

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Writ Petition No.2142 of 2002
With
Civil Application No.5746 of 2002
And
Civil Application No.3318 of 2015**

* Sameer Ahmed Khan s/o. Saud)
Ahmed Khan Patel.)
Aged 17 years (Minor))
Through his natural guardian)
and father :)
Saud Ahmed Khan Patel)
s/o Romekhan Patel)
Age 43 years,)
Occupation : Private Service)
R/o Mujeeb Colony, Lane No.1,)
Roshangate Aurangabad.) **.. Petitioner.**

Versus

1) The State of Maharashtra.)
)
2) The Committee for Scrutiny &)
Verification of Tribe Claims,)
Aurangabad)
Through its Member Secretary.)
)
3) The Executive Magistrate,)
Aurangabad.)
)
4) The Competent Authority &)
Director of Medical Education)
& Research, MS, Mumbai.)
)
5) Maharashtra University of)
Health Sciences, Main Road,)
Mhasrul, Nasik.) **.. Respondents.**

Shri. S.B. Talekar, Advocate, for petitioner.

Shri. V.D. Godbharle, Assistant Government Pleader for respondent Nos. 1, 3,4,5.

Shri. K.D. Bade Patil, Advocate, for respondent Nos.2 & 6.

**CORAM: T.V. NALAWADE &
Smt. I.K. JAIN, JJ.**

DATE : 19th MARCH 2015.

JUDGMENT : (Per T.V. Nalawade, J.)

1) The petition is filed to challenge the order dated 11-6-2002 made by the Committee constituted for scrutiny and verification of the tribe claims in Maharashtra (hereinafter referred to as "the Committee") under the provisions of 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 Act, 2000 (hereinafter referred to as "the Act"). The Committee has rejected the claim of the petitioner that he belongs to Scheduled Tribe by name "Raj". In the present petition, relief of setting aside that order is claimed. Also relief of declaration is

claimed that the petitioner belongs to the said scheduled tribe. Both the sides are heard. Original record was made available to this Court.

2) The caste certificate of the petitioner was referred to respondent No,2, Committee, by the college of the petitioner for verification along with his application on 6-6-2001. At the relevant time the petitioner was studying in 11th Standard (Science). The record shows that procedure is followed by respondent No.2, Committee and there is no dispute over the procedure followed by the Committee. The Committee has considered report of the vigilance cell which was prepared during inquiry. The Committee has considered the circumstance that validity certificate of this caste was issued by the Committee in favour of the sister of the petitioner in the past. For rejection of the claim of the petitioner the Committee has given following reasons :-

- (i) that in the school record of the father of the petitioner right from beginning upto end of education, the father of the petitioner had mentioned his caste and religion as "Musalman";

(ii) that in the school record of the petitioner and also his sister to whom validity certificate is issued, the caste and religion were mentioned as "Musalman";

(iii) that the petitioner could not establish ethnic linkage and affinity towards Scheduled Tribe, Raj;

(iv) that, the petitioner and his father do not have basic knowledge of traits, characteristics, customs etc. of this tribe and that of Gound, scheduled tribe which is synonym of Raj tribe;

(v) that in birth and death certificates of so called relatives of the petitioner produced on the record the caste was shown as Raj but during inquiry it was revealed that in the original record there was no such mention and by creating false certificate attempt was made to prove the claim.

3) The religion of the petitioner is Muslim. As per law established it was open to the petitioner to prove that he belongs to Raj, Scheduled Tribe. However, it was necessary for him to establish that he and his ancestors on father's side were of Raj tribe and they are still suffering from social disability in Muslim religion and also that they are still following the customs and traditions of Raj tribe.

While appreciating the material and considering the reasons given by the Committee, this Court is expected to keep in mind that the Committee consists of many members and one of them is Research Officer who has intimate knowledge in identifying the tribes. When the Committee has observed that Raj Tribe is synonym to Gound tribe, it was necessary for the petitioner to show to this Court that there is error apparent with regard to this observation of the Committee. Nothing in this regard is shown by the learned counsel for the petitioner.

4) In this regard it also needs to be kept in mind that if the so called relatives of the petitioner are using or were using the name or surname as Raj, this circumstance itself will not be sufficient to prove that they belong to Raj tribe.

5) In the present case complete names of the petitioner and his father are as under :-

Petitioner : Patel Sameer Ahmed Khan s/o Saud Ahmed Khan Patel.

Father of the petitioner : Patel Saud Ahmed Khan s/o
Romekhan Patel.

Father of the petitioner is studied upto 12th Standard and admittedly he never used the name "Raj".

6) The petitioner has relied on one so-called certificate issued in respect of the marriage of the so called brother of his grandfather. It was submitted that such record is maintained by Qazi and the certificate was issued by the Qazi. This record, xerox copy, is of the year 1940. As per this document, the marriage of one Bapuji Raj s/o Ahmed Raj was solemnized in the year 1940. The caste of this man was mentioned as "Shaikh Raj" and the religion was mentioned as "Hanafi". Occupation was shown as Raj. He was shown to be resident of Wahegaon, Tahsil Georai, District Beed. The bride name was given as Niyazbi Sk. Karim. Her caste was mentioned as Shaikh and religion was mentioned as Hanafi. Occupation was mentioned as household. Details of Meher amount are given in this document. Name of Qazi is mentioned as Gulam Mohd. s/o Abdul Quadar, resident of Wahegaon. No affidavit of concerned is there in support.

7) There is one more document, copy of certificate issued to one Umarkhan Pathan is produced and it is contended that this person was grandfather of the petitioner. As per this document, it was created in 1934. the particulars are as under :

Description of the bridegroom : Umarkhan Patel
Raj s/o Raj s/o Chaman Khan Raj, religion
Musalman, Raj. Occupation Raj Kam, resident of
Mudhegaon, Tahsil Ambad, District Aurangabad.

Description of the bride : Jainatbee Binant
Shaikh Abdul Rahim Patel Raj. Occupation
Khandani Sakin, Tahsil Gangapur, District
Aurangabad.

In this document also the particulars of Meher amount are given. This document shows that inquiry was made as to whether the bridegroom had four wives, they were related with any prohibited degree of relationship, whether the bride is real or foster son, step son or paternal niece or aunt of the present wife of the bride groom or divorced wife of the bridegroom. Vakils of both the sides were also shown to be present and the document was signed by two adult male witnesses.

8) Affidavit of one Shaikh Mitthu Chhatu Raj, resident of Nandurghat, Tahsil Georai, District Beed and of one Gafur Chandu Raj of same village are filed to show that they are the relatives of the petitioner. They have produced 7/12 extracts of Gat No.199/1 of Nandurghat to show that Gafur Chandu is the successor of Chandu Bademiyan Raj. Record is produced to show that caste certificate was issued in the past to one Raj Issak Mithumiya of Nandurghat on 7-1-1988 by Tahsildar Kaij. There is reference of Nagaland Scheduled Tribe Order 1970 in the certificate (xerox copy) and the xerox copy is signed by the school headmaster to show that he issued this verified copy on 8-1-1996. Some school leaving record of the relatives of this person is produced to show that they had shown their caste as Raj in the school record.

9) Copies of birth certificates of the persons from the family of aforesaid persons of Beed are produced to show that in the birth record they had given their caste as Raj. These certificates are in respect of Shaikh Imran Ahmed, Shaikh Rais Subhan, Shaikh Firdos Fitema Osman, Shaikh Rizwan Osman, Shaikh Reshma Osman.

The order of the Committee shows that the Committee has verified as to whether there was such entry in the original record of birth, in the register. The Committee found that the caste was not recorded in the original record and false certificates were produced before the Committee to show that these persons had given their caste as Raj to village panchayat. In any case they are from different districts and so their linkages with the ancestors of the petitioner ought to have been established by producing some record in respect of father etc. of the said village.

10) On the other hand in the primary school record of the father of the petitioner religion and caste was mentioned as Hanafi. Father of the petitioner was admitted in the primary school in the year 1963. There is school record showing that initially father of the petitioner had given his name as Patel Saud Ahmed Khan Rome Khan but when he again got admission in the school he gave his name as Saud Ahmed Khan Rome Khan. On this occasion also he gave his caste as Musalman or Hanafi. In similar manner the petitioner had given his religion and caste in the school record as Muslim when he first got

admission in the primary school in the year 1984.

11) In favour of the sister of the petitioner validity certificate was issued by the Committee before consideration of the present matter. However, aforesaid circumstances are now considered by the Committee. The certificate in favour of the sister was granted on the basis of the same record. In view of the aforesaid peculiar circumstances, the Committee has refused to hold that the petitioner belongs to Raj tribe.

12) The provision of Section 8 of the Act and the Rules framed under the Act show that burden to prove that petitioner belongs to Raj tribe was on the petitioner. Rule 12 (9)(b) of the said Rules runs as under :

"12. Procedure to be followed by Scrutiny Committee :

(9) (b) After personal hearing, if the Scrutiny Committee is not satisfied about the genuineness of the claim and correctness of the Scheduled Tribe Certificate, it shall pass an order of cancellation and of confiscation of the Certificate and communicate the same to the Competent Authority for taking

necessary entries in the register and for further necessary action. The Scheduled Tribe Certificate shall then be stamped as "cancelled and confiscated".

Reference can be made on this point to the case reported as **2009 (1) M.I.J. 1 SC (Raju v. Mahesh)**.

13) The aforesaid provisions show that, tribe claim is to be allowed only where the Committee is satisfied about the genuineness and correctness of the claim and the burden of proof, burden to satisfy the Committee is on the petitioner. In the landmark judgment of the Hon'ble Apex Court reported as **AIR 1995 SC 94 (Kumari Madhuri Patil v. Additional Commissioner, Tribal Development)** the Apex Court has laid down that entries given in the school record prior to the Constitution have greater probative value. The entries in the school record made prior to the raising of the claim and particularly in the school record of the father of the claimant needs to be given more importance if there are some subsequent entries in the record of the relatives of the claimant. As per the school record, the father of the petitioner never claimed during his education that he belongs to Scheduled

Tribe, Raj. In view of this circumstance, the other record which is mentioned above cannot be given much importance.

14) Provision of Section 6 of the Act shows that each and every claim is expected to be verified by the Committee independently. This becomes more necessary when there is no validity certificate in favour of the father of the claimant. When there is validity certificate in favour of the relatives like sister or brother of the claimant that may be relevant but not much weight can be given to it and the Committee is expected to arrive at independent conclusion. In this regard reference can be made to reported case **2009 (1) Mh.L.J. 1 SC (Raju Vasave v. Mahesh)**. In this case, it is laid down that if previous committee has ignored vital evidence, different finding can be given. The other side placed reliance on the decision of this Court given in **Writ Petition No.925/2014 (Shobhana v. State of Maharashtra)**. The facts were different.

15) The procedure prescribed by the Apex Court in the case of Madhuri Patil (cited supra) and the procedure laid down in the Act and the Rules show that strict verification of the caste before giving benefit to a person is necessary so that the benefit is given to the real backward class person. The procedure shows that the Committee is expected to follow the principles of natural justice and the satisfaction of the Committee is important. The Committee consists of expert persons and so this Court is expected to keep in mind the purpose behind creation of such procedure. Limitation of the power given to this Court under Article 226 of the Constitution of India shows that if there are no vitiating circumstances like the finding of fact based on no evidence or on perverse appreciation, decision cannot be interfered with. Thus, when the view adopted by the Committee is a possible view, interference is not warranted from this Court. The aforesaid material and the circumstances are sufficient to show that the view taken by the committee is a possible view.

16) The record of the present proceeding shows that on 2-7-2000 this Court made first interim order in favour of the petitioner. In view of this order the petitioner was considered as a candidate from Scheduled Tribe Raj and he was given admission in MBBS course in the year 2002 provisionally. This Court had made another interim order like stay to the operation to the order of the Committee dated 21-8-2002 and the matter was admitted. After that no interest was shown by the petitioner for early hearing of the matter. Even the office objections were not removed. It was made clear by this Court if the office objection were not removed, the matter shall stand dismissed automatically after six weeks from 15-7-2003. The matter was accordingly dismissed. Then in the year 2008 an application for restoration was filed by the petitioner along with application for condonation of delay caused in filing restoration application. This Court restored the matter on 22-9-2008. Again the petitioner did not remove the office objections immediately and an application was moved for extension of time in January 2009. This application was also allowed. Then another application was moved to add the Maharashtra University

of Health Sciences as party-respondent and this application came to be allowed on 22-1-2009.

17) The petitioner appeared for all the tests of the MBBS course and then civil application was filed for seeking direction to the authority to declare his result. This application was allowed on 9-2-2009. He had filed another civil application for bringing on the record that one of the so called distant relative had got validity certificate on 3-11-2006. Civil Application No.5482/2010 was moved for seeking direction to give Degree Certificate and certificate regarding completion of internship. This application was allowed by an order dated 19-4-2010.

18) The aforesaid circumstances show that when the first interim relief was granted on 3-7-2002 no urgency was shown to get decision of the matter by the petitioner and he moved the Court only for getting interim reliefs. There are specific directions given in Madhuri Patil's case (cited supra) to expeditiously dispose of such matters. Even if matter is not disposed of as expeditiously

as directed in Madhuri Patil's case, Courts are expected to decide such matters within reasonable time. In any case it needs to be kept in mind that there is specific provision in the Act viz. Section 10 that benefit if at all given to such candidate needs to be withdrawn whose claim is invalidated. In view of this specific provision it was necessary for the petitioner to make attempt to get early decision as he was taking risk of completing education and giving his so many years of life for such course. The conduct shows that he was interested only in getting interim reliefs, he took such risk. In view of this provision which is mandatory in nature, a person cannot be allowed to retain the benefit of degree.

19) When this Court expressed that the Court is dismissing the petition learned counsel for the petitioner submitted that he wants to challenge the decision of this Court and in view of this circumstance his claim to consider him for admission to Post Graduate course needs to be considered from open category.

20) It appears that so many orders of interim nature were made by this Court in the past. It needs to be presumed that these interim orders and directions were subject to result of the proceeding and the provisions of the Act. The petitioner did not come to this Court for getting permission for making application to appear for the Common Entrance Test which is held for admission to Post Graduate courses. He came to the Court at eleventh hour when the result of the Common Entrance Test was declared and he was to be called for counselling on 19-3-2015. Such programmes are declared by the concerned many months prior to the date of written examination but the petitioner filed Civil Application No.3318 of 2015 on 8-3-2015 for directions. The matter came before this Court on 18-3-2015 as the regular Court refused to consider the matter by making order "not before this Court". In view of the urgency and the aforesaid circumstances this Court expressed that no interim relief will be given and the matter needs to be argued finally. So the matter was argued finally on 19-3-2015. This Court was dismissing the proceeding and there are aforesaid circumstances but in view of the statement made that the petitioner wants to

challenge the decision of this Court by filing appropriate proceeding in the Supreme Court this Court expressed that the authority may consider the claim of the petitioner from open category if the petitioner is otherwise eligible and operative order was given accordingly.

21) In the result, following order :

22) The writ petition and the civil applications are dismissed. Rule is discharged with no order as to cost.

Sd/-
(Smt. I.K. JAIN, J.)

Sd/-
(T.V. NALAWADE, J.)

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