

UNREPORTED**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.836 OF 2016**

Smt.Martha W/o Devidas Rathod,
Alias Martha D/o Chintaman
Mhankale, Age 45 years,
Occ.Police Patil, Wadala
Mahadev, Taluka Shrirampur,
Dist.Ahmednagar. ... Petitioner.

Versus

1. Scheduled Caste, De-notified
Tribe (Vimukta Jaati), Nomadic
Tribes, Other Backward Classes
and Special Backward Category
Divisional Caste Certificate
Scrutiny Committee, Committee
No.1, Nashik Division, Nashik,
through its Member Secretary.

2. Sub-Divisional Magistrate,
Shrirampur Division,
Taluka Shrirampur, Dist.
Ahmednagar. ... Respondents.

...
Mr.Amit A.Yadkikar, advocate for the petitioner.
Mr.P.S.Patil, Additional Government Pleader for
the State.

...

**CORAM : S.V.GANGAPURWALA AND
S.M.GAVHANE, JJ.**

**Reserved on : 07.12.2017.
Pronounced on : 19.12.2017.**

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

1. Rule. Rule returnable forthwith. With the consent of the learned counsel for parties, the petition is taken for final hearing.

2. The caste claim of the petitioner as belonging to Mahar - Scheduled Caste is invalidated by the Committee. Aggrieved thereby, the present Writ Petition.

3. Mr.Yadkikar, learned counsel for the petitioner submits that entire record of the petitioner and his relatives records caste as Hindu Mahar. The School record of the petitioner records caste as Hindu Mahar. The School record of the petitioner's paternal aunt of the year 1952 records caste as Hindu Mahar. The learned counsel submits that even the vigilance is conducted. The School record has been found to be genuine and correct. It has also come on record that the parents of the petitioner nor the petitioner has undergone Baptism. The marriage of the petitioner is performed as per Hindu tradition. The marriage of the brother of the

petitioner has also been performed as per Hindu custom. Only because the ancestors of the petitioner were buried and photo of Lord Jesus was found on the wall of the petitioner's house would not be sufficient to brand the petitioner as Christian or having converted to Christianity. Learned counsel relies on the judgment of the Division Bench of this Court in the case of **"Dipak S/o Yohan Shinde Vs. State of Maharashtra and others"** reported in **2014 (5) Mh.L.J.252**, in case of **"Sudam Ankush Randive Vs. State of Maharashtra and others"** Writ Petition No.615/2012 (Coram : R.M.Borde and V.L.Achliya,JJ.) decided on **2.7.2014**, in case of **"Chaturbhuji Vithaldas Jasani Vs. Moreshwar Parashram and others"** reported in **AIR 1954 Supreme Court 236**, in case of **"C.M.Arumugam Vs. S.Rajgopal and others"** reported in **AIR 1976 Supreme Court 969**, in case of **"K.P.Manu Vs. Chairman, Scrutiny Committee for Verification of Community Certificate"** reported in **AIR 2015 Supreme Court 1402**.

4. Mr.Patil, learned Additional Government Pleader submits that even the name of the

petitioner and her relatives shows that petitioner is Christian. The parents of the petitioner were following Christianity. The statement of the uncle of the petitioner is recorded and he admits visiting the Church and having faith in Christian religion. The ancestors of the petitioners are buried in Christian Crematorium. In the house also the photo of Lord Jesus is found. All these facts show that petitioner and her parents professed Christian religion. The bare statement of the petitioner and her uncle that the marriage of the petitioner is performed as per Hindu custom has no supporting evidence. The learned Additional Government Pleader submits that the petitioner profess Christian religion and as such can not be said to belong to Mahar caste. The learned Additional Government Pleader relies on the judgment of this Court in the case of "**Aman Santosh Shirsath Vs. State of Maharashtra and others**" (Coram : B.P.Dharmadhikari and Ravindra V.Ghuge, JJ.) dated 10.9.2013 in Writ Petition No.5105/2013, so also the judgment of the Apex Court in the case of "**Kailash Sonkar Vs. Smt.Maya**

Devi" reported in **(1984) 2 Supreme Court Cases 91** and another judgment of the Apex Court in the case of **"C.M.Arumugam Vs. S.Rajgopal and others"** reported in **(1976) 1 Supreme Court Cases 863.**

5. With the assistance of learned counsel for respective parties, we have gone through the judgment delivered by the Committee and the documents.

6. The documents produced on record by the petitioner depicts caste recorded as Mahar. The documents include School record of the petitioner and old School record of the year 1952 of the real paternal aunt. No contra documentary evidence is produced.

7. The vigilance is conducted. The statement of uncle of petitioner is recorded. Uncle of the petitioner states that grand father of the petitioner died in 1971 and he was buried. So also his brother was buried. He further states that the marriage of the petitioner's parents and petitioner is performed as per Hindu

custom. The vigilance also found the photo of Lord Jesus in the house of the petitioner.

8. The vigilance has not found any record to show that the petitioner or her parents has undergone Baptism or that they are members of the Church. Mere photo of Lord Jesus on the wall in the house may not be sufficient to come to the conclusion that the petitioner professes Christian religion. However, further it has been found that ancestors of the petitioners on their death are buried and the same is not as per the Mahar custom. In such cases the Committee ought to have probed into detail by conducting extensive affinity test. They should have enquired about the traits and ethnic linkage of Mahar caste from the petitioner. The Committee has not conducted such exercise. At least in such cases as in the present matter, it was necessary for the Committee to extensively probe and conduct the affinity test. The Committee has failed to do so. In view of that we feel it appropriate to remit the matter to the Committee.

9. In the result, the impugned judgment and order is quashed and set aside. The parties are relegated before the Committee. The Committee shall conduct extensive affinity test and decide the claim of the petitioner of Mahar - Scheduled Caste afresh on its own merits after hearing the petitioner.

10. The petitioner shall appear before the Committee on 10.1.2018. The Committee shall thereafter decide the proceedings expeditiously, preferably within six (6) months.

11. Till the proceedings are decided by the Committee, the Respondents shall not take any coercive action against the petitioner. The Respondents may take further course of action depending upon the judgment that would be delivered by the Committee in the validation proceedings.

12. Rule accordingly disposed of in above

terms. No costs.

Sd/-

(S.M.GAVHANE, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

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