

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

WRIT PETITION No. 433 OF 2022

Parvati Dattatray Kumbhar,
Age : 51 years, Occ. Social Service,
R/at: Nrusinhwadi, Taluka Shirol,
District Kolhapur.

....Petitioner

Versus

1. Committee for Scrutiny of Caste Claims,
Kolhapur, having its office at Kolhapur,
Through its Member Secretary.
2. Ramesh Prakash Sutar,
Age : 50 years, Occ. Social Service,
3. Chetan Chandrakant Gawali,
Age : 50 years, Occ. Social Service,

Both Respondent Nos. 2 and 3
R/at: Nrusinhwadi, Taluka Shirol,
District Kolhapur.

....Respondents

Mr. S.S. Patwardhan a/w Mr. B.R. Mandlik for the Petitioner .
Ms. Kavita N. Solunke – AGP for Respondent Nos. 1/State
Mr. Vijay D. Patil i/by. Mr. Yogesh Patil for Respondent Nos. 2 and 3.

CORAM	:	R. D. DHANUKA M.M. SATHAYE, JJ.
RESERVED ON	:	9th February, 2023
PRONOUNCED ON	:	2nd March, 2023

: JUDGMENT (PER : M. M. SATHAYE, J.):

1. Rule. Rule is made returnable forthwith. Learned AGP waives service for Respondent No. 1. Mr. Patil, waives service for Respondent Nos.2 and 3. Taken up for final disposal by consent of the parties.

2. This Petition is filed under Article 226 of the Constitution of India, seeking a Writ of Certiorari for quashing and setting aside the impugned judgment and order dated 17th December, 2021 passed by the Respondent No.1 (Caste Scrutiny Committee, Kolhapur) invalidating the Petitioner's caste claim and for direction to issue caste validity certificate in favour of the Petitioner.

3. It is the case of the Petitioner that she belongs to caste *Kumbhar*, which is Other Backward Class (OBC). It is contended that in January, 2020, the elections for village Panchayat of Nrusinghwadi, Taluka Shirol, District Kolhapur were held and the Petitioner contested the said election for the post of Sarpanch and she was elected as Sarpanch. It is contended that the Petitioner had contested the said election on the basis of her caste. The caste certificate was sent for verification to the Respondent No.1. Respondent Nos. 2 and 3 are the complainants who contested the Petitioner's claim of caste *Kumbhar*. The Vigilance Cell was directed to

conduct enquiry and a report dated 22nd September, 2021 came to be submitted by Vigilance Cell to the Respondent No. 1.

4. It is contended that the Respondent No.1-Scrutiny Committee conducted hearing wherein both the Petitioner and Respondent Nos.2 and 3 filed documents and affidavits in support of their case and after considering the same along with the Vigilance Cell report, by the impugned Order dated 17th December, 2021, the Respondent No.1 has invalidated the Petitioner's caste claim.

5. Mr. Patwardhan, learned counsel for the Petitioner argued that the documents submitted by the Petitioner in support of her case have not been properly considered by the Respondent No.1 Scrutiny Committee. He contended that the Vigilance Cell Report is discarded by the Respondent No.1 Scrutiny Committee without giving any reasons. He has invited our attention to various documents produced by Petitioner in support of her case.

6. *Per contra*, Mr. Patil, learned counsel for the complainants/Respondent Nos. 2 and 3 contended that whether the Petitioner is really a daughter of Basappa Virupax Kumbhar, as asserted by her, is under serious dispute. He contended that the Petitioner's family

belongs to Village Kurni, Taluka Hukkeri of Belagavi which is in Karnataka State and as such Petitioner was not resident of Maharashtra at the time of her birth and as such, she is not entitled to caste benefits here. According to them, the real name of Petitioner's father is Basavanni Lagamappa Kumbhar, who was resident of Karnataka State and not Maharashtra State. He contended that both the aspects of caste and place of origin of the Petitioner's family, are under serious challenge. He also invited our attention to various documents produced by Respondent Nos. 2 & 3 opposing the Petitioner's caste claim.

7. Ms. Solunke, learned AGP appearing for Respondent No.1 supported the impugned order of the Scrutiny Committee. She contended that there are obvious contradictions in the evidence produced by the Petitioner. She has relied upon a Judgment of this Court pronounced on 10.03.2021 in W. P .No. 1322 of 2020 in similar set of facts, wherein caste claim was rejected.

REASONS & CONCLUSIONS

8. We have heard the learned counsel for the parties and perused the record carefully. It is settled position of law that the Vigilance Cell Report is not evidence of caste *per se* and though it has persuasive value, the same is not binding upon the Caste Scrutiny Committee. However, there is

duty cast upon the Scrutiny Committee to give reasons, if it rejects the Vigilance Cell Report. In this backdrop, we proceed to scan various documents produced by the Petitioner and Respondent Nos. 2 & 3 about the Petitioner's claim and also the impugned Order, to ascertain if it has recorded the reasons while discarding Vigilance Cell Report and whether it warrants any interference.

9. At the outset, it must be noted that the Petitioner has claimed her caste on the premise that she is daughter of Shri. Basappa Virupax Kumbhar, who, according to Petitioner, was resident of Kurandwad, Taluka Shirol, District Kolhapur. In the light of this assertion, the Complainants/Respondent Nos. 2 and 3 have raised an objection that Petitioner is not a daughter of Basappa Virupax Kumbhar, but is daughter of one Basavanni Lagamappa Kumbhar, who was resident of Karnataka State and who expired in the same State and he was not a resident of Maharashtra State. It is therefore, contended that the Petitioner, cannot claim the benefit of caste in Maharashtra.

10. Now let us scan the documents on record, one by one.

(i) Petitioner has produced PAN Card in support of her case. Learned AGP had produced the original file of the Caste Scrutiny Committee before

us and pointed out that the copy of said PAN Card shows the name of Petitioner's father as Basappa Lagamappa Kumbhar and not Basappa Virupax Kumbhar.

(ii) The Petitioner has relied upon a Gazette Notification for change of her name from Kumari Parvati Basvanni Kumbhar to Parvati Dattatray Kumbhar which is her present name, after marriage. It is not explained by the Petitioner how her name was changed from Parvati Basvanni Kumbhar, if she is daughter of Basappa Virupax Kumbhar.

(iii) Respondent Nos. 1 and 2 have produced Bonafide Certificate issued by the Headmaster of Government K.H.P.S. School Taluka Hukkeri, District Chikodi, in the State of Karnataka showing name of Petitioner as Parvati Basvanni Kumbhar, in which her caste is shown as "Hindu Lingayat" and not "Kumbhar". Perusal of Petitioner's statement /affidavit dated 30th March, 2021 before the Caste Scrutiny Committee, shows that Petitioner has admitted in paragraph No. 4 that in said School Certificate, which according to her, is issued at her maternal village, the caste of the Petitioner is shown as "Hindu Lingayat" and not "Kumbhar".

(iv) Perusal of Birth Certificate of Petitioner shows her name as Parava

Basavanni Kumbhar daughter of Basavanni Lagamappa Kumbhar R/o Kurni Village, born on 29.12.1969 (after deemed date 13.10.1967) and the same is issued by the Government of Karnataka from Birth and Death Register of Yadgud Village, Tal. Hukkeri, Dist. Belagavi, Karnataka.

(v) Perusal of Death Certificate of Basavanni Lagamappa Kumbhar R/o Kurniwadi shows that he died on 27.05.2003 (after deemed date) at Kurniwadi and it is issued by Government of Karnataka from Birth and Death Register of Kurni Village, Tal. Hukkeri, Dist. Belagavi, Karnataka.

(vi) Petitioner has produced voters list of Village Kurundwad, which is a place claimed to be Petitioner's native place in the State of Maharashtra. It shows that the name of Basappa Virupax Kumbhar appears singularly without any children of Basappa Virupax Kumbhar, in list. This lends credence to the objection of Respondent Nos. 2 and 3 that Basappa Virupax Kumbhar is not father of the Petitioner, but the Petitioner is setting up a false claim of being his daughter to bring her claim within caste benefits in the State of Maharashtra.

(vii) Petitioner claimed that her father Basappa Virupaxi Kumbhar, had land at Village Kurundwad, bearing Survey No. 111/6 which is

subsequently converted to Gat No. 459. Respondent Nos. 2 and 3 have produced an order passed by the learned Civil Judge, Junior Division, Kurandwad dated 20th November, 2013, under which 3 ladies claiming to be legal heirs of Basappa Virupax Kumbar, have obtained succession certificate after his death.

(viii) Perusal of proceedings produced by Respondent Nos.2 and 3, at page nos.181 to 187 of the Petition, shows that 3 ladies Shalan Maruti Kumbar, Sunanda Suresh Kumbar and Mahadevi Shivaji Kumbar have applied for succession certificate, as distant legal heirs of deceased Basappa Virupax Kumbar, who according to them died “issue-less”. It further appears from the said record that news-paper publication was made and after following due process, order was passed in favour of said 3 ladies. Respondent Nos.2 and 3 have also produced 7/12 extract of Gat No. 459 at Village Kurandwad, Taluka Shirol, District Kolhapur in which, the name of Basappa Kumbar was removed by M. E. No. 10380 and names of these 3 ladies were mutated in his place. This mutation entry is dated 23/01/2014 and same is duly certified.

11. There is merit in the submission of Respondent Nos.2 and 3 that if Basappa Kumbar was really Petitioner’s father, it cannot be believed that she had no knowledge about such succession certificate being issued to

distant relatives and even their names being mutated in the revenue record of his agricultural property, as far back as in 2014. If Petitioner was really daughter of said Basappa Kumbar, it is unbelievable that Petitioner would not take any steps against the said order of succession certificate or said mutation entry, for a long time. Mr. Patwardhan submits that Petitioner has now challenged the said heirship certificate. However this belated action is of no use to advance the case of the Petitioner, because it is taken after Respondent Nos. 2 and 3 brought the said heirship proceedings on record.

12. It is also Petitioner's case that her father's property bearing Survey No. 111/6 which is subsequently converted to Gat No. 459 is situated in series of lands bearing Survey No. 111/1 to 11 which are Kumbhar Inam lands and she has therefore relied upon caste certificate of one Komal Popat Kumbhar. First of all, it has not come on record how Komal Popat Kumbhar or other land holders around the land allegedly belonging to the Petitioner's father, are related to her. In view of the fact that the Petitioner's claim of being daughter of Basappa Virupax Kumbhar, itself seems to be full of contradictions, land of said Basappa Virupax Kumbhar and case of adjoining land holders' caste cannot have any bearing on the Petitioner's claim.

13. We, therefore, find merit in the arguments of Respondents that the evidence produced by the Petitioner herself is contradictory. There is no valid explanation for these obvious contradictions.

14. We have perused the order of this Court pronounced on 10th March, 2021 in Writ Petition No. 1322 of 2020, passed in the almost identical situation. Petitioner therein claimed to be belonging to “Hindu Nhavi” caste and there also, complainant had objected that she was born in Karnataka State and her father was also a permanent resident thereof, who lived there till his death and therefore, the Petitioner therein is not entitled to claim caste benefit in Maharashtra State. In that case, Division Bench of this Court, having come to the conclusion that the Petitioner, whose family was not residing at Maharashtra on deemed date, cannot derive in benefits from the State of Maharashtra.

15. In the background of above facts and circumstances, after considering the documents on record, perusal of the impugned Order shows that, all these documents and arguments are considered in detail by the Scrutiny Committee by discussing documents in tabular form and in conclusion para Nos. 1 to 9, after recording legal and valid reasons for

rejecting the Vigilance Cell Report. In that view of the matter, we do not find any perversity or apparent illegality in the impugned order passed by Respondent No.1 Scrutiny Committee.

16. The Petition is thus devoid of merits and the same is dismissed. Rule is discharged. No order as to costs.

(M. M. SATHAYE, J.)

(R. D. DHANUKA, J.)

17. At this stage, learned Counsel for the Petitioner seeks continuation of ad-interim relief existing in favour of the Petitioner today. Ad-interim relief which is already granted, to continue for four weeks.

(M. M. SATHAYE, J.)

(R. D. DHANUKA, J.)