

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7320 OF 2014

Akshada d/o Bajirao Muntode, ... **Petitioner**
Age 18 years, Occu; Student,
R/o Shiblapur, Tq.Sangamner,
Dist. Ahmednagar

VERSUS

1]	The State of Maharashtra, Through its Ministry of Social Welfare, Cultural Affairs Department, Mantralaya, Mumbai-4.	...	Respondents
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2] The Commissioner,
Scheduled Castes, Vimukta
Jati, Nomadic Tribes, Other
Backward Classes and Special
Backward Classes Divisional
Caste Scrutiny Committee,
Nashik Division, Nashik.

3] The Principal,
SMBT School of Nursing,
Amrutnagar (Ghulewadi)
Tq.Sangamner Dist.Ahmednagar.

Advocate for Petitioner : Mr. Swapnil Paturkar for J.P.
Legal Associates.

AGP for the Respondent Nos.1 & 2: Mr. V.M. Kagne.
Respondent no.3 served.

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

DATE : 18th July, 2016

ORAL JUDGMENT (Per Wadane, J.):

1] Rule. Rule made returnable forthwith. By consent
of the learned counsel appearing for the parties, the

petition is taken up for final hearing. We have heard the learned counsel for the respective parties.

2] By the present petition, the petitioner has challenged the order passed by the respondent no.2 - committee on 29th November, 2013 by which the caste claim of the petitioner is invalidated.

3] The petitioner has filed the petition contending *inter alia* that she is taking education and has obtained admission for the Nursing course in SMBT School of Nursing, Amrutnagar (Ghulewadi) Tq.Sangamner Dist.Ahmednagar and she belongs to Mahar, Scheduled Caste. The Sub Divisional Officer, Sangamner, had issued Caste certificate in favour of the petitioner on 23rd September, 2010. The petitioner further states that there are entries of Mahar caste in the school record of the petitioner as well as school record of her father and grandfather to support her caste claim.

4] The caste claim/certificate of the petitioner was referred to the respondent no.2 - committee. The committee referred an application to the Vigilance Cell for conducting school enquiry, home enquiry and other enquiries. The Vigilance Cell submitted its report to the Respondent Committee upon conducting enquiry.

Relying upon the findings of the vigilance cell, the respondent no.2 - Committee has invalidated the caste claim of the petitioner mainly on the following grounds:

(1) Name of the petitioner's grandfather appears to be Petras Sulbha Muntode, which is normally of a Christian person.

(2) School record of the petitioner, though of Hindu Mahar caste, is of recent origin and, therefore, cannot be considered.

(3) As per the statement of the father of the petitioner, last rites of grandfather of the petitioner were performed as per Christian faith.

(4) Photographs of Yesu Christ were seen inside the house of the petitioner.

5] On scrutiny of the reasons recorded by the respondent Committee, it appears that the respondent no.2 - Committee has taken into consideration irrelevant aspects to determine the caste claim of the petitioner. On scrutiny of the documents produced by the petitioner before the respondent Committee, it appears that various school leaving certificates, caste

certificates of the father, grandfather of the petitioner, and caste validity certificate of the petitioner's cousin sister Bhavna Vijay Muntode dated 10.8.2010 and the family tree contained in the affidavit filed by the father of the petitioner etc. are placed on record. All the above documents consistently show that the petitioner, her father and grandfather are belonging to Mahar caste. Caste validity certificate dated 10.08.2010 shows that cousin sister of the petitioner belongs to Hindu Mahar caste. There is no reason to disbelieve the school record particularly, when the entries in the school record are consistently Hindu Mahar. The petitioner submits that her family is permanent resident of village Shiblapur since last more than 90 years and the petitioner is born and brought up at village Shiblapur. In the school leaving certificate issued by the School, her caste is recorded as Hindu Mahar. So, looking to the entire material on record, we are of the opinion that documentary evidence produced in support of the caste claim of the petitioner are sufficient to hold that petitioner is belonging to Mahar caste.

6] It appears that, the respondent Committee has taken into consideration the irrelevant factor while

determining the caste claim of the petitioner. There is no evidence/material on record to conclude that the petitioner has adopted Christian religion and she does not belong to Hindu religion, Mahar caste.

7] It is contended on behalf of the petitioner that the view taken by the Scrutiny Committee is absolutely inconsistent with the law laid down by the High Court as well as the Supreme Court. It is contended that there is no evidence coming forth in respect of adoption of Christianity either by the father of the petitioner or her family. The petitioner has not relinquished Hindu religion and has not adopted Christian religion at any point of time. On the other hand no record is placed before the committee to conclude that the family of the petitioner has been excommunicated and they have snapped ties with Hinduism. Conversion, if any, is only nominal and for all practical purposes the family belongs to Hindu religion. It is further pointed out that 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 castes from amongst Hindus.

8] In this context reliance can be placed on a judgment in the matter of **C.M. Arumugam v. S. Rajgopal and others** reported in (1976) 1 SCC 863. In paragraph no. 12 of the judgment, the Supreme Court has observed thus :

12. It seems that the correct test for determining this question is the one pointed out by this Court in *Chatturbhuj Vithaldas Jasani v. Moreshwar Prasahram. Bose, J.*, speaking on behalf of the Court in this case pointed out that when a question arises whether conversion operates as a breakaway from the caste , what we have to determine are the social and political consequences of such conversion and that, we feel, must be decided in a common sense practical way rather than on theoretical and theocratic grounds. The learned Judge then proceeded to add :

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.

What is, therefore, material to consider is how the caste looks at the question of conversion. Does it outcaste or excommunicate the convert or does it still treat him as continuing within its fold despite his conversion: If the convert desires and intends to continue as a member of the caste and the caste also continues to treat him as a member, notwithstanding pointed out by this Court, "the views of the new faith hardly matter." This was the principle on which it was decided by the Court in *Chatturbhuj Vithaldas Jasni's case* (supra) that Gangaram Thaware, whose nomination as a scheduled caste candidate was rejected by the Returning Officer, continued to be a Mahar, which was specified as a scheduled caste, despite his conversion to the Mahanubhav faith."

9] As laid down by the Supreme Court in the matter of **K.P. Manu, Chairman Scrutiny Committee for Verification of Community Certificate**, reported in **AIR 2015 Supreme Court 1402**, three things need to be established by a person who claims to be a beneficiary of a caste certificate – (i) There must be absolutely clearcut proof that he belongs to the caste that has been recognised by the Constitution (Scheduled Caste) Order 1950; (ii) There has been reconversion to original religion to which the parents and earlier generations had belong; and (iii) there has to be a

evidence establishing acceptance by the community.

10] While considering somewhat similar facts/situation like one in the present matter, the Supreme Court, in the case of **M. Chandra Vs. M. Thangamuthu**, reported in (2010) 9 SCC 712, observed that in order to claim benefits of reservation under the Constitution (Scheduled Caste) Order, 1950, a person must establish that the caste to which he belongs is notified in the Presidential Order and he is not professing a religion different from the Hindu, the Sikh or the Buddhist.

11] If findings of the Committee are carefully perused, the finding of facts recorded by the Committee that the petitioner is Christian by religion is without any basis and the said finding is perverse, unjust, inasmuch as, there is no documentary evidence on record which would suggest that the petitioner professes Christianity by way of conversion. The Committee has not kept in view the law laid down by the Supreme Court in the aforementioned authoritative pronouncement and proceeded to invalidate the claim of the petitioner only on the basis of Vigilance Cell's report.

12] In the instant matter, since there is no evidence in respect of conversion, there arises no question of

reconversion to the original religion. There is sufficient evidence placed on record to demonstrate that petitioner belongs to Mahar caste and that the people of the community accept petitioner as a member of Mahar caste.

13] The Scrutiny Committee has overlooked the basic principles while declining to grant validation certificate in favour of petitioner. The order passed by the Scrutiny Committee on 29.11.2013 invalidating the caste certificate issued to petitioner is erroneous and deserves to be quashed and set aside and the same is accordingly quashed and set aside. The respondent no.2 - Committee is directed to issue caste validation certificate in favour of petitioner certifying that she belongs to Mahar Scheduled Caste, in the prescribed proforma, as expeditiously as possible, preferably within a period of four weeks from today.

14] Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

(K. L. WADANE, J.)

(R. M. BORDE, J.)

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