the scrutiny committee it was necessary for the petitioner to produce on record documents showing that family business of the petitioner was that of weaver which the petitioner failed to do so.

7. Reasoning so adopted by the scrutiny committee in our opinion is illogical. It is well known that there are many

persons whose families pursue a particular profession such as tailoring or carpentry or weaving but these persons on account of financial difficulties are not able to carry forward their family profession and are forced to take upon sundry jobs including the job as a worker in some society which may or may not be of weavers or tailors or carpenters society. Just because a person has accepted a job as a worker or an employee in a weaver's society or some handloom or powerloom, it would not mean that such person's family business is not that of weaving. Therefore the sole ground that the person is working as a worker in a weavers society is not enough to dismiss the claim of that person as belonging to weavers community professing Jullah caste. In such a case the scrutiny committee would also need to consider the other evidence brought on record by the claimant and upon a holistic view of the entire evidence that the scrutiny Committee shall come to a conclusion regarding the claimant proving his caste or otherwise. The scrutiny committee in the present case has failed to consider the other evidence brought on record by the petitioner and the outcome is an order which is not sustainable in the eye of law.

8. The scrutiny committee, in addition, also found that the certificate of Parmeshwar Hatmag Vinkari Mandal Utpadak Sahakari Sangh , Solapur relied on by the petitioner, was false and accordingly concluded that petitioner could not prove her claim.

9. Reason for finding the said certificate as false was that in some previous cases the then scrutiny committee had noticed

some false certificates having been issued by the said society. But, in our view, it would not mean by itself that the certificate issued in favour of the petitioner, would also be false. The reason being that in India the principle, "once a liar always a liar" has not been accepted as a reliable rule of appreciation of evidence and the law is that each case has to be considered on its own merits for reaching an appropriate conclusion. If the scrutiny Committee has some doubt about certificate issued by Parmeshwar Sangh in favour of the petitioner, the scrutiny committee could have embarked upon the exercise of removal of this doubt by considering the other evidence brought on record by the petitioner. But, the scrutiny committee failed to do so.

10. Apart from what is stated above, in this case there is available clinching evidence for proving the case of the petitioner. It is in the nature of validity certificate issued by Pune Scrutiny Committee to the real brother of the petitioner as he belonging to Jullah, OBC caste. This validity certificate has been discarded by the scrutiny committee by giving some untenable reasons. The scrutiny committee has observed that this validity certificate was issued by Pune scrutiny committee by considering the certificate issued by Parmeshwar Society which certificate was found as not reliable by the present scrutiny committee in this case. On this ground, the scrutiny committee came to the conclusion that the validity certificate was obtained by Gadwal Muzmmil Mohd. Gaffar by deceiving the Scrutiny Committee or by playing fraud upon the scrutiny committee. In recording such a conclusion, the scrutiny committee, however, lost sight of the fact that there is a world of

difference between producing evidence which is doubtful and producing evidence comprising false and fabricated documents. In the former case, the document is not considered to be sufficient or reliable for proving social status of the claimant. In the latter case, the document is not at all issued by the entity by whom the document is purported to be issued. In the latter case, there would be what is called in law as playing of fraud upon the scrutiny committee but this would not be so in the former case. The validity certificate in question here was undoubtedly not based upon fabrication of evidence and so could not have been rejected as having been obtained by playing fraud.

11. The scrutiny committee has also not issued any notice to Muzmmil for cancellation of the validity certificate granted to him on the ground that he obtained validity certificate by playing fraud upon the scrutiny committee. No action as seen from the impugned order has been initiated by the scrutiny committee for reconsideration and cancellation of the validity certificate granted to the brother of the petitioner.

12. In these circumstances, we are of the view that the scrutiny committee ought not to have rejected the validity certificate existing in favour of brother of the petitioner but ought to have accepted it as a conclusive proof of the petitioner's claim as belonging to Jullah, OBC caste. The scrutiny committee in not doing so has committed a manifest error in passing the impugned order which needs to be corrected. The validity certificate granted

to the petitioner's brother, in our considered view, is sufficient proof for declaring that the petitioner also belongs to Jullah, OBC caste and we do so.

- i) The Petition is allowed;
- ii) The impugned order is quashed and set aside;
- iii) Respondent No.2 is directed to issue validity certificate to the petitioner as she belonging to Jullah, OBC caste within a period of 4 weeks from the date of receipt of a copy of the order;
- iv) Parties to act on authenticated copy of the order.

(G. A. SANAP, J.)

(S. B. SHUKRE, J.)