



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.6515/2022

Ku. Parvi Ashish Chakravarti,

Petitioner.

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Social Justice and Special Assistance Department,
Mantralaya,
Mumbai-32.
2. The District Caste Certificate Scrutiny Committee,
Amravati,
Through its Chairman,
Dr. Babasaheb Ambedkar
Samajik Nyaya Bhavan,
1st Floor-V-Wing,
Camp Road,
Amravati.

Respondents

Mr. Naquid Z. Mirza, Advocate for petitioner.
Mr. M.K. Pathan, AGP for respondent nos.1 and 2.

CORAM : PRITHVIRAJ K. CHAVAN AND URMILA JOSHI-PHALKE, JJ.
DATE OF RESERVING THE JUDGMENT : 06/10/2023.
DATE OF PRONOUNCING THE JUDGMENT :10/10/2023.

JUDGMENT (Per Prithviraj K. Chavan, J.)

1. **Rule.**

Learned Assistant Government Pleader waives service.

Rule is taken up for hearing forthwith by consent of learned counsel for the parties.

2. The petitioner – Ku. Parvi Ashish Chakravarti has sought to invoke writ jurisdiction of this Court through her father (legal guardian) impugning an order dated 22.09.2022 passed by respondent no.2 invalidating her caste as “Mahar”. The petition is filed through the guardian since, the petitioner - Parvi is aged about 17 years.

3. Briefly stated, facts of the petition are summarised as follows:

The petitioner has passed 12th examination in the current session and had also cleared State Common Entrance Test. She belongs to ‘Mahar’ community, which is recognized as ‘Scheduled Caste’ under the Constitution (Scheduled Castes) Order, 1950.

4. A proposal was forwarded to respondent no.2 on 7.10.2021 for deciding the caste claim of the petitioner. Several documents were annexed along with proposal by the petitioner in order to

substantiate her claim as regards her caste 'Mahar' which is a Scheduled Caste, as per the Constitution, more particularly, prior to the year 1950.

5. The Vigilance Cell conducted an inquiry as regards the customs and rituals of the petitioner and submitted its report to respondent no.2 on 29.07.2022. Subsequently, respondent no.2 issued a communication dated 16.09.2022, by which the petitioner was directed to remain present before it for hearing. The petitioner submitted her detailed reply to the show cause notice issued by the Vigilance Cell on 22.09.2022. The petitioner had taken exception to the report of the Vigilance Cell. Respondent no.2 thereafter, by the impugned order dated 22.09.2022 invalidated the caste claim of the petitioner as 'Mahar' which has been challenged by the petitioner, by way of present petition.

6. We have heard Mr. Mirza, learned counsel for the petitioner and Mr. Pathan, learned AGP for the respondents.

7. At the outset, learned counsel for the petitioner, has pressed into service a recent pronouncement of a judgment on identical facts

delivered by a Division Bench of this Court in case of *Priti d/o Ashok Chakranarayan Vs. State of Maharashtra and another*, reported in *2023 (3) Mh.L.J. 312*. We shall consider the ratio laid down by the Division Bench in case of *Priti* (supra) in the later part of the judgment.

8. The petitioner had submitted following documentary evidence before respondent no.2, in order to substantiate her claim:-

(i) Caste Certificate of the petitioner issued by Sub Divisional Officer Daryapur, bearing No.MRC – 40112130411 dated 3.7.2020.

(ii) The School Leaving Certificate of the petitioner issued by Headmaster, Golden Kids English High School, Amravati, dated 17.8.2020, wherein her caste is mentioned as 'Mahar'.

(iii) School Leaving Certificate of father of the petitioner Shri Ashish Gunvantrao Chakravarti, issued by Headmaster, Shri Gajanan Maharaj High School, Amravati, District -Amravati, indicating his caste as 'Mahar'.

(iv) School Leaving Certificate of grandfather of the petitioner - Shri Gunvanta Chandrabhan, issued by Headmaster, Zilla Parishad Primary Marathi School, Sukali, indicating his caste as 'Christain'. Date of admission was shown in the year 1952.

(v) Copy of Kotwal Book, issued by Tahsildar, Daryapur, District Amravati in the name of great grandfather namely Chandrabhan Fulya Mahar, wherein it has been mentioned that a male child born to Chandrabhan Fulya was Namdev. The said document indicates that Namdev s/o Chandrabhan Fulya was born on 2.10.1940. The birth extract indicates caste of Namdev as 'Mahar'.

(vi) Copy of the first page of service book in the name of cousin paternal grandfather of the petitioner Shamrao Chandrabhanji Chakravarti reveals that his caste is 'Hindu Mahar'. However, School Leaving Certificate of the real grandfather reveals his caste as 'Christian'.

9. The petitioner had also submitted following validity certificates of her blood relatives including her father:

(i) Roshan Rajendra Chakravarti, cousin of the petitioner. The Committee had granted validity certificate on 5.11.2009.

(ii) Rajendra Gunvant Chakravarti, uncle of the petitioner. The Committee had granted validity certificate on 9.8.2011.

(iii) Ashish Gunwantrao Chakravarti, father of the petitioner. The Committee had granted validity certificate on 25.8.2015.

10. It is an admitted fact that the petitioner had submitted not only caste validity certificates issued by respondent no.2 in respect of her blood relatives, as stated herein above, but, had also tendered a pre-constitutional document in order to substantiate her claim of belonging to caste 'Mahar' which is a scheduled caste.

11. Pre-constitutional document is in the form of an extract of Kotwal book. It is a public document. It depicts the date of birth of Namdev s/o Fulya Mahar who was born on 2.10.1940. The said document also reveals his caste as 'Mahar'. What more proof was required to be considered by the Committee who appears to have turned a Nelson's eye to this glaring document apart from three validity certificates which have already been granted by it in favour of blood relatives of the petitioner? The respondent no.2 had literally rendered this pre-constitutional document otiose.

12. The only contention raised by respondent no.2 while invalidating the claim of the petitioner is that as per Vigilance Cell report, it transpired that the father and grandfather of the petitioner had converted themselves to 'Christianity' meaning thereby, they have adopted Christian religion. Since, they converted themselves

into 'Christianity', they are included in the category of Other Backward Classes at Sr. No.196 as 'Scheduled Caste' converted to 'Christianity'.

13. It is quite interesting to note that in its reply on affidavit, respondent no.2 states that it is an admitted fact that the petitioner belongs to caste 'Mahar' but, those who professes the religion Hindu, Sikh and Buddhist only belongs to the category of Scheduled Caste. There is absolutely no shred of evidence on record or material found by the Vigilance Cell during enquiry that either the grandfather, father or the petitioner had undergone Baptism in order to buttress the respondents' contention that they have converted into 'Christianity'. Baptism is a Christian sacrament by which one is received in Church and sometimes given a name, generally involving the candidate is to be anointed with or submerged in water.

14. Be that as it may. In its reply, it is further stated that traditional occupation of the petitioner and her kith and kin is labour work. Marriages are performed as per 'Buddhism' by singing 'Budha Vandana'. The groom and bridegroom wear white dresses during

marriage ceremony. They celebrate Dr. Babasaheb Ambedkar Jayanti as well as Gautam Buddha Jayanti or Buddhist festivals. Their deity is Gautam Buddha. The surnames in their caste are Wankhade, Ingle, Khandare, Chakravarti and Ingole. Merely because the officer of the Vigilance Cell, during his visit to the house of the petitioner, noticed a photograph of Lord Jesus Christ, he assumed that the petitioner's family professes Christian religion. This so called report of the Vigilance Officer merits to be discarded at the threshold being figment of his imagination, more particularly in light of the tradition of Buddhism being followed by petitioner's family sans any material to contradict the claim of the petitioner. It is not the case of respondent no.2 that earlier caste validity certificates issued by it are tainted by fraud or were granted without jurisdiction.

15. In reply to the show cause notice to the petitioner, it was submitted that the photograph of Jesus Christ in the house of petitioner was gifted by someone and, therefore, it was displayed in the house. No sane man will accept or believe that merely because there is a photograph of Jesus Christ in the house would *ipso facto* mean that a person had converted himself into Christianity.

16. The Hon'ble Supreme Court, in that context, in the case of *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others* reported in *(2011) Mh.L.J.919* has held that the entries in the pre-constitutional documents have more probative value and if a candidate has such documents of his fore-fathers, then the claim of such candidate cannot be rejected. Even in such cases, as a matter of routine, the claims were rejected.

17. It would be apposite to place reliance on a decision dated 15.4.2016 of this Court in *PIL No.102/2013 (Narayan Dinbaji Jambule and others Vs. The Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli and others with PIL No11/2016 (Bhagwan Vithuji Nanaware Vs. The Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli and others)*, wherein this Court was compelled to summon the then Commissioner, Tribal Research and Training Institute, Pune directing him to present personally in the Court. Since, this Court had noticed that inspite of judgment of this Court in case of *Mana Adim Jamat Mandal vs. State of Maharashtra and others* reported in *2003 (3) Mh.L.J. 513*, wherein this Court had specifically rejected the claim of the State stating therein that only such of the Manas' who are having affinity with the Gonds' are

entitled to be granted validity of belonging to the Scheduled Tribe and in spite of the said Judgment being upheld by the Apex Court in the case of *State of Maharashtra and others Vs. Mana Adim Jamat Mandal*, reported in (2006) 4 SCC 98, the members of the Committee were bent upon to reject the claim of the candidates belonging to 'Mana' community.

18. The Division Bench had taken a survey of earlier decisions of this Court in case of *Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others* reported in 2010(6) Mh.L.J. 401, wherein it is held that if the kith and kin of a candidate is already granted Validity Certificate, such candidate should also be granted Validity Certificate. But still, the claims were rejected by the Committee on the ground that the claim of each of the candidates is to be decided on its own merits.

19. This Court in the aforesaid PILs observed thus:

"We find that there is no such conflict as sought to be projected by the learned Commissioner. The ratio laid down in the case of Apoorva d/o. Vinay Nichale (supra) will have to be considered as laying down a proposition that when a particular member in a family has been granted Validity Certificate after going through the rigour of scrutiny including

enquiry by Vigilance Cell, then the brother, sister, father and mother of such a candidate should not be required to go through the rigour of such scrutiny again.

By no stretch of imagination, the ratio in the case of Apoorva d/o. Vinay Nichale (supra) could be said to be holding that even when validity is granted to the candidate without following the procedure prescribed i.e. Vigilance Cell etc; even in such cases, the kith and kiln of a person who is granted validity, such person should also be granted Validity. The Division Bench in the case of Shweta Ramlal Ghunavat (supra) though has referred to the earlier Judgment in the case of Apoorva d/o. Vinay Nichale, (supra), the ratio laid down therein is that when the Validity Certificate is granted without following the procedure as prescribed by law, then merely because validity is granted to the family member of a candidate, it would not bind the Members to grant validity to other members of the family.

It could thus be seen that if the Authorities correctly apply the law, there should be no confusion in their minds. When the validity is granted to one of the members of the family after entire procedure was followed including Vigilance Cell, home inquiry etc., then again requiring the brother, sister, father and mother etc. of such a candidate to go through the same procedure would unnecessarily burden the work of the Committee, inasmuch as the material to be considered against the members of the family would be the same.

However, if on erroneous presumption or erroneously construing the documents and without undergoing the process of scrutiny, vigilance etc. validity is granted to a member in the family, then

such a Validity Certificate will not ipso facto entitle other members of the family to claim Validity Certificate on the basis thereof. In such a case, the Committee will be fully justified in holding de novo enquiry if it is found that the claim of such candidate is not supported by documentary evidence and there are contra documents available in denying the claim of such a candidate.”

20. It is apparent from the impugned order of respondent no.2, which is based on the conclusion drawn by the Vigilance Cell is incorrect, without properly appreciating law laid down by the Supreme Court in the case of **Anand** (supra) as well as law laid down by this Court in case of **Apoorva** (supra) and **Shweta Ramlal Ghunavat Vs. State of Maharashtra and others** dt. 25.11.2011 (Writ Petition No.10144 of 2011).

21. This Court in a latest judgment in the case of **Priti** (supra), which is on identical facts held that the Divisional Caste Scrutiny Committee should not have rejected the claim of the petitioner as a candidate or invalidated the caste claim. In the said case, it is contended that the petitioner failed to produce caste claim documents prior to 1950 and during affinity test, photos of Lord Jesus Christ and portrait of Dr. Babasaheb Ambedkar were found in prayer-room of her house. The Committee invalidated the petitioner's

caste claim on the premise that she was professing Christianity by ignoring other documents produced on record to substantiate her claim as belonging to 'Mahar' caste. This Court noted that only because portrait of Lord Jesus Christ was found at the house of the petitioner, does not mean that the petitioner ceased to be 'Mahar'.

22. Before parting with the judgment, we would like to invite attention of the respondents to the last paragraph of the judgment in PIL No.102/2013 (Narayan Dinbaji Jambule and others Vs. The Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli and others with PIL No.11/2016 (Bhagwan Vithuji Nanaware Vs. The Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli and others), wherein this Court had sounded a note of caution in the following words:-

“We make it clear that if, in spite of the afore-said directions, if the members of the Committee continue to deny Validity Certificates to the candidates, in spite of there being pre-constitutional documents with them and when there is no material available to contradict their claim, we will be left with no other alternative than to take serious view of the matter”.

23. Corollary of the aforesaid discussed led us to hold that the impugned order deserves to be set aside as it has been passed by ignoring the settled legal position. Now, to the order:

ORDER

- (i) The petition succeeds.
- (ii) The impugned order dated 22.9.2023 passed by respondent no.2 - The District Caste Certificate Scrutiny Committee, Amravati, is quashed and set aside.
- (iii) Respondent no.2 is directed to issue caste validity certificate to the petitioner as belonging to 'Mahar' (Scheduled Caste) as notified at Sr. No.37 in the Constitution (Scheduled Caste) Order 1950 within a period of two weeks from the date of receipt of authenticated copy of this order.

24. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(PRITHVIRAJ K. CHAVAN, J.)

Ambulkar