

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

WRIT PETITION NO. 11549 OF 2015

Mathurabai Shankar Benade .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Rajendra S. Deshmukh, Advocate a/w Amol Joshi, Advocate
for the Petitioner.

Shri V. H. Dighe, A.G.P. for Respondent Nos. 1 to 4.

Shri S. B. Talekar, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

DATE : 08TH JANUARY, 2016.

PER COURT :

. The petitioner assails the judgment and order dated 09.10.2015 of the Committee invalidating the caste claim of the petitioner as belonging to 'Pardeshi' Other Backward Class (O. B. C.). We have heard Mr. Deshmukh, the learned counsel for the petitioner, Mr. Talekar, the learned counsel for the respondent No. 5 and the learned Assistant Government Pleader.

2. Mr. Deshmukh and Mr. Talekar, the learned counsel for respective parties have taken us through the document on record.

3. We have also gone through the judgment. In fact, earlier the Committee had validated the caste claim of the petitioner as belonging to Pardeshi O. B. C. The same was assailed by the present respondent No. 5 in Writ Petition No. 5466 of 2014. Vide order dated 28th April, 2015, we had partly allowed the said writ petition. We had set aside the judgment of the Committee validating the caste claim of the present petitioner as belonging to Pardeshi O. B. C. and had remitted the matter back. The reason for setting aside the said judgment was not considering the affinity test and the ethnic linkage. Vide order dated 28th April, 2015, in Writ Petition No. 5466 of 2014 while remitting matter, we had observed as under :

"4. We have perused the judgment. The statements are recorded by the vigilance, however, from the perusal of the judgment it nowhere transpires that, the Committee has applied its mind and has considered the affinity test. The judgment is silent about it. The affinity test is an integral part of the proceedings and the same is also relevant for determining the caste claim of any party. It was also one of the contention of the petitioner that, the documents of 1915 in the name of the Jaysing was referred to an expert. Even the hearing was concluded and no opportunity was given to the petitioner to comment upon the report of expert.

5. As the affinity test is not conducted and nothing

has been said by the Committee in respect of affinity and ethnic linkage, we are not entering into contentions of the respective parties on merits.

6. It will be appropriate to remit the matter back to the Committee for considering the affinity test, the ethnic linkage and thereafter decide the proceedings afresh. Of course, it would not be necessary for conducting any fresh vigilance, as the same is already conducted. At the most the Committee may examine the affinity and ethnic linkage and hear the parties afresh. The petitioner and the respondent No. 4 are at liberty to put forth their contention in respect of their case."

4. After the matter was remitted, it appears that the parties have submitted some additional documents. However, some questionery was given to the petitioner which was replied. Perusal of the impugned judgment of the Committee, it is manifest that, the Committee has not applied its mind to the affinity test. Even the questionery that is given does not seek details about various aspects which would be necessary for the complete affinity test. Such as the rites at the time of the death, birth, etc.

5. The Committee has absolutely failed to consider the affinity test. Certainly, affinity test can not be the sole basis for

grant of validity or otherwise, but it can be one of the corroborative piece for considering along with the documents. The judgment does not in any way consider the said affinity test.

6. The reasons for which the earlier judgment of the Committee was set aside and the matter was remitted back was lack of conducting the affinity test and ethnic linkage. The impugned judgment still suffers from the same defect. The judgment nowhere depicts the application of mind on the part of the committee to the affinity test and/or ethnic linkage. The said lacunae still subsist. In fact, when the matter was remitted for the said purpose, the Committee ought to have been diligent in applying its mind in respect of the affinity test and ethnic linkage and given its findings on the same. The impugned judgment does not confirm to the said aspect. We express our displeasure for the same.

7. Considering the above, we are required to remit the matter back again for the same purpose. The said affinity test and ethnic linkage would also be considered along with the documentary evidence while deciding the claim of the petitioner as belonging to Pardeshi O. B. C.

8. In the light of the above, we pass the following order.

9. The impugned order is quashed and set aside. The matter is remitted back to the Committee for consideration as observed above in the present order. The parties shall appear before the Committee on 29th January, 2016. As both the parties are before this Court, it is not necessary for the Committee to issue fresh notices to the parties. The Committee shall thereafter decide the proceedings as expeditiously as possible, as per the directions given herein above expeditiously and preferably within a period three (3) months from 29.01.2016. The original record is with the A. G. P. The same be handed over to the Committee immediately.

10. In view of the instant, order needless to state that, the elections in respect of the post held by the petitioner shall not be held. The learned A. G. P. shall inform the present order to the concerned authorities. The writ petition is disposed of. No costs.

11. Parties to act on authenticate copy.

[A. M. BADAR, J.]

[S. V. GANGAPURWALA, J.]