



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

WRIT PETITION NO.1401 OF 2018

Mr. Akhtar Kadar Jamadar
Aged 19 years, residing at Malbhag,
Near Post Office, Herle,
Tal. Hatkanangle, Dist. Kolhapur.

... Petitioner

Vs.

1. State of Maharashtra
Through its Secretary,
Social Justice Department,
Mantralaya, Mumbai - 32.

2. District Caste Certificate Scrutiny
Committee, Kolhapur.
Through its Member Secretary,
having its office at Dr. Babasaheb Ambedkar
Samajik Nyay Bhavan, 2nd Floor, Kavla Naka,
Kolhapur.

3. Directorate of Technical Education
and Competent Authority,
Maharashtra State, 3, Mahapalika Marg,
Dhobi Talao, Mumbai-1.

4. The Principal,
Kolhapur Institute of Technology's,
College of Engineering and Technology,
Kolhapur, having its office at 1-3, Gokul,
Shirgaon, Kolhapur, Dist. Kolhapur.

... Respondents

Mr.C.K. Bhangoji alongwith Ms. Suvarna S. Yadav, advocates for
Petitioner.

Ms. Sushma S. Bhende, Asst. GP for Respondents No.1 to 3-State.

**CORAM : R.D. DHANUKA AND
ABHAY AHUJA, JJ.**

RESERVED ON : 30TH SEPTEMBER, 2021.

PRONOUNCED ON : 21ST OCTOBER, 2021.

JUDGMENT : (PER ABHAY AHUJA, J.)

1. Rule. With consent of the counsel for the parties, rule made returnable forthwith and heard finally.

2. By this petition, filed under Article 226 of the Constitution of India, petitioner is challenging the legality and validity of the judgment and order dated 14th December 2017 passed by the District Caste Certificate Scrutiny Committee, Kolhapur viz. Respondent No.2, rejecting/invalidating the caste claim of the petitioner as Gavali, Nomadic Tribe (B).

3. Brief facts leading upto this petition are that, petitioner who claims to belong to the Gavali community by birth applied to the Sub-Divisional Officer, Ichalkaranji for grant of caste certificate and was granted the same on 9th June 2010. Thereafter, petitioner intending to seek higher education, made an application before the

second respondent-committee for verification of his caste certificate through his junior college alongwith the necessary documents, evidence in support of his claim to the Gavali, N. T. (B). It is stated that at the time of filing this petition, petitioner was pursuing biotechnology degree course in a reserved category seat in N. T. (B) in respondent no. 4-college viz. Kolhapur Institute of Technologys College of Engineering and Technology, Kolhapur.

4. Respondent No.2-Committee handed over the case of petitioner to the Vigilance Cell for conducting the caste certificate and home inquiry after which the police inspector of Vigilance Cell conducted inquiry and recorded statements of local persons at the petitioner's place of residence and submitted report to respondent no. 2- Committee. The Committee issued a show cause notice to petitioner based on the said vigilance cell report which was replied to by the petitioner. Thereafter, without considering the vigilance cell report, the affinity test, the evidence of agreements for milk supply by petitioner's cousin grandfather, the respondent no. 2-committee rejected petitioner's claim to Gavali, NT (B).

5. It is the case of petitioner that petitioner belongs to Gavali caste and that the family of the petitioner was engaged in the traditional occupation of selling milk. It is submitted that reputed local persons around petitioner's place of residence testified petitioner's family carrying on the traditional occupation of selling milk as well as the traits rituals, rites and traditions of petitioner's family resembling those of Gavali Nomadic tribe. Petitioner also submitted documentary evidence, in the nature of agreement in respect of petitioner's cousin grand-father supplying milk to certain hotels from the year 1958 was submitted to the caste scrutiny committee.

6. Learned counsel for petitioner submits that all these vital pieces of evidence have been rejected by the caste scrutiny committee primarily on the ground that no reference to caste entries was found in the documents except description as Muslim or Musalmaan. Learned counsel for petitioner submits that it is settled law as held by this Court in Writ Petition No. 10577 of 2013 that in the case of Muslims, the affinity test is necessary as there is no likelihood to be found in caste entries in their documents and therefore, affinity to Gavali community as testified in the

statements recorded in the inquiry report dated 22nd February 2017 submitted by the Vigilance Cell to the respondent no.2- committee as well as the agreements dated 21st September 1959 and 17th April 1958 was conclusive to show that the petitioner's cousin grandfather was selling milk to the hotels etc. and ought to have been considered by the Scrutiny Committee. Learned counsel further submits that as per law laid down by the Hon'ble Supreme Court in the case of **Madhuri Patil Vs. Additional Commissioner, Tribal, (1994 SCC (6) 241)**, the respondent no.2- Committee ought to have directed the vigilance officer to record statement of petitioner or his family members with respect to the affinity towards the Gavali community as is required when there are no documents to show caste.

7. Learned counsel for petitioner draws attention of this Court to the vigilance cell report dated 22nd February 2017 regarding home inquiry in petitioner's case at pages 43 and 44, relevant portions whereof are quoted as under:-

“उमेदवाराचे खालील प्रमाणे शालेय दाखले हजर केलेले आहेत.

उमेदवाराचे नाव	शालेचे नाव	प्रवेश दिनांक	जन्म दिनांक	जात	जन्मस्थळ

गुलाब कादर जमादार	देसाई विद्या मंदिर, उदगांव, ता. शिरोळ, जि. कोल्हापूर	२७/०४/१९४९	२७/११/१९३७	मुसलमान	उदगांव पे शिरोळ
अख्तर कादर जमादार	हेर्ले हायस्कूल, हेर्ले	१६/०६/२००८	०७/०८/१९९८	मुसलमान	कोल्हापूर
जमादार कादर गुलाब	हेर्ले हायस्कूल, हेर्ले	१२/०६/१९७९	०७/०३/१९६४	मुसलमान	कोल्हापूर

दक्षता पथकाने वरील अ. क्र. १ ते ३ मधील शाळेच्या दाखल्याच्या जनरल रजिस्टर उता—यांची छायांकित सत्यप्रती उपलब्ध करून घेतले आहेत. शाळेत जातीची नोंद उमेदवाराने सादर केलेल्या शालेय दाखल्याप्रमाणे आहे. शाळेच्या रजिस्टर मध्ये खाडाखोड, शाईबदल किंवा अक्षरबदल दिसून येत नाही.

३) गृहचौकशी —

उमेदवार हे मुळचे राहणार म. पो. हेर्ले ता. हातकणंगले जि. कोल्हापूर येथील आहेत. दक्षता पथकाने सादर गावातील खालील रहिवाश्याकडे उमेदवारांच्या कुटुंबाची जात, व्यवसाय व वास्तव्याबाबत तसेच त्यांच्या चाली—रिती, रूढी—परंपरा व रोटी—बेटी व्यवहाराबाबत चौकशी करून त्यांचे जबाब नोंदविलेले आहेत.

१. बाबासाहेब रहिमान नदाफ वय वर्षे ६०
२. गौस काशीम नायकवडी वय वर्षे ६४

वरील साक्षीदार हे नमुद पत्यावर त्यांच्या जन्मापासून राहत असून उमेदवारास तसेच उमेदवाराच्या कुटुंबातील सदस्यांना सुध्दा ओळखतात. उमेदवाराचे आजोबा गुलाब जमादार यांचा व कुटुंबीयांचा पारंपारिक व्यवसाय हा दुध विक्री करण्याचा असल्याचे ते सांगतात. तसेच त्यांच्या सर्व रूढी परंपरा या मुस्लीम धर्मा प्रमाणे पार पाडल्या जातात. तसेच त्यांचे वैवाहिक संबंध हे जमादार, मुल्ला, नायकवडी, देसाई व बारगीर यांचेत होत असल्याचे व ते जातीने गवळी असलेले त्यांनी सांगितलेले आहे.

४) वंशावळीचे प्रतिज्ञापत्र —

उमेदवाराच्या वडीलांनी विहित नमुन्यामध्ये वंशावळीचे प्रतिज्ञापत्र सादर केले आहे. सादर प्रतिज्ञापत्रामध्ये नमुद असलेले उमेदवाराचे नातेसंबंध हे इतर पुराव्यावरून स्पष्ट होत आहेत.

चौकशीचा गोषवारा

उमेदवार यांच्या गवळी जातीदाव्या प्रकरणी केलेल्या चौकशीचा गोषवारा पुढीलप्रमाणे —

१. गुलाब कादर जमादार यांच्या शालेय दाखल्यावरती जातीची नोंद मुसलमान आहे.
२. अख्तर कादर जमादार यांच्या शालेय दाखल्यावरती जातीची नोंद मुसलमान आहे.
३. जमादार कादर गुलाब यांच्या शालेय दाखल्यावरती जातीची नोंद मुसलमान आहे.
४. उमेदवार यांचे राहते गावामध्ये साक्षीदारांकडील गृह चौकशीमध्ये त्यांनी उमेदवार यांना व त्यांचे वडील, आजोबा यांना ओळखत असल्याचे तसेच उमेदवाराचे

आजोबा यांचा परंपरागत व्यवसाय हा दूध विक्री करत असल्याचे सांगितले आहे. त्यांचे वैवाहिक संबंध हे जमादार, मुल्ला, नायकवडी, देसाई व बारगीर यांचेत होत असल्याचे व ते जातीने गवळी असलेचे सांगितलेले आहे.

एकंदरीत उपरोक्त नमूद केलेल्या उमेदवार यांच्या गवळी जाती दाव्याच्या पडताळणी संदर्भात चौकशी करण्यात आली असून चौकशीची कागदपत्रे अनुक्रमे अवलोकनार्थ या सोबत अग्रेषित करण्यात येत आहेत.”

8. Learned counsel submits that in the case of Muslim Community, in the school records only “Musalmaan” is mentioned and there is no reference to their caste or tribe. Referring to paragraph 3 above, regarding Home Enquiry he submits that the two persons referred to therein claimed to know the petitioner as well as petitioner’s family members positively asserted that petitioner’s grandfather’s and their family ancestral business was of selling milk. Their traditions and rituals are followed as per Muslim religion. Similarly, their marriage relations are with Jamadar, Mulla, Nayakvadi, Desai and Bargir communities and therefore they are belonging to Gavali tribe. Drawing attention to the conclusion no.4, as quoted above, learned counsel reiterated that petitioner therefore belongs to the Gavali Nomadic tribe.

9. Learned counsel submits that despite the clear findings by the Vigilance Cell, in favour of petitioner’s claim to Gavali Nomadic

Tribe, the respondent no.2 issued a show cause notice dated 5th April, 2017 to petitioner seeking explanation to the enquiry report, which he submits was appropriately responded to by letter dated 25th April 2017. Learned counsel takes us through the said letter and submits that the entire focus of the letter was on the absence of documentary evidence and not on the successful affinity test.

10. Learned counsel at this stage tenders a communication dated 22nd July, 1996 from Additional Secretary, Social Welfare, Cultural and Sports Department to Director, Social Welfare containing directions highlighting the necessity and importance of home enquiry etc. in the case of Muslim Community as there is no description of caste in their documents and there is less likelihood of finding caste description therein. In support learned counsel takes us to various exhibits to the petition which only show “Musalmaan” in the column for caste.

11. Learned counsel submits that the caste scrutiny committee has simply rejected petitioner’s documents on the ground that only Musalmaan is mentioned in the school admission records and other documentary evidence and no where Gavali is mentioned or that

the petitioner has not produced any caste validity certificate previously granted to any blood relation showing Gavali tribe. With respect to the cousin grandfather's milk supply contracts, it is submitted that the same has been rejected on the ground that the same had not been registered and is not a public document but only a private one.

12. The scrutiny committee has rejected the vigilance cell report without even considering the basic principle of determining caste validity in the case of Muslim community and only on the basis that the vigilance cell report is based only on oral evidence.

13. Learned counsel for petitioner has taken us through the two agreements entered into between petitioner's cousin grandfather in the years 1958-1959, exhibited from pages 31 to 39 of the petition.

14. In support his contentions, learned counsel has relied upon the following decisions:-

i) Smt. Bismilla Mohammedsab Sayyed (Mujawar) @ Bismilla Alabaksh Shikkalgar Vs. Divisional Caste Certificate Committee No. 1, Solapur through its Member Secretary and others in Writ Petition No. 10577 of 2013 decided on 21st February 2014.

ii) Shri Shahjahir Aminullah Momin Vs. State of Maharashtra through its Secretary and Others in Writ Petition No. 8687 of 2015 decided on 26th February 2019.
iii) Miss Swaliha B. Sanadi Vs. State of Maharashtra and others in Writ Petition No. 11414 of 2019 decided on 22nd December 2020.

15. Per Contra, learned AGP, Ms Bhende, relies upon the order of scrutiny committee dated 14th December 2017 and reiterates that the school admission documents of petitioner as well as his relatives refer to the caste as “Musalman” and not Gavali. Referring to the vigilance cell report, she submits that the statements of the persons named therein were only oral and therefore cannot be relied upon. With respect to the agreements, learned AGP submits that the same were not registered and therefore deserve to be rejected. Learned AGP, therefore, urges this Court to dismiss the petition and uphold the order of the scrutiny committee rejecting the petitioner’s claim to the Gavali Nomadic Tribe.

16. We have heard Mr. Bhangoji, Learned Counsel, on behalf of Petitioner and Ms. Bhende, Learned Assistant Government Pleader for Respondents No. 1 to 3- State and with their able assistance, we have perused the papers and proceedings in the matter.

17. Let us first come to the decisions cited by learned counsel for petitioners in support of his contentions. With respect to the decision in the case of **Smt. Bismilla Mohammedsab Sayyed (Mujawar) (supra)**, this Court while considering the claim of petitioner therein belonging to other backward classes (OBC) had the occasion to examine the claim of petitioner, who was Mujawar caste amongst Mohameddans, which is recognised as other backward class. It was held therein that on the basis of recommendation of the Mandal Commission certain castes in Mohameddans were recognized as reserved caste and the notification was issued by the State Government in this regard on 9th August 1995. This Court while holding that since in the case of Mohameddans, there was no recognised castes or sub-castes as in the case of Hindus, there was no likelihood of finding any entry of the caste of a person of Mohameddan religion in the old records.

18. This Court, therefore, highlighted the necessity of recording of statements of respected and responsible persons from the concerned area under Rule 13 (1) of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward

Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 as well as the affinity test. This Court also highlighted the importance of the vigilance cell and affinity test in the case of Muslims in contradistinction to the entries in the records as in the case of Hindus. Paragraphs 5 and 6 of the said decision are usefully quoted as under:-

“5. It cannot be disputed that in case of the Mohameddians, there were no recognised castes or sub castes and therefore, as in the case of Hindus, there is no likelihood of finding any entry of the caste of a person of Mohameddians religion in old records.

6. In the present case, the petitioner is claiming to be belonging to caste Mujawar. Our attention is invited to the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (hereinafter referred to as ‘the said Rules’). Rule 12 provided for the constitution of Vigilance Cell. Rule 13 deals with contents of the report upon investigation made by the Vigilance Cell. Sub Rule (1) of Rule 13 reads thus :

“ 13 Report of Vigilance Cell and Issues to be dealt with-

(1) Vigilance Cell Officer(s) shall submit report upon investigating into the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category claim referred to it-

(a) by visiting permanent place of residence and conducting domestic inquiry, or

(b) by recording statements of respected

and responsible persons from concerned area, including representatives of Local Self Government, Police, Patil, etc; or (c) by collecting information, as part of recording statement, as regards to name, age, educational qualification, occupation, existing place of residence and information regarding properties (existing and disposed) of family members of applicant or claimant; or (d) by collecting information including the sociological, anthropological and ethnological (anthropological moorings and ethnological kinship), genetical traits of the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, if any;; or (e) by personally visiting Office of the Competent Authority or revenue or school or other concerned offices.”

In the present case, the Vigilance Cell report is on record. Clause (d) of sub Rule 1 of Rule 13 provides that the Vigilance Cell should collect information including sociological, anthropological, ethnological and genetical traits of the relevant Caste. In the present case, this exercise was necessary as we have already observed earlier that there is no likelihood of any entry of caste recorded in old record in the case of Mohameddans. It was necessary for the Vigilance Cell to make an enquiry in terms of clause (d). An enquiry should have been made to ascertain the traditional occupation of the Mujawars. We have perused the Vigilance Cell report. We find that no such exercise has been made. Perusal of the impugned order shows that even the Caste Scrutiny Committee has not applied the affinity test. Therefore, we find that the entire approach of the Caste Scrutiny Committee is erroneous as in the facts of the case, the Caste Scrutiny Committee should

have directed the Vigilance Cell to do the exercise under the provisions of Clause (d) of Sub Rule 1 of Rule 13 the said Rules. The Caste Scrutiny Committee ought to have held the appropriate enquiry in the present case. Earlier, the petitioner had obtained caste certificate of the caste Shikalgar. A caste certificate is not conclusive evidence of caste. It is not the case made out that any adjudication was made on the basis of the said certificate by the Caste Scrutiny Committee. In the present case, the enquiry as contemplated by the Rules has not been held. Only on the basis of the impugned order, the petitioner, who was elected Councilor of Municipal Corporation has been unseated. Now, the notification dated 15th February 2014 issued by the first respondent State Election Commission records that the election will be held to fill in the vacancy caused by the petitioner. The election programme is to start from 25th February 2014 and the election is scheduled to be held on 23rd March 2014. If the petitioner succeeds after the order of remand, the order unseating the petitioner will not survive and therefore, to avoid any complications, it will be necessary for the State Election Commission to postpone the election for filling up the vacancy caused by the petitioner.”

19. Coming to the decision of this Court in the case of **Shahjahir Aminullah Momin (supra)**, this court while considering the claim of petitioner being member of Musim Momin community as OBC has reiterated that as there is no practice of mentioning the caste/sub-caste amongst the Muslims, the report of vigilance cell assumes significance. Paragraphs 7 to 9 of the said decision are pertinent and are quoted as under:-

“7] Evidently there are no pre-constitutional documents,

which record the caste of the forefathers of the Petitioner as "Muslim Momin". However, this factor does not seem to be decisive as even Respondent No.2 - Committee expressly observed that there was no practice of mentioning the caste/sub caste amongst the Muslims. The fact that the school leaving certificates of the paternal relations of the Petitioner simply record Muslim and do not find mention of 'Momin', does not detract materially from the Petitioner's claim. The Respondent No.2-Committee was of the view that the claimant was required to place material indicating the occupation, and the Petitioner failed to do so.

8] In this context, the report of the Vigilance Cell assumes significance. It is pertinent to note that the Vigilance Cell report refers to the local inquiry made with the witnesses and explicitly records that the grandfather and father of the Petitioner were handloom weavers and their traditional occupation was handloom weaving. It further records that the persons who were in the know of the things recognized the Petitioner and his ancestors as the members of the Momin caste. The Vigilance Cell report also refers to a certificate issued by the Momin Jamat Trust to the effect that the Petitioner is a member of the Momin community. Conversely, the vigilance inquiry did not find any contra material.

9] In the backdrop of the aforesaid Vigilance Cell report, it is necessary to note as to how the Respondent No.2 - Committee dealt with the said report. In the impugned order, the Respondent No.2 - Committee simply observed that it does not agree with the report of the Vigilance Cell. No reason was assigned by the Respondent No.2-Committee to indicate as to why it found itself unable to agree with the Vigilance Cell report. This factor is of material significance for the reason that the Respondent No.2 - Committee was alive to the position that the insistence upon entries of the caste in the documents was not expected as the Petitioner professed Muslim religion. The report of the Vigilance Cell which lent requisite support to the claim of the Petitioner could not have been

thus brushed aside without assigning any justifiable reason.”

20. Also the decision of this Court in the case of **Miss Swaliha B. Sanadi (supra)**, (where one of us R. D. Dhanuka, J. was a member) assumes significance in the light of the present discussion as this Court in this decision as well has highlighted the significance of affinity test as amongst Muslims there is no practice of mentioning caste in the records. Paragraphs no. 9 to 11 are relevant and are quoted as under:-

“9. Mr. Sutar is right in relying on the judgment in the matter of Jamadar Mehaboob Ghudubai (supra). He placed reliance on paragraph 13 of the said judgment. The said paragraph 13 is reproduced herein below.

*“13. We also find that Vigilance Cell has not carried out enquiry as required by clause (d) of Sub- Rule 1 of Rule 13 which provides that the Vigilance Cell should include information including sociological, anthropological, ethnological and genetical traits of the relevant Caste. In the present case, this exercise was necessary as there is no likelihood of any entry of caste recorded in old record in case of Mohameddans. It was necessary for the Vigilance Cell to make an enquiry in terms of clause (d). Perusal of the impugned order shows that the Committee has not applied the affinity test. This Court has already considered the provisions of Rule 13 of the said Rules in case of **Smt. Bismilla Mohammedsab Sayyed (Mujawar) @ Bismilla Allabaksh Shikkalgar** (supra). In this case also we find that entire approach of the Caste Scrutiny Committee is erroneous as in the facts of this case, the Caste Scrutiny Committee should have directed*

the Vigilance Cell to do the exercise under the provisions of clause (d) of Sub-Rule 1 of Rule 13 of the said Rules. The Caste Scrutiny Committee ought to have held appropriate enquiry in the present case.”

10. As the Vigilance Cell Report is not in accordance with the Rules and therefore, the impugned order suffers from illegality and irregularity.

11. As far as the second contention that none of the documents show that the petitioner belongs to caste “Kasai”, it is well settled that in case of Muslims, there was no practice of mentioning the castes in the record.”

21. What emerges from the above exposition is that:

(i) The committee should be alive to the position that insistence upon entries of the caste in the documents is not be expected in a case where the applicant professes Muslim religion,

(ii) As held in the decisions cited herein, this Court has repeatedly highlighted the significance of affinity test as amongst Muslims there is no practice of mentioning caste in the records except mentioning the “Muslim”, “Musalman” or “Mohameddan” as can be seen from the documents annexed to the petition,

(iii) particularly in the case of Muslims, under Rules 12 and 13 of the said Rules, vigilance cell officer is to submit report by recording statements of respected and responsible persons from the concerned area as well as by collecting information including the

sociological, anthropological and ethnological, genetical traits in respect of the concerned caste/tribe, which in our view, the vigilance officer has scrupulously and meticulously done as can be seen from the submissions above,

(iv) as in the case of the Muslim community there is no practice of mentioning the caste/sub-caste and evidently in this case neither there are any pre-constitutional documents nor records indicating the said caste therefore, the report of vigilance cell assumes significance. The local inquiry made with the witnesses regarding the traditional occupation would also come out in the vigilance cell report. The same in our view been erroneously rejected by the committee on the flimsy ground that the same was based on oral statements. Where an inquiry is made pursuant to the said Rules by the vigilance cell officer naming the persons who gave the information, in our view rejection by the committee was completely unwarranted. There is also no also allegation by the committee as to the veracity of this information but simply on the basis that the vigilance cell report is based on oral evidence, the same has been rejected. This in our view is not acceptable.

(v) Further the rejection of the milk supply agreements entered into by cousin grand-father of petitioner is also erroneous. A

perusal of the said agreements indicates that these agreements are on stamp papers and are entered into between one of C. B. Mohammad Malbari and Yashin Kadar Jamadar of Kolhapur (cousin grandfather of petitioner) and the other one is between H. Manjunath Shivdev Shetty and Yashin Kadar Kamadar. Both the agreements are for supply of milk. True that these documents are not registered but we observe that the same are on stamp paper and in any event agreements for selling/supply of movables are not compulsory registrable documents under law. For the caste scrutiny committee to raise such an objection for rejecting claim of petitioner is completely misplaced in our view.

22. A perusal of the impugned order shows that the committee has not applied the affinity test nor considered the vigilance cell report. The caste scrutiny committee ought to have considered the conclusions in the vigilance cell report. It has miserably failed in its duty to do so.

23. We also agree with the submissions made on behalf of petitioner with respect to the communication dated 22nd July 1996 from the Additional Secretary, Social Welfare to the Director, Social

Welfare which contains directions highlighting the necessity and importance of the home inquiry etc. in the case of Muslim community as there is no description of caste in their documents and there is a less likelihood of finding caste description therein, which is clearly borne out from the various exhibits annexed to the petition.

24. Having observed as above, it will also not be out of place to refer to the decision of this Court in the case of **Kum. Fehmi Mushtak Mukadam (supra)**, where this Court, based on the report of the vigilance cell was persuaded to uphold the claim of petitioner belong to Gavali Nomadic Tribe-B, who professed Muslim religion.

Paragraph 7 of the said decision is usefully quoted as under:-

“7. In the present case, the report of vigilance cell shows that the grand-father of the petitioner was in the business of grazing the cattle and selling the milk. He had cattle shed and maintaining 15-20 cows and buffaloes. Not only this but upon examination of the witnesses and vigilance cell further found that the relatives of the petitioner are having surnames which are normally found in Gavali Tribe. In that view of the matter, we are inclined to allow the Petition”

25. We are not impressed with the learned AGP's arguments. The learned AGP has not been able to distinguish the above referred judgments.

26. We, therefore, have no doubt that respondent no. 2 scrutiny committee having completely failed in its duty to apply settled basic principles based on which caste validity claims in case of Muslims are to be determined and having completely ignored the overwhelming and uncontroverted findings of the vigilance cell as well as the two agreements entered into by petitioner's cousin grandfather for supply of milk in the years 1958 and 1959. The impugned judgment and order dated 14th December 2017 thus deserves to be quashed and set aside. We hereby quash and set aside the judgment and order dated 14th December 2017 passed by respondent no. 2 viz. District Caste Certificate Scrutiny Committee, Kolhapur.

27. We further direct the respondent no.2-committee to issue caste validity certificate to petitioner as belonging to Gavali, Nomadic Tribe (B), within a period of two weeks from today.

28. Rule is made absolute in the above terms. Writ petition is accordingly allowed. There shall however be no order as to costs.

29. Parties to act upon an authenticated copy of this order.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)