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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3961/2015

Jyoti Vijaysing Patil Pardeshi.
...Petitioner..

Versus

The State of Maharashtra &
three others.

...Respondents...

.....

Shri D.B. Thoke, Advocate for petitioner.
Shri P.S. Patil, AGP for respondent nos.1 & 2.
Respondent nos.3 & 4 served.

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**CORAM: S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE: 27.07.2017

ORDER :

1] The scrutiny committee's order dated 24.9.2014 has been challenged in this petition under Article 226 of the Constitution of India. The petitioner claims that she belongs to Rajput Bhamta – Vimukta Jati, which is notified tribe as VJNT. A certificate to that effect was issued by the competent authority on 10.7.2012 (Annexure A).

2] The petitioner has completed her Bachelor of

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Computer Application course in the year 2012-13. She has thereafter taken admission to the Master's degree in the same subject against a reserved seat in the respondent no.3 - college.

3] Since she has been admitted against a reserved seat, the caste certificate was forwarded to the respondent no.2 - committee for verification.

4] Amongst others, the petitioner relied upon a certificate of validity, which was issued to one Govindsing Thansing Rajput. The claim of said Govindsing Thansing Rajput was held as valid. He also claims that he belongs to Rajput Bhamta. It is claimed that he is the real uncle of the petitioner. There is also an affidavit, which was sworn before the Executive Magistrate, Chalisgaon, dated 30.11.2012 alongwith genealogy.

5] It is claimed that there was a common ancestor and that is why she can rely upon the certificate of validity issued to Govindsing Thansing Rajput.

6] Since the committee is alleged to have omitted this from consideration though it was claimed to be a valid piece of evidence, we have not only carefully

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perused the impugned order, but we called for the original file in relation to Govindsing Thansing Rajput's case.

7] Though the argument of the petitioner is referred, what is pertinent is that the scrutiny committee relied upon the entries in the school records (Zilla Parishad Prathamik Shala, Bahal Tq.Chalisgaon Dist.Jalgaon). The petitioner's brother is supposed to have admitted to the said school and left it. The date of birth is 16.3.1947, but the entry in the caste column is "Hindu Pardeshi (Rajput). A finding of fact is, therefore, recorded that the petitioner cannot claim to be Rajput Bhamta - VJNT when such is the entry in relation to her father.

8] As far as Govindsing's record is concerned, it is stated that Govindsing also has a similar entry in relation to him made by the Head Master of the Zilla Parishad Primary School, Bahal. It is in these circumstances that the claim of the petitioner towards Rajput Bhamta - VJNT, has been rejected.

9] We would not have bothered to interfere with such an order of the scrutiny committee, but for the fact

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that Govindsing was issued a certificate of validity. That is why we called for the record in relation to Govindsing.

10] During the course of arguments before us, learned AGP Shri Patil relied on original record pertaining to Govindsing's case. Shri Patil argued that Govindsing had affirmed an affidavit before the Executive Magistrate on 26.10.2010 and who is an Executive Magistrate at the same place namely Chalisgaon. Govindsing did not show in the affidavit or in the family tree relied upon that he had a brother (Vijaysing), who is the father of the petitioner. Hence, Shri Patil argued that Govindsing and the petitioner's father are not related to each other.

11] Shri Thoke, learned Advocate appearing for the petitioner, would submit that grave injustice would be caused to the peitiotner if this argument of Shri Patil, and made for the first time, is accepted. Shri Thoke submits that he argued the case on the footing that the certificate of validity issued to Govindsing has been erroneously and illegally discarded by the committee. No credence or weightage is given to this legally admissible

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evidence. The reason for discarding it is that instead of a certificate of validity, which is a conclusive proof, the school entries and birth entries have to be preferred, for, the claim in the case of Govindsing does not tally with his birth and primary school record. Shri Thoke would, therefore, submit that the petitioner is taken completely by surprise.

12] Alternatively, it is submitted that this argument of the State and on behalf of the scrutiny committee is not borne out from the record. There are voluminous documents, which would evidence the relationship, and Shri Thoke requested for a last opportunity to the petitioner to substantiate this assertion and argument.

13] Having heard both the sides, we find that since the petitioner is a student and presently undergoing her studies for Master's degree in Computer Application in the respondent no.3 - college, deserves a last opportunity and in the larger interest of justice to substantiate and prove her claim, not only towards Rajput Bhamta - VJNT, but also to prove her relationship with the certificate of validity holder Govindsing, whether he

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is the real uncle from the paternal side, should be decided, therefore, by the committee on the basis of the contentions raised before us, but not entirely influenced by the arguments of the State and the scrutiny committee, canvassed before us. The scrutiny committee shall decide the matter afresh on its own merits and in accordance with law. The committee should approach the case in an unbiased and impartial manner bearing in mind the career of the petitioner.

14] We keep all the contentions open. We allow the petition to above extent. If the petitioner's admission has been protected by any ad-interim order of this Court, that should be protected till the scrutiny committee pronounces and delivers its order.

15] The writ petition is allowed in above terms. No costs. R & P be returned forthwith to Shri Patil, learned AGP.

(MANGESH S. PATIL, J.) (S.C. DHARMADHIKARI, J.)