

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO. 1493 OF 2016**

|                              |     |                   |
|------------------------------|-----|-------------------|
| Francis s/o Nivrutti Palande | ... | <b>Petitioner</b> |
| Age 44 years, Occu: Service, |     |                   |
| R/o Loni (kh),Tq. Rahata,    |     |                   |
| Dist. Ahmednagar             |     |                   |

## VERSUS

1. The State of Maharashtra  
Through the Ministry of Social  
Welfare Department,  
Mantralaya, Mumbai.
2. The Block Education Officer,  
Panchayat Samiti, Sangamner,  
District Ahmednagar.
3. The Sub Divisional Officer ... **Respondents.**  
(Revenue), Shirdi, Tq. Rahat,  
District Ahmednagar
4. The Tahsildar,  
Rahata, Tq. Rahata,  
District Ahmednagar
5. The Regional Caste Scrutiny  
Committee-1  
Nashik Region, Nashik

Advocate for Petitioner : Mr.Pathan Yunus Baasheer  
AGP for Respondents State: Mr. P. S. Patil  
Advocate for Respondent No.2 : Mr. S. T. Shelke

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

**DATE : 24th June, 2016**

**JUDGMENT (Per Wadane, J.):**

1. Rule. Rule made returnable forthwith.

2. By consent of the parties, taken up for final hearing. We have heard the learned counsel for the respective parties.

3. By the present petition, the petitioner has challenged the order passed by respondent No.5-Caste Scrutiny Committee on 8<sup>th</sup> September, 2015 invalidating caste claim of the petitioner. According to the petitioner, respondent No.5 Committee has considered the aspects which are not material to determine the caste claim of the petitioner and arrived at a wrong conclusion. According to the petitioner, the documents produced on record at Exhibit 'B' collectively are sufficient to determine the caste claim of the petitioner as belonging to Hindu Mahar caste.

4. The petitioner is serving as a teacher in Z.P. School at village Manchi, Tq. Sangner Dist. Ahmednagar. Respondent No.3-Sub Divisional Officer (Revenue) Shirdi had issued caste certificate in favour of the petitioner certifying that the petitioner is belonging to Hindu Mahar, Scheduled Caste. The documents presented by the petitioner demonstrate that the petitioner is belonging to Mahar caste, however, relying upon the report of the Vigilance Cell,

respondent No.5 Committee has arrived at a wrong conclusion. Hence the present petition.

5. We have perused the documents produced by the petitioner in support of his caste claim before respondent No.5- Committee. We have also perused the report of the Vigilance Cell and the reasons recorded by respondent No.5 Committee while rejecting the caste validation claim of the petitioner. On perusal of the same, it appears that respondent No.5 Committee has relied upon the report of Vigilance Cell in which it is reported that uncle of the petitioner died and photograph of the tomb(kabar) where he was buried was taken by the Vigilance Officer. Secondly, photograph of Yeshu Christ was reported to be seen inside the house of the petitioner so also on the upper portion of the door. Respondent No.5 Committee, by relying upon the circumstances appearing in the report of the Vigilance Cell, has invalidated the caste claim of the petitioner.

6. It appears that, respondent No.5 has taken into consideration the irrelevant factors while determining the caste claim of the petitioner. Merely because the photographs of Yeshu Christ was seen inside the house

and on upper portion of the door of house of the petitioner is not sufficient to conclude that the petitioner is belonging to Christian community. On the contrary, during the vigilance enquiry, the vigilance officer has recorded the statement of the Priest, Incharge of the Church who stated that the petitioner is not a member of the Church. Further more, there is no evidence/material on record to conclude that the petitioner has adopted Christian religion and he 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 the family of the petitioner. The petitioner has not relinquished Hindu religion and has not adopted Christian religion at any point of time.

8. It is contended by the petitioner that he is belonging to Hindu Mahar and in support of his claim, the petitioner has relied upon the report of the Police Inspector, Vigilance Cell. On perusal of Para 1 of the

said report, it appears that school leaving certificates of the petitioner and his real uncles were collected, in which caste of the uncles is recorded as Hindu Mahar. 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.

9. 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."

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 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. Respondent No.5 Committee is directed to issue caste validation certificate in favour of petitioner certifying that he belongs to Mahar Scheduled Caste, in the prescribed proforma, as expeditiously as possible, preferably within a period of four weeks from today.

15. Rule 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. )

JPC