

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8248 OF 2022

Mohsina Hujur Saheb Chikkali	}	Petitioner
V/s.		
1. The State of Maharashtra through	}	
Ministry of Social Justice and Special	}	
Assistance.	}	
	}	
2. District Caste Scrutiny Committee,	}	
Solapur.	}	
	}	
3. The Sub Divisional Officer, Solapur	}	
(Revenue), Solapur.	}	
	}	
4. Mujib Nabilal Nadaf	}	
Age: Adult, Occu. R/o. At post Pitapur,	}	
Tal. Akkalkot, District-Solapur.	}	... Respondents

Mr. S.S. Patwardhan a/w. Ms. Mrinal Shelar with Mr. Ajay Rajenimbalkar with Mr. Akshay Hardas I.by Mr. M.S. Mulla for petitioner.

Mr. Javed Shaikh with Mr. M.S. Dehlvi I.by Dehlvi and Co. for respondent no. 4.

Mr. S.L. Babar – AGP for respondent nos. 1 to 3/State.

**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, J.J.**

DATE : 1st AUGUST 2023.

ORAL JUDGMENT : (PER SUNIL B. SHUKRE, J)

. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

2. We find that there is a great substance in the contention of the learned counsel for the Petitioner that before rejecting the documents mentioned in paragraphs 4 and 5 of the impugned order the Committee ought to have called upon the petitioner to disclose the name of the custodian of those documents from whom verification about the genuineness of the documents submitted by the petitioner could have been made by the Scrutiny Committee and in case of documents in question, no one having ordinary sense of prudence, would approach the office of the Assistant Registrar, Co-operative Societies for their verification. He submits that these documents from their face itself can be seen to be maintained in regular course of business not by the office of the Co-operative Society, Akkalkot, but by the offices of the concerned societies namely Rashtriya Hatmag Kapad Utpadak Sahakari Sangh Niyamit, Maindargi and Mahatma Hatmag Vinkar Sahkari Utpadak Sangh, Maindargi and, therefore, the Scrutiny Committee ought to have approached these societies for the purpose.

3. It appears that the Scrutiny Committee in the present case has approached a wrong office for verification of the documents in

question. We are of the view that if Scrutiny Committee had no idea about the right authority for verification, it could have atleast called upon the petitioner to disclose the name of the custodian and if it had done so, things would have changed and the Scrutiny Committee would have received effective assistance upon its approaching the concerned Co-operative Societies for the purpose of verification of the documents. But that did not happen and therefore, we find that great injustice has been caused to the petitioner which has resulted from not following of proper procedure by the Scrutiny Committee. As such we would say that the impugned order is arbitrary and illegal.

4. Of course, learned counsel for the respondent no. 3 would submit that ultimately it is the duty of the petitioner to discharge the burden of proof that is placed upon the petitioner and therefore, it would be wrong to contend that the Scrutiny Committee should have called upon the petitioner to disclose the name of the custodian of the documents in question. While there can be no second opinion about the proposition put forward by the learned counsel for the respondent no. 4 that the burden of proof to prove the genuineness of the caste or tribe claim is upon the person who makes such a claim, the person claiming it is not under a duty to himself conduct the exercise of

verification of the documents as such person would not know about the course adopted by the Scrutiny Committee for verification of the documents submitted by him. If the Scrutiny Committee takes recourse to wrong approach in verification of the documents, such claimant cannot be blamed for it. In order to avoid such a situation, we must say that the Scrutiny Committee must follow proper procedure and when it has no idea about the person or the office from whom proper verification can be done, it would be always better on its part to call upon the claimant to disclose the name of the person or the office with whom such verification can be done. Since it did not happen in the present case, we find that the petitioner is not at fault and therefore, the argument made in this regard by learned counsel for the respondent no. 4 is rejected.

5. Learned counsel for the respondent no. 4 has also submitted that there are two independent witnesses, who were examined by the Vigilance Officer and who have made a statement that the family of the petitioner has never been in the occupation of weaving and that they were agriculturists by occupation and these statements of two independent witnesses can be examined while taking into consideration the claim made by the petitioner. He, therefore, submits

that this petition deserves to be dismissed.

6. We are not inclined to accept the above referred argument of learned counsel for the respondent no. 4 for the reason that the Scrutiny Committee has not at all adverted in its impugned order to the statements of these witnesses, who are stated by the respondent no. 4 to be independent. Of course, the Scrutiny Committee can always consider their statements if this matter is directed to be considered by the Scrutiny Committee afresh and in fact, we find that there is a need for issuing such a direction, in view of what we have found and observed in the earlier paragraphs.

7. In the result, we are of the view that the impugned order cannot sustain in the eye of law and it deserves to be quashed and set aside. Hence, we pass the following order:-

ORDER

- i). The petition is allowed.
- ii). Impugned order is hereby quashed and set aside. The matter is remanded back to the respondent no. 2 for fresh consideration of the caste claim of the petitioner as she belonging to “Julah Caste” in accordance with law after giving due

opportunity of hearing to the petitioner and respondent no. 4.

iii). While deciding the caste claim of the petitioner afresh, the Scrutiny Committee shall be at liberty to consider the vigilance report already on record and also to call for additional vigilance report, in its discretion.

iv). The Scrutiny Committee shall make verification of the documents submitted by the petitioner in accordance with law from the appropriate custodians of those documents, keeping in mind the observations made hereinabove. The petitioner is at liberty to file fresh documents, if any.

vi). Final adjudication of the caste claim of the petitioner shall be made by respondent no. 2 within 12 weeks from the date of the appearance of the petitioner and respondent no. 4 before it.

vii). Petitioner and respondent no. 4 shall appear before the Scrutiny Committee on 21st August 2023 at 11.00 a.m.

8. Rule is made absolute in the above terms. No costs.
9. Writ Petition is disposed of.

(RAJESH S. PATIL, J)

(SUNIL B. SHUKRE, J)