

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

WRIT PETITION NO. 3916 OF 2012

1. Abbasi Noorifaraz S/o Mohammed Iliyas,
Age : 22 Years, Occu. : Student,
R/o Near Ieedgah Kaman
Infront of Janta Tent Suppliers,
Degloor Naka, Nanded.
2. Abbasi Mohammed Imran Younus,
Age : 29 Years, Occu. : Teacher,
R/o Near Ieedgah Kaman
Infront of Janta Tent Suppliers,
Degloor Naka, Nanded. .. Petitioners

Versus

1. The State of Maharashtra,
through Secretary,
Social Welfare Department,
Mantralaya, Mumbai - 400 032.
2. The Divisional Caste Certificate
Scrutiny Committee No. 2,
Aurangabad Division, Latur.
3. The Principal,
M.G.M. College of Engineering,
Nanded.
4. The Education Officer (Primary),
Brihan Mumbai Mahanagarpalika,
Dadar (East), Mumbai.

5. The Head Master,
Deaonar Colony,
Urdu No. 1 Primary School,
Gowandi, Mumbai - 400 043.

6. Swami Ramand Teerth
Marathwada University,
Through its Vice Chancellor,
Nanded.

.. Respondents

Smt. A. N. Anasari, Advocate for Petitioners.

Shri V. M. Kagne, A. G. P. for Respondent Nos. 1 and 2.

Shri V. D. Salunke, Advocate for the Respondent No. 3.

Shri A. K. Tiwari, Advocate for Respondent Nos. 4 and 5.

Shri U. S. Malte, Advocate for the Respondent No. 6.

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.**

DATE : 17TH MARCH, 2016.

ORAL JUDGMENT (Per S. V. Gangapurwala, J) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Mrs. Ansari, the learned counsel for petitioners submits that, the Committee while rejecting the validation proceedings in respect of the caste claim of petitioners as belonging to 'Beldar Bhatke Jamati Nomadic Tribe has not considered the old documents on record in its correct perspective. The Mortgage Deed executed in favour of great grandfather has not been considered. The said document is of the year, 1939. Pursuant to

the said document even entry was taken in the records of the Municipal Council wherein tax was assessed. The copies of the said documents were also produced before the Committee. The old documents have got higher probative value. Validity is granted to the real uncle of the petitioner. Even subsequently sister of the petitioner is given validity. The school record of petitioners consistently records the caste as 'Beldar'. This aspect has not been considered by the authorities in its correct perspective.

3. Mr. Kagne, the learned Assistant Government Pleader submits that, validity given to the uncle of the petitioner cannot be considered as the same was issued in the year, 1994, without conducting vigilance. The validity subsequently issued in favour of sister of the petitioner is by suppressing the fact that the petitioners proposal for validity was already rejected. On the contrary statement was made that none of the proposal seeking validation in the family has been rejected. The learned A. G. P. submits that, even in respect of school record of the relatives of petitioners, there is interpolation and the same is rightly considered. The documents of recent period do not inspire confidence.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. In fact, the petitioners ought to have produced the original documents before the Committee. The tax receipt, the Mortgage Deed are in Urdu language. Though the translation was filed, the same was not attested as a true translation by the person making translation and the affidavit of the person making the translation was not filed. In absence of the same naturally, the Committee could not have relied upon the said translation. The learned counsel for petitioners states that, original bond executed in the year 1939 in favour of the great grandfather of the petitioner and the tax receipts wherein tax was assessed and charged on the basis of the same bond is available. The same ought to have been filed before the Committee in original.

6. Considering the fact that, material documents in original were not filed and the affidavit of the person translating the documents was also not filed, we are inclined to grant one more opportunity to the petitioner to place all these documents before the Committee for its consideration.

7. In light of the above, the impugned judgment and order is quashed and set aside. The parties are relegated before the Committee. The parties shall appear before the Committee on 06th April, 2016. The petitioners are permitted to file additional documents in original so also the affidavit of the person translating the documents as true translation. The Committee

shall thereupon consider the said documents and decide the proceedings afresh on its own merits, in accordance with law, after hearing parties concerned.

8. Till the said proceedings are pending, no adverse action be taken against the petitioner No. 2 who is in service on the ground that validation proceedings are still pending. The result of the petitioner No. 1's exam also shall not be withheld on the ground that validation proceedings are pending. Till the validation proceedings are decided the petitioners shall not take further benefit of reservation. Of course the authorities can act in tune with the judgment of the Committee in validation proceedings.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[A. I. S. CHEEMA, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/March 16