

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2254 OF 2016

Chhaburao s/o David Kamble ... **Petitioner**
Age 52 years, Occu: Service,
R/o Padali, Tq. Pathardi,
District Ahmednagar
At present r/o Manokamna
Society 1-8, Third Floor, 302,
Gautam Nagar, Panjarpola,
Chembur, Mumbai.

VERSUS

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Divisional Caste
Certificate Scrutiny Committee
No.1, Nashik Division,
Nashi.
3. The Assistant Engineer, ... **Respondents.**
Road and Traffic Department,
Dhumra-Jantu Sayantra Office,
Sudam Kalu Ahere Marg,
Worli, Mumbai 400 030

Advocate for Petitioner : Mr. Murge Estling S.
AGP for Respondents 1 and 2- State: Mr. V. M. Kangne
Advocate for Respondent No.3 : Mr. A. K. Tiwari

**CORAM : R. M. BORDE &
K. L. WADANE, JJ.**

DATE : 6th June, 2016

ORAL JUDGMENT (Per Borde, J.):

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith and the

petition is heard for final disposal by the consent of learned counsel for the respective parties.

3. The petitioner claims to be belonging to 'Mahar' caste, which is included in the Scheduled Caste category. Since the petitioner is employed as labour in the Government Department, the caste certificate issued to him has been referred to the Scrutiny Committee for verification. The Scrutiny Committee, after following the procedure prescribed in law, verified the caste certificate and declared it as invalid vide its judgment and order dated 17.12.2015.

4. The petitioner places reliance on the school record of himself as well as birth and death register of the year 1942, wherein the entry in respect of death of his grandfather is recorded. The birth and death register of the year 1942 records caste of his grandfather as 'Mahar' Scheduled Caste. There is no adverse entry in respect of caste of the petitioner in any documentary record. It is also not a matter of dispute that the caste certificate issued in favour of the brother of the petitioner by name Anna David Kamble has been validated by the Scrutiny Committee and the validity certificate in that regard has been issued on

01.02.2012. The Scrutiny Committee has turned down the caste validation claim of the petitioner mainly on the ground that vigilance cell has reported that the petitioner appears to be observing Christian faith and that final rites of his mother and grandfather were performed in accordance with Christian faith.

5. The petitioner himself claims that he belongs to Mahar caste and that there is no evidence in respect of conversion of the petitioner and adoption of Christianity and there is also no evidence to come to conclusion that old order i.e. 'Mahar' community has ostracized the petitioner as its member or that outcasted or ex-communicated him.

6. In this regard, reliance can be placed on the judgment in the matter of **Chaturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and others**, reported in **AIR 1954 SC 236**. In paragraphs 48 and 49 of the judgment, the Supreme Court has observed as follows:

"(48) Conversion brings many complexities in its train, for it imports a complex composite composed of many ingredients. Religious, beliefs, spiritual experience and emotion and intellectual conviction mingle with more material considerations such as severance of

family and social ties and the casting off or retention of old customs and observances.

The exact proportions of the mixture vary from person to person. At one extreme there is bigoted fanaticism bitterly hostile towards the old order and at the other an easy going laxness and tolerance which makes the conversion only nominal. There is no clearcut dividing line and it is not a matter which can be viewed from only one angle.

(49) Looked at from the secular point of view, there are three factors which have to be considered: (1) the reactions of the old body, (2) the intentions of the individual himself and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or excommunicate the convert and the individual himself desires and intends to retain his old social and political ties, the conversion is only nominal for all practical purposes and when we have to consider the legal and political rights of the old body the views of the new faith hardly matter.

The new body is free to ostracise and outcaste the convert from its fold if he does not adhere to its tenets, but it can hardly claim the right to interfere in matters which concern the political rights of the old body when neither the old body nor the convert is seeking either legal or political favours from

the new as opposed to purely spiritual advantage.

On the other hand, if the convert has shown by his conduct and dealings that his break from the old order is so complete and final that he no longer regards himself as a member of the old body and there is no reconversion and readmittance to the old fold, it would be wrong to hold that he can nevertheless claim temporal privileges and political advantages which are special to the old order."

7. There is absolutely no material available to conclude that either the petitioner or his forefathers have relinquished the Hindu faith and have adopted Christianity. There is also no evidence to suggest that the petitioner or his family have been outcast or excommunicated and that they have snapped ties with Hinduism. Conversion, if any, is only nominal and for all practical purposes the family belongs to Hindu Religion. Apart from this, the disadvantages which are peculiar to Scheduled Caste, which is sadly a feature of Hindu Religion, continue and the family faces such disadvantages and difficulties faced by the lower casts from amongst Hindus.

8. Apart from this, there is no reason for the

scrutiny committee to disbelieve the validation certificate issued in favour of the brother of the petitioner. On the contrary the Scrutiny committee ought to have issued validity certificate in favour of the petitioner on the strength of the documentary evidence in the form of validity certificate issued to his brother. In this context, reference can be made to the judgment in the matter of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 & others** reported in **2010(6) Mh.L.J. 401**, wherein the Division Bench of this Court has observed as follows:

“9. In the present case, we find that the committee has disbelieved the petitioner's case that she belongs to Kanjar Bhat after calling the school leaving certificate of petitioner's father and noticing that the original caste written on it was 'Thakur' and that was subsequently changed to Kanjar Bhat. The committee observed that the caste has been changed without complying with the procedure prescribed by Section 48(e) and 132(3) of Mumbai Primary Education Act. In fact, the caste has been changed on the basis of the affidavit. From the findings of the committee it appears that the committee has observed that the change of caste has been done

illegally. Obviously, the committee which decided the caste claim of the petitioner's sister did not hold the same view, otherwise it would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is

directed to furnish the caste validity certificate to the petitioner."

9. In view of the decision in the matter of **Apoorva d/o Vinay Nichale (supra)** as well as for the reasons recorded herein above, the writ petition deserves to be allowed and the same is accordingly allowed.

10. The order passed by the Scrutiny Committee invalidating the caste certificate issued to the petitioner is hereby quashed and set aside. The scrutiny committee is directed to issue validity certificate to the effect that the petitioner belongs to 'Mahar' Schedule Caste, as early as possible and preferably within a period of one month from today.

11. Rule is made absolute accordingly.

12. There shall be no order as to costs.

(K. L. WADANE, J.)

(R. M. BORDE, J.)

True Copy

(J. P. Chavan)
P. A. to the
Honourable Judge.