

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

**WRIT PETITION NO. 10855 OF 2015**

Shah Faiz Ahmed Yunus .. Petitioner

**Versus**

The State of Maharashtra and others .. Respondents

Shri Santosh B. Gastgar, Advocate h/f Shri Apparao Yenegure,  
Advocate for the Petitioner.

Shri A. M. Phule, A.G.P. for Respondent Nos. 1 and 2.

Shri Shailendra S. Gangakhedkar, Advocate for the Respondent  
No. 4.

**CORAM : S. V. GANGAPURWALA AND  
A. I. S. CHEEMA, JJ.**

**DATE : 07TH MARCH, 2016.**

**PER COURT :**

. The claim of the petitioner as belonging to Chappar Band (Vimukta Jati) is rejected. Aggrieved thereby present petition.

2. Mr. Gastgar, the learned counsel for the petitioner submits that, in old record also against the name of the forefathers of the petitioner Shah is recorded and in some cases Fakir is recorded, surname Shah and Fakir can be considered to determine the caste as Chhapparband. The learned counsel relies on the circular dated 23.03.2011 issued by the Government. The learned counsel submits that, even affinity test and the report of

vigilance supports the case of the petitioner. Ancestors of the petitioner were preparing fake currency, which has been stated by the witnesses before the vigilance. The learned counsel submits that, even the real paternal cousin has been given validity certificate. The genealogy filed on record substantiates the said fact. According to the learned counsel the Committee failed to consider the same. The learned counsel relies on the orders of this Court in Writ Petition No. 746 of 2013 dated 03rd March, 2015, so also the judgment and order of this Court at Nagpur in Writ Petition No. 3738 of 2014 dated March 10, 2015 and also the judgment in Writ Petition No. 2802 of 2014 dated 06th April, 2015. The learned counsel submits that, the documents wherein Shah and Fakir is mentioned are much old documents. They are pre-independence period documents i. e. of the years 1938, 1937, 1946.

3. The learned Assistant Government Pleader supports the order and submits that, the circular dated 23rd March, 2011 relied by the petitioner has been cancelled by subsequent circular dated 16.02.2015. According to the learned A. G. P., there is no document worth the name showing the caste of the petitioner as Chhapparband.

4. With the assistance of learned counsel for respective parties, we have gone through the judgment, so also the

documents.

5. It would be worth considering that there is not a single document either of the petitioner, his father or his relative recording their caste as Chhapparband. We could have considered the case of the petitioner in the light of the surname being Shah and Fakir as corroborative piece of evidence to come to the conclusion that the caste of the petitioner is Chhapparband, had there been independent document suggesting caste of the petitioner as Chhapparband. However, in not a single document filed by the petitioner, the caste is mentioned as Chhapparband.

6. The validity granted to the paternal cousin of the petitioner is not issued on the basis of any document, but is issued solely on the basis of circular dated 23.03.2011, which is subsequently cancelled vide circular dated 16.02.2015. Even the circular dated 23.03.2011 does not state that the mention of word Shah and Fakir against their name would conclusively establish the caste as Chhapparband. It only states that the same can be considered. We would have considered the same as corroborative evidence. In absence of any evidence on record in the shape of documents showing the caste recorded as Chhapparband of the petitioner or his ancestor, the case of the petitioner cannot be considered and the judgment has been rightly passed.

7. The petitioner has been admitted to B.U.M.S. course and is presently studying in the IIInd year. Considering the fact that, the petitioner has completed half of the course, we deem it expedient to protect the admission of the petitioner. In the result, we pass following order.

8. The writ petition to the extent of challenge to the judgment of the Committee invalidating caste claim of the petitioner is dismissed. However, the respondents shall permit the petitioner to continue his education in B.U.M.S. course as a student from open category henceforth and shall not cancel the admission on the ground that his caste claim has been invalidated. No costs.

9. The claim of the petitioner has been invalidated on account of lack of evidence. In view of that, on account of invalidation of the claim, the criminal action may not be taken against the petitioner.

10. The parties to act on authenticate copy.

**[ A. I. S. CHEEMA, J. ]**

**[ S. V. GANGAPURWALA, J. ]**