

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

923 WRIT PETITION NO. 6465 OF 2016

WITH

CA/13006/2016 IN WP/6465/2016

Afnan d/o Ferozkhan Pathan **... Petitioner**
Age 18 years, Occu: Student
R/o Near Sadat Masjid, Azam
Colony, Roshan Gate, Aurangabad.

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai 400 032
2. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Division, Aurangabad
3. The Sub Divisional Magistrate,
Aurangabad
4. The Directorate of Medical
Education and Research,
C.E.T.Cell, Opp. Govt. Dental
College & Hospital Building, St.
George's Hospital Compound, Near
C.S.T. Railway Station, Mumbai-1
5. All India Institute of Medical
Science, Gautam Nagar, Ansari
Nagar East, New Delhi 110 029
6. The Dean, Mahatma Gandhi
Institute of Medical Sciences,
Sevagram, Wardha
7. The Maharashtra University of **... Respondents**
Health Sciences, Nashik, Through
its Registrar

Advocate for Petitioner : Mr. S. B. Talekar i/by
Talekar And Associates
AGP for Respondents 1 to 4 State: Mrs. M. A. Deshpande
Advocate for Respondents 8 and 9: Mr. A. V. Hon
(Added respondents)

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 29th September, 2016

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

1. Heard the learned counsel for the parties.

2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal

3. The tribe claim of the petitioner as belonging to Tadvi, Scheduled Tribe has been invalidated. Aggrieved thereby, the present petition.

4. Mr. Talekar, the learned counsel for the petitioner states that the petitioner had filed ample evidence on record substantiating her claim as belonging to Tadvi, Scheduled Tribe. The school record of the petitioner mentions caste of the petitioner as Tadvi so also the school record of the real brother of the petitioner states the caste as Tadvi, School record of the real aunt of the petitioner states the

caste as Tadvi. The learned counsel submits that apart from the said documents on record, father of the petitioner has been issued validity certificate as belonging to Tadvi, Scheduled Tribe, so also real aunt of the petitioner has been issued validity as belonging to Tadvi, Scheduled Tribe. Two real uncles of the petitioner are issued validity certificate as belonging to Tadvi, Scheduled Tribe. Learned counsel submits that inspite of the said evidence on record, the tribe claim of the petitioner is invalidated. According to the learned counsel, the affinity test cannot be the sole ground to reject the tribe claim. It can only be a corroborative piece of evidence. The learned counsel relies on the judgment of Division Bench of this Court in a case of **Sanjay Bajirao More and another Vs. The State of Maharashtra and others**, reported in **2015 (6) Mh.L.J. 822**.

5. Mrs. Deshpande, the learned AGP, states that only because the tribe claim of some family members of the petitioner are validated, that cannot ipso facto be a ground for granting validity to the petitioner. Each case has to be independently considered on the basis of evidence before the Committee. The father of

the petitioner was granted validity only on the ground that one Sartaj Khan, member of the family, has been granted validity. The validity is granted to him without conducting vigilance. As such the same would not be a material fact. The learned AGP relies on the judgment in a case of **Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar & ors.** reported in **2008 (9) SCC 54**. The learned AGP further submits that in the school record of the father and real uncles of the petitioner, the caste is mentioned as Muslim and Islam. Tadvī caste is not recorded in their school record. The petitioner also could not pass the affinity test. All these aspects have been considered by the Committee and the Committee, on detail appreciation of the relevant material on record, has negatived the tribe claim of the petitioner. No illegality has been committed by the committee while invalidating the tribe claim of the petitioner.

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

7. It is a matter of record that the father of the petitioner Fiorozkhan Pathan has been granted validity certificate. Uncle of the petitioner namely Minajkhan

has been granted validity certificate under the order of this Court in Writ petition No. 1759 of 1994 dated 15th June, 1994. The another uncle of the petitioner Sartajkhan Saheblal Pathan has also been granted validity under the order of this Court in Writ Petition No. 2044 of 1993, dated 5th July, 1993. Real aunt of the petitioner has also been granted validity by the Committee itself. The caste appearing as Muslim and Islam/Momedian in the school record of the father and uncles of the peitioner cannot be said to be a contra evidence as the said entry is not that of a caste but of a religion.

8. It is settled proposition of law that affinity test cannot be the sole ground for determining the caste/tribe. It can, at the most, be used as a corroborative evidence. In the present matter, there is absolutely no contra evidence on record. On the contrary, validity certificates are issued to the members of the family of the petitioner on the paternal side. Father, two real uncles and real aunt of the petitioner are issued validity certificates as belonging to Tadvī, Scheduled Tribe.

9. Considering the aforesaid overwhelming evidence

on record, there is no impediment to arrive at the conclusion that the petitioner belongs to Tadvi, Scheduled Tribe.

10. In the light of above conspectus, the impugned judgment and order is quashed and set aside.

11. The respondent No.2 Committee shall issue validity certificate to the petitioner as belonging to Tadvi, Scheduled Tribe.

12. Rule is made absolute accordingly. There shall be no order as to costs.

13. In view of disposal of writ petition, civil application also stands disposed of.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC