

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7305 OF 2014**

Devika Sitaram Gangawane	... Petitioner
Vs.	
State of Maharashtra and Anr.	... Respondents

Mr. R.K. Mendadkar with C.K. Bhangoji, for the Petitioner.
Mr. V.P. Malvankar, AGP, 'A' Panel, for the Respondent Nos.1 and 2.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 27th JANUARY, 2015

PC.

. Heard the learned counsel appearing for the Petitioner and the learned AGP appearing for the Respondents. On the last date, the parties were put to notice that the Petition will be forthwith taken up for final disposal.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner has impugned the order dated 21st February, 2014 passed by the second Respondent – Scrutiny Committee on the caste claim of the Petitioner. On the basis of caste certificate dated 7th September, 2001 issued by the Resident Deputy Collector, Sindhudurg,

the Petitioner claimed that she belongs to “Thakar” a notified Scheduled Tribe. By the impugned order, the caste claim of the Petitioner has been negated by the Caste Scrutiny Committee.

3. The learned counsel appearing for the Petitioner relied upon the caste validity certificate granted to the Petitioner's real sister Ms. Sonali Sitaram Gangawane. He also relied upon the caste certificate granted to Sushil Suresh Gangawane, Suresh Gangawane and Sushant Suresh Gangawane. He submitted that these three persons are the cousins of the Petitioner.

4. This Court had called for the record of the cases of the said four persons. As far as Sonali Sitaram Gangawane is concerned, perusal of the case file shows that on 16th June, 2001, the Caste Scrutiny Committee upheld the caste claim of Sonali that she belongs to “Thaker” – a Scheduled Tribe.

5. Perusal of the file in the case of Sonali shows that the Caste Scrutiny Committee held a detailed enquiry. After holding a detailed enquiry and after consideration of several documents, the Caste Scrutiny Committee upheld the caste claim of said Sonali. As far as the caste claim of Sushant Suresh Gangawane is concerned, we find that by

speaking order dated 18th July, 2001, the Caste Scrutiny Committee upheld the caste claim. As far as Sushil Gangawane and Suresh Gangawane are concerned, though their caste claims have been validated, perusal of the respective files shows that there is no speaking order passed.

6. The contention of the learned counsel appearing for the Petitioner is that the said Sonali Sitaram Gangawane is the real sister of the Petitioner. He pointed out that the caste validity certificate granted to the Petitioner's real sister has been brushed aside by the Caste Scrutiny Committee by observing that the same is not conclusive. He urged that the caste validity certificate granted to Sonali Sitaram Gangawane, the real sister of the Petitioner and to the cousins ought to have been considered. He also invited our attention to the affidavit of Shri Digambar Nemichand Chavhan, Senior Research Officer, who was a member of the Caste Scrutiny Committee which passed the impugned order. Inviting our attention to what is stated on page 155 (page 11 of the affidavit), he urged that Shri Chavhan accepted that said Sonali Sitaram Gangawane is the real sister of the Petitioner and thus, there is no dispute about the relationship between the Petitioner and the said Sonali.

7. The learned AGP submitted that apart from the fact that the relationship between the Petitioner and the said four persons is not established, the caste validity certificates granted to the said persons are not conclusive and after holding a detailed enquiry, the Caste Scrutiny committee has come to the conclusion that the caste claim is not established by the Petitioner.

8. We must note here that the Vigilance Cell report refers to the fact that said Sonali is the real sister of the Petitioner. Moreover, in the affidavit of Shri Digambar Nemichand Chavhan, who is a member of the Scrutiny Committee which passed the impugned order, the relationship between the Petitioner and he said Sonali is admitted. It is true that the caste validity certificates granted to the relatives on the paternal side may not be conclusive unless the same are issued after due inquiry in accordance with law. However, in the present case, we have perused the file of the caste claim of the Petitioner's real sister Sonali. We find from the order dated 16th June, 2001 that large number of documents were produced by the Petitioner's sister. The Caste Scrutiny Committee gave personal hearing to the Petitioner's sister. After considering the record produced by the Petitioner's sister and after considering what the Petitioner's sister disclosed during personal hearing, the caste claim of the Petitioner's sister has been upheld. We

find no reason as to why the said order in relation to the Petitioner's real sister cannot be relied upon.

9. There was no reason for the Caste Scrutiny Committee to discard the evidence in the form of caste validity certificate granted to the Petitioner's real sister. Considering the order dated 16th June, 2001 passed in relation to the Petitioner's sister, the caste claim of the Petitioner could not have been thrown out only on the basis of affinity test.

10. Therefore, in the facts of the case, the Caste Scrutiny Committee ought to have relied upon the caste validity certificate issued to the Petitioner's real sister. Therefore, the Petition must succeed and we pass the following order :-

ORDER

- (i) The impugned order dated 21st February, 2014 is hereby quashed and set aside;
- (ii) We direct the second Respondent – Caste Scrutiny Committee to issue caste validity certificate to the Petitioner on the basis of the caste certificate dated 7th September, 2001;

(iii) The caste validity certificate shall be issued to the Petitioner within a period of six weeks from the date on which an authenticated copy of this Judgment and Order is produced by the Petitioner before the Caste Scrutiny Committee;

(iv) Petition is allowed on above terms. All concerned to act upon the authenticated copy of this order.

(A.K. MENON, J)

(A.S.OKA, J)