

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.4896 OF 2016****WITH****C.A.NO.7019 OF 2016.**

Shaikh Akhtar S/o Jalalsab Mistri,
Age 50 years, Occ.Mistri and
Corporater, R/o Miskinpura,
Latur, Taluka and District
Latur. ... Petitioner.

Versus

1. The State of Maharashtra,
through the Secretary,
Social Welfare Department,
Mantralaya, Mumbai.

2. The Scheduled Caste,
Vimukta Jati Nomadic
Tribe, Other Backward
Class & Special Other
Backward Class caste
Certificate Scrutiny
Committee No.2, Aurangabad
Division, Latur.

3. Gopal S/o Satrajeet
Burbure, Age 28 years,
Occ.Legal Practitioner
and Agriculture, R/o
Mali Galli, Ward No.2,
Latur, Dist.Latur.

4. The Commissioner,
Municipal Corporation,

Latur.

... Respondents.

...

Mr.S.B.Talekar, advocate holding for
Mr.V.G.Sakolkar, advocate for the petitioner
Mr.B.V.Virdhe, A.G.P. for the State.
Mr.N.V.Gaware, advocate holding for
Mr.G.K.Sontakke(Patil), advocate for Respondent
No.3.
Mr.V.D.Hon, advocate for Respondent No.4.
Mr.Shivaji T.Shelke, advocate for Respondent
No.5.

...

**CORAM : S.V.GANGAPURWALA AND
K.K.SONAWANE, JJ.**

Date : 10.08.2016.

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

1. Heard.

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

3. The caste certificate of the petitioner
as belonging to Mistri (OBC) has been
invalidated. Aggrieved thereby, the present
petition.

4. The petitioner had obtained the caste certificate as belonging to Mistri from the Sub-Divisional Office, Latur, on 17.3.2012. The petitioner contested the election to the Latur Municipal Corporation. The petitioner was elected as a Corporator and later on as a Mayor of the Latur Municipal Corporation. The caste certificate of the petitioner was forwarded to the Scrutiny Committee for verification. Initially the said certificate was validated. The order of the Committee validating the caste certificate of the petitioner as belonging to Mistri (OBC) was assailed by the Respondent No.3 before this Court in W.P.No.301/2015. This Court by its judgment and order dated 21.10.2015 set aside the judgment of the Committee and remanded the matter back to the Committee. Pursuant to the remand after hearing the parties, the Caste Scrutiny Committee invalidated the claim of the petitioner.

5. Mr.Talekar, learned counsel for the petitioner strenuously contends that the petitioner had in fact, submitted 155 documents.

The Committee considered only 15 documents. The other documents were not referred to nor considered by the Committee. The learned counsel submits that petitioner had filed the copies of various documents and at the time of hearing produced the originals of all those documents, such as the LIC policy, Bank passbook, cheque book, property tax receipts standing in the name of his father and fore-fathers, wherein the petitioner's father and fore-fathers were referred to as Mistri along with the name. According to the learned counsel, it was imperative for the Committee to consider all these documents. As the fore-fathers of the petitioner were doing the occupation of Mistri, they were referred to as Mistri. This aspect has not been considered. The learned counsel submits that after the originals were shown to the Committee, the originals were taken back and photo copies of the same were retained in the record.

6. The learned counsel further submits that the occupation carried out by the person is

indicative of his caste. There is no caste system in the Muslims, however, by virtue of the occupation being carried out, they are referred to belonging to the said caste. All the old documents produced on record would go to show that the petitioner's father and fore-fathers were referred to as Mistri only because they were doing the work of Mistri. The learned counsel to substantiate his submission that the class has been formed because of the occupation that they were doing, relies on the judgment of the Apex Court in the case of **"Indra Sawhney Vs. Union of India"** reported in **1992 SCC (L & S) Supp.**

7. According to the learned counsel, the School record of the petitioner and the petitioner's brother also substantiate the contention of the petitioner. In the School record of the eldest brother of the petitioner, the occupation of the father is recorded as Mistri. The brother has taken admission on 21.7.1965 and caste Mistri has been included in OBC category in the year 1967. The said document is prior to the inclusion of the said caste in

OBC category. The said document will have high evidential and probative value. The learned counsel further submits that in the School Admission Register of the petitioner himself, the caste is recorded as Sutar. The word Sutar is referred to as synonym to Mistri. According to the learned counsel, in villages these words and occupations are interchangeable, as such the Mistri is loosely referred to as Sutar. According to the learned counsel, the entry in the School Register of the third brother of the petitioner though shows the occupation as business, the same can not be said to be contra evidence and the isolated entry may not have any effect. In the caste column of the petitioner and the brothers, the caste is recorded as Muslim because in Muslim, there is no caste system. In fact, Muslim is religion. The learned counsel further submits that thrice the Vigilance has been conducted and all the three Vigilance report are not against the petitioner. In fact, the home inquiry conducted by the Vigilance supports the case of the petitioner. The statements of four elderly persons are recorded who have

categorically stated that the fore-fathers of the petitioner were doing the work of Mistri. The Committee has perversely observed in the order that the home inquiry does not support the case of the petitioner. The facts on record are otherwise. The learned counsel further submits that the Committee has not conducted the affinity test nor the Vigilance has conducted the affinity test. The learned counsel submits that affinity test is relevant and material and is required to be conducted.

8. The learned counsel submits that the documents on record are sufficient to prove the case of the petitioner as belonging to Mistri (OBC). However, if the Committee has some doubt then it ought to have conducted the affinity test. The learned counsel submits that the affinity test is not restricted to a particular tribe but has to be conducted in respect of the other caste also. The learned counsel relies on the judgment of the Division Bench of this Court in the case of **"Sadeek Shaha Ramjan Shaha Vs. State of Maharashtra"** reported in **2009 (3)**

Mh.L.J.372 and another judgment of the Division Bench of this Court delivered at Nagpur in **W.P.No.2491/2011 dated 14.7.2011**, so also the judgment of the Division Bench delivered at principal seat at Bombay in **W.P.No.8044/2013 dated 17.2.2014**. The learned counsel also relies on the judgment of the Apex Court in the case of **"Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others"** reported in **AIR 2012 Supreme Court 314**.

9. Learned counsel also relies on the literature i.e. on the book the Tribes and Castes, Bombay, Volume III authored by R.E.Enthoven. According to the learned counsel, the Committee failed in its duty in not referring to all the documents placed before it, so also not considering the report of the Vigilance Committee with regard to the home inquiry.

10. Mr.Gaware, learned counsel for Respondent No.3 vehemently submits that the petitioner in the year 2001 had obtained caste certificate as belonging to Chapparband V.J. The

said caste certificate was retained by him and while he was holding the said caste certificate considering that the post of Mayor for the election of the Latur Municipal Corporation is reserved for OBC, obtained caste certificate of belonging to Mistri OBC in the year 2012 and contested the election on the basis of caste certificate of OBC. After getting elected and for one year after obtaining the caste certificate of Mistri, did not even surrender the caste certificate obtained by him of Chapparband. It is only after one year of obtaining the caste certificate as belonging to Mistri and getting elected, the petitioner surrendered his earlier caste certificate as belonging to Chapparband. The conduct of the petitioner is relevant. The learned counsel submits that while obtaining the caste certificate as belonging to Chapparband in the year 2001, the petitioner had annexed the various other documents of his relatives to show that he belong to Chapparband caste. On oath the petitioner stated that he belonged to Chapparband caste. The said fact needs to be considered and would negate the claim of the petitioner as

belonging to Mistri caste. The learned counsel submits that the Vigilance had considered the documents produced by him. After the Vigilance was conducted for the first time again the Vigilance was conducted after one month as additional documents were submitted by the petitioner and subsequently for the third time, the Vigilance was conducted as the documents which were relied by the petitioner at the time of obtaining the caste certificate as Chapparband were produced on record. The conduct of the petitioner would disentitle the petitioner from any relief. The learned counsel submits that the surname as being synonymous with the name of a caste and the occupation professed is not sufficient to establish that the petitioner belongs to the said OBC caste. For the said purpose the learned counsel relies on the judgment of the Full Bench of this Court in the case of **"Shilpa Vishnu Thakur Vs. State of Maharashtra and others"** reported in **2009 (3) Mh.L.J.995**, so also the judgment of the Division Bench of this Court in the case of **"Sagiruddin Israiluddin Mistry and another Vs. State of**

Maharashtra and others” reported in **2007 (1) ALL MR 627**. According to the learned counsel, the documents placed on record by the petitioner are contradictory. The document of the petitioner bearing admission serial No.1253 shows the caste of the petitioner as Sutar. The same is interpolated and made as Mistri as per endorsement of Vigilance on the said document. When there is contradictory evidence on record, no illegality has been committed by the Committee in rejecting the caste claim of the petitioner. According to the learned counsel the documents which were submitted by the petitioner in respect of tax record were not available with the Corporation when the Vigilance visited the Corporation. The petitioner being a Mayor, at the relevant time had destroyed the said record. The learned counsel submits that even the LIC document which was produced could not be counter-checked as the record with the LIC Office was not available. Apart from the documents relied by the Committee, the veracity of the other documents produced could not be verified by the Vigilance squad as the record with the said

Offices were not available or were destroyed. The learned counsel submits that the affinity can not be the sole ground for establishing the caste claim. It can at the most be used as corroborative evidence, however, the petitioner has to first prove his caste. When there are documents on record substantiating the fact that the petitioner does not belong to the said caste then no other evidence is necessary in the shape of affinity or otherwise as the affinity test is only corroborative in nature. The learned counsel relies on the judgment of the Division Bench of this Court in the case of **"Madhuri Nitin Jadhav and others Vs. State of Maharashtra and others"** reported in **2014 (3) Mh.L.J.900**. The learned counsel also relies on the judgment of the Apex Court in the case of **"Director of Tribal Welfare, Government of A.P. Vs. Laveti Giri and another"** reported in **(1995) 4 Supreme Court Cases 32** and submits that burden is upon the person who propounds the said certificate. The learned counsel relies on the unreported judgment in **W.P.No.2026/2013 of this Bench dated 24.12.2013** and submits that in the said case also the

petitioner therein had obtained two separate certificates. The Court had considered the said aspect of having obtained the earlier certificate of belonging to a different caste and had held that when the evidence produced while obtaining both the certificates were different, the same would be contradictory and inconsistent. The learned counsel submits that the petitioner herein is taking chances and the same is not permissible.

11. The learned counsel submits that no error has been committed by the Committee while rejecting the claim of the petitioner.

12. Learned A.G.P. submits that the Committee has considered all the relevant evidence on record. The contra evidence has been considered and thereafter the Committee has arrived at the correct conclusion. No error has been committed by the Committee in invalidating the caste claim of the petitioner.

13. Mr.Talekar, learned counsel further

submits that even if the petitioner had wrongly obtained the caste certificate as belonging to Chapparband caste earlier, the same would not preclude the petitioner from obtaining the caste certificate of the caste to which he belongs i.e. Mistri and the said certificate is required to be considered for validation on its own merits. The petitioner had not taken any benefit of the caste certificate of Chapparband V.J. The learned counsel relies on the judgment of the Apex Court in the case of **"Varsha Vs. Divisional Caste Certificate Scrutiny Committee and others"** delivered in **Civil Appeal No.7325 of 2011 on 16.8.2011.**

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

15. It is not disputed that the petitioner had earlier obtained caste certificate as belonging to Chapparband V.J. in the year 2001 and subsequently in the year 2012, had obtained the caste certificate as belonging to Mistri

(OBC). The petitioner has surrendered the caste certificate as belonging to Chapparband in the year 2013. There is nothing on record to show that the petitioner had obtained some benefit of caste certificate of Chapparband. The petitioner contested the election on the caste certificate of Mistri.

16. Be that as it may, the petitioner had submitted some documents purportedly of his relatives to substantiate his claim for getting caste certificate of Chapparband. The petitioner has also submitted documents to substantiate his caste as Mistri. The Committee has to weigh the evidence before it while arriving at a particular conclusion. The documents which were submitted by the petitioner necessarily were required to be verified by the Vigilance. The genuineness and veracity of the said documents are required to be verified by the Vigilance squad and thrice the Vigilance has submitted its report. The documents referred to by the Committee in its judgment were verified. However, there are other documents which were submitted by the

petitioner but the same were not verified as the record was not available with the respective Offices. The Vigilance had no opportunity to test the genuineness or veracity of the said documents. The Committee has also not considered the said documents.

17. The copies of the said document which according to the petitioner are old documents and at the suffix of the name of the petitioner Mistri appears. The photo copies are placed on record and it was submitted that the petitioner had produced the originals at the time of hearing. In fact, the original should have formed part of the record of the Committee as at the time of delivery of the judgment the original documents are required to be before the Committee. The Committee could not have based its judgment on the basis of photo copies. According to the petitioner, in all the old documents, such as property tax receipts, the documents of LIC, Passbook, cheque books of the petitioner's father and fore-fathers though the surname is Shaikh, Mistri is at the suffix of the

name. According to the petitioner that shows that the fore-fathers of the petitioner were doing occupation of Mistri and the same would be relevant consideration and the said documents are required to be considered. However, as the originals were not retained by the Committee, the Committee could not have given his finding upon those documents.

18. The surname reflected in the documents produced as being synonymous with the name of the designated caste in itself may not be sufficient to establish caste, as is observed by the Full Bench of this Court in the case of **"Shilpa Vishnu Thakur Vs. State of Maharashtra and others"**. Occupation carried out by the person may not be the sole criteria to determine the caste as is held the Division Bench of this Court in a case of **"Sagiruddin Israiluddin Mistry and another Vs. State of Maharashtra and others"** referred to supra. In Muslim caste system did not exist. At least in Muslims occupation carried out since fore-fathers may be indicative to some extent as a corroborative one of a caste. By occupation,

the person may be Mistri and Mistri as a class is included in OBC irrespective of the religion to which a person may belong. The particular occupation carried on since fore-fathers of a person if proved may be one of the circumstance to prove the caste though not the sole criteria. The same may also depend upon other factors including the documents on record. If there are documents showing contra evidence of caste, the same will have to be considered as those documents would have high probative and evidential value.

19. The Vigilance has conducted the home inquiry. In the home inquiry, the statements of four persons are recorded. The same does not appear to have been considered in the judgment. It would also appear that the affinity test has not been conducted either by the Vigilance or the Committee. As observed by the Division Bench of this Court in the case of **"Mohd. Kumail S/o Nasir Sheikh Vs. Divisional Caste Scrutiny Committee No.3"**, Writ Petition No.2491/2011 dated 14.7.2011 referred to supra and in the case of **"Sadeek**

Shaha Ramjan Shaha Vs. State of Maharashtra"

referred to supra, the affinity test is required to be applied to find out whether the petitioner belongs to a particular caste. It is also observed by the Division Bench of this Court in a case of **"Sadeek Shaha Ramjan Shaha Vs. State of Maharashtra"** referred to supra, that *"it is therefore, not impermissible in absence of any documentary evidence for an applicant to prove by evidence his affinity to a particular caste or tribe which he belongs. As the oral evidence is also permissible."*

20. Considering the aforesaid aspects of the matter and more particularly, that the Committee has not considered the affinity test, so also has not considered the efficacy of the other documents produced such as the old documents and also the documents produced by the Respondent No.3, submitted by the petitioner at the time of availing the certificate of Chapparband, we deem it appropriate to remit the matter back for the Committee to consider all the documents submitted by the petitioner and

also by the Respondent No.3 and weigh the evidence, conduct the affinity and decide the matter afresh.

21. In light of the above, we pass the following order :

a) The impugned judgment and order is quashed and set aside. The parties are relegated before the Committee to decide the matter afresh in light of the observations made hereinabove. The parties shall appear before the Committee on 6.9.2016. The petitioner and Respondent No.3 are entitled to file additional documents.

b) Till the validation proceedings of the petitioner in respect of his caste claim is decided, the petitioner shall not claim benefit of the said certificate. Considering the fact that the matter is remitted back, the Committee shall decide the said proceedings expeditiously on its own merits after hearing all parties concerned within three (3) months from the date of appearance. The parties shall cooperate in

expeditious disposal of the proceedings.

c) Depending upon the judgment of the Scrutiny Committee, the consequences would follow.

d) Rule accordingly made partly absolute. No costs.

e) In view of disposal of Writ Petition, the Civil Application also stands disposed of.

Sd/-
(K.K.SONAWANE, J.)

Sd/-
(S.V.GANGAPURWALA, J.)

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