

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

WRIT PETITION NO. 8802 of 2017

Mrs. Ruksana Shamshuddin Inamdar
nee Ruksana Gulam Husain Khan,
r/at: Lane No.B12,
Near Dr. Godbole, Sayed Nagar,
Hadapsar, Pune 411 028. ... Petitioner

v/s.

1. The District Caste Certificate
Validity Committee,
Jail Road, Behind Comer Zone
IT Park, Yerawada,
Pune 411 006.
2. The State of Maharashtra,
(through the Principal Secretary,
Social Welfare Department,
Mantralaya, Mumbai 400 032.
3. Mrs. Sarika Dattatraya Shinde,
R/at: 315,
Near Vaiduwadi Talim,
Hadapsar, Pune 411 028.
(Original Opponent No.1)
4. Mrs. Tanabai Govind Lakde,
R/at — Survey No.315,
B Vaiduwadi, Hadapsar,
Pune 411 028.
(Original Opponent No.2).
5. Mrs. Usha Ashok Lakde,
R/at — Survey No.315,
Vaiduwadi, Near Bholenath,
Hadapsar, Pune 411 028.
(Original Opponent No.3)
6. The Municipal Corporation of
the City of Pune, (through
Dy. Commissioner (Election)),
Shivajinagar, Pune 411 005.

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7. The Commissioner,
Municipal Corporation
of the City of Pune
Shivajinagar, Pune 411 005. ... Respondents

Mr. Jayesh Kotecha, Advocate a/w. Mr.Chandrakirti Zende,
Advocate for the Petitioner.

Ms. A.A.Purav, AGP for Respondent-State.

Mr. Bhooshan R. Mandlik i/b. Mr.S.S. Patwardhan for
Respondent No.3.

Mr. Abhijeet Kulkarni for Respondent No.6.

Ms. Rupali Andhare, law officer – present in the Court.

**CORAM : A.A.SAYED &
S.G.DIGE, JJ.**

**DATE: 24 FEBRUARY 2022
(THROUGH V.C.)**

JUDGMENT (Per S.G.Dige,J)

By this Petition, the Petitioner is challenging the order dated 11/07/2017 passed by Respondent No.1-Caste Scrutiny Committee (for short 'Scrutiny Committee') invalidating the Caste Certificate of the Petitioner as 'Muslim Machchhimar (Daldi)' .

2. The Divisional Officer, Pune issued a caste certificate in favour of petitioner on 17/01/2017 as Muslim Machchhimar (Daldi). The Petitioner submitted an application to the Scrutiny Committee, Pune for verification and validation of her caste certificate. The Petitioner contested the general elections of Pune Municipal Corporation from Ward No.24B, Ramtedki – Sayed Nagar, Pune as an independent candidate for the seat which was reserved for OBC (Woman) category. The Petitioner was declared as elected as an independent candidate. The

Scrutiny Committee sent the matter to the Vigilance Cell for enquiry. Accordingly, the Vigilance Cell made enquiry in respect of caste claim of Petitioner and submitted report to the Scrutiny Committee. After receiving Vigilance report, the Scrutiny Committee issued a show-cause notice to the Petitioner. Petitioner submitted her reply to the show-cause notice. Before the Scrutiny Committee, respondent nos.3, 4 and 5 have objected for issuance of validity of the caste certificate to the petitioner. After hearing the parties the Scrutiny Committee passed the order and rejected the caste claim of the Petitioner. The said order is under challenge. During pendency of Petition, Petitioner amended the Petition and sought some additional reliefs.

3. It is the contention of learned Counsel for the Petitioner that the Petitioner is resident of Pune. Her forefathers were from Dapoli. Earlier they were residing together at Dapoli, Taluka – Dapoli, Dist. Ratnagiri and traditional occupation of her family was fishing. They are recognized as "Muslim Machchhimkar (Daldi)". Learned Counsel further submitted that Scrutiny Committee has not considered various documents produced by Petitioner alongwith her reply to the show-cause notice, the said documents were not taken on record by the Scrutiny Committee, which shows the Petitioner belongs to "Muslim Machchhimkar (Daldi)". The Petitioner's family was engaged in business of selling of fish but this fact was not considered by Scrutiny Committee. From Vigilance Cell report it is revealed that in local enquiry the witnesses have stated that Petitioner belongs to "Muslim

Machchhimkar (Daldi)" but the said fact was not considered by the Scrutiny Committee. The order passed by Scrutiny Committee is devoid of merit, hence, liable to be set aside.

4. It is the contention of learned AGP that documents filed by Petitioner does not show her caste as "Muslim Machhimar (Daldi)". The Vigilance report does not support Petitioner's caste claim. The Scrutiny Committee has passed order by considering submissions of all parties. It was burden on the Petitioner to prove that her caste is "Muslim Machchhimkar (Daldi)" but Petitioner could not prove her caste. Hence, order passed by the Scrutiny Committee is just and proper.

5. It is the contention of learned Counsel for Respondent No.3 that Petitioner has failed to prove her claim before the Scrutiny Committee that she belongs to "Muslim Machhimar (Daldi)". Petitioner has also failed to prove that her forefathers were from the village Dapoli. Nikahnama of Shri Bashirkhan on which Petitioner is relying was not produced by Petitioner before Vigilance Cell or Scrutiny Committee and the same is produced in the present writ petition for the first time. The contentions of Petitioner that her family was engaged in fishing activities and business of selling fish are false.

6. We have considered the rival submissions of all parties. We have perused the impugned order of Caste Scrutiny Committee as well as documents produced on record. The Petitioner is claiming that she belongs to

caste of "Muslim Macchimar (Daldi)". The documents produced by Petitioner simply records Muslim and do not show her caste as "Muslim Macchimar (Daldi). In Mohammedans there is no practice of mentioning caste or sub-caste. In this context, report of Vigilance Cell assumes significance. Vigilance Cell made enquiry with local people at Hadapsar, Pune where Petitioner is staying. Vigilance Cell also verified the documents submitted by Petitioner. The concluding part of the Vigilance Report reads as under:

"(1) Actual verification of the certificate of the caste Macchimar Daldi of the candidate has been made. Said certificate is issued by the concerned office.

(2) On the school evidence of the candidate entry of the caste is made as Musalman.

(3) From the school and other evidences produced by the candidate the ancestors of the candidate are not appearing as resident of Maharashtra earlier to the year 1967. On the school certificate of the candidate birth year is shown as 1965 at Hadapsar, Pune. But there is no any evidence of any of the elderly person showing that they were residents of Maharashtra earlier to the year 1967.

(4) The candidate has submitted the genealogy in the prescribed form.

(5) The witnesses in the area of the candidate have stated that the caste of the candidate is Muslim Machimar. But there is no documentary evidence showing the caste as Macchhimar Daldi in Maharashtra earlier to the year 1967. Similarly there is no any evidence of candidate's family was in the business of Macchhimar."

From this report it is revealed that there is no documentary evidence to show that Petitioner belongs to "Muslim Macchimar (Daldi)". On the basis of said Vigilance report, show-cause notice was issued to the Petitioner by Scrutiny Committee to file her say. After considering submission of Petitioner and Respondent Nos. 3 to 5, the Scrutiny Committee passed the impugned order. In the impugned order, the Scrutiny Committee has observed that considering documents produced on record, Vigilance Cell Report and submissions of all parties, the Petitioner failed to prove that she belongs to "Muslim Macchhimar (Daldi)".

7. The Petitioner had submitted six documents before Scrutiny Committee which are as under:

- i) caste certificate issued by Dy. Collector and Land Acquisition Officer 03, Pune on 17/01/2017.
- ii) School leaving certificate of the Petitioner.
- iii) Death certificate of father of the Petitioner.
- iv) Trade License issued in favour of Smt.Mehmunabi Sultan.
- v) Certificate issued by Muslim OBC organization, Pune.
- vi) Genealogy certificate of the Petitioner.

The Petitioner is relying on the document of trade license dt.09/10/1985 for fish business in the name of Smt.Mehmunabi Sultan issued by Executive Officer, Pune

Cantonment. In the Vigilance report it is mentioned that original abstract of register in respect of Licence No.910 dt.09/10/1985 was not found in the office. The Petitioner has produced certificate dt.16/01/2014 issued by Muslim OBC organization,Pune. This document can be considered as supplementary evidence but there is no other evidence in support of this sole document. The school leaving certificate of petitioner and death certificate of petitioner's father does not show caste as Muslim Macchimar (Daldi). It is the contention of learned counsel for the Petitioner that Petitioner's documents were not taken on record by Scrutiny Committee which includes Nikahnama of Shri Bashirkhan, uncle of Petitioner dt.11/01/1961 which shows his caste was Fisherman (Daldi). It is the contention of learned AGP that these documents were not tendered before the Vigilance Cell or Scrutiny Committee nor application was given for production of it before the Scrutiny Committee.

8. After perusal of record, we find that document Nikahnama was neither produced before Vigilance Cell nor before Divisional Officer, Pune who issued caste certificate to the Petitioner. The Petitioner has not mentioned about this Nikahnama in the written submission given before the Scrutiny Committee. If as per Petitioner, it is an important evidence to prove her caste claim then question arises why Petitioner had not produced it before Vigilance Cell, who has authority to make proper enquiry of this document. In all the documents produced before the Scrutiny Committee, the Petitioner has mentioned that she is resident of Hadapsar, Taluka Pune. For the first

time, Petitioner has stated in this petition that her forefathers were from Dapoli, Dist. Ratnagiri. So it appears to be an afterthought story by the Petitioner. Respondent No.3 has also mentioned in his Affidavit-in-Reply that these documents including Nikahnama were not produced by the Petitioner before the Scrutiny Committee. The Scrutiny Committee after considering all the evidence has arrived at the finding that the Petitioner has failed to prove that she belongs to 'Muslim Macchimar (Daldi)' caste. Hence we do not find merit in the submission of learned Advocate for the Petitioner that these documents were not considered by the Scrutiny Committee.

9. For the abovementioned reasons, no interference is warranted in the impugned order of the Scrutiny Committee. There is no merit in the Petition. The Petition is accordingly dismissed.

(S.G.DIGE, J)

(A.A.SAYED, J)

Lata Panjwani, P.S.