

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4519 OF 2015

Appa S/o Damodhar Kapate

Petitioner

V E R S U S

The State of Maharashtra, Through
its Secretary, Rural Development
Department, Mantralaya, Mumbai &
five others

Respondents

WITH

WRIT PETITION NO. 4523 OF 2015

Sangita W/o Appa Kapate

Petitioner

V E R S U S

The State of Maharashtra, Through
its Secretary, Rural Development
Department, Mantralaya, Mumbai &
five others

Respondents

Mr. S.S. Thombre, Advocate for the petitioners
Mr. M.B. Bharaswadkar, A.G.P. for respondent Nos.1, 3 & 4
Mr. S.T. Shelke, Advocate for respondent No.2
Mr. M.D. Narwadkar, Advocate for respondent No.6

**CORAM : S.V.GANGAPURWALA AND
K.L. WADANE, JJ.**

DATE : 2nd MARCH, 2017

PER COURT :

1. The Caste claims of the petitioners in both these petitions as belonging to 'Bhope' caste (NTB) category are rejected.

2. Mr. Thombre, learned counsel for the petitioners submits that the documents filed on record clearly show the caste of the petitioners as 'Bhope'. The Committee has not made it clear the basis upon which the Committee came to the conclusion that the petitioners are 'Mahanubhav Bhopi', which comes in O.B.C. and not Bhope under NTB. According to the learned counsel, the second cousin of the petitioner in Writ Petition No. 4519 of 2015 has been granted validity. The same is referred, however, nothing is discussed as to why the Validity Certificate is not relied. Learned counsel further submits that the Vigilance report also supports the case of the petitioners. Learned counsel further submits that there is no contra evidence on record in both the matters. Even it is no where stated by the Committee

that the petitioners have not passed the affinity test. There is not a single contra evidence in respect of the petitioner in Writ petition No. 4523 of 2015. All the documents consistently refer caste as 'Bhope'.

2. Mr. Bharaswadkar, learned A.G.P. states that the petitioner could not satisfy the affinity test. The Validity Certificate is in respect of distinct relative and not a near relative. The Committee has rightly considered all the documents on record.

3. We have gone through the Judgment delivered by the Committee and the documents produced on record by the petitioners.

4. The petitioners in both these petitions are husband and wife. As far as the Caste Claim of the wife is concerned, the same will have to be considered on the basis of documents of her paternal side. As far as husband's caste claim is concerned, the validity of the second cousin is produced on record,

but except referring to the same, the Committee has not discussed about the evidence tendered while giving the validity of the second cousin of the petitioner. All the documents suggest the entry of caste 'Bhope'. In case of cousins of the petitioners, the Khasra-Patrak is filed on record, which is of the year 1955-56. The relevancy of the same ought to have been considered by the Committee. The Committee was also required to consider the affinity test and give such finding on such affinity. The Committee has concluded that the petitioners are belonging to 'Mahanubhav Bhopi' (OBC) and not Bhope (NTB). The basis for arriving of such conclusion is nowhere spelt out. In fact, there is not a single document filed on record by either of the petitioners referring to their caste as 'Mahanubhav Bhopi'. Without any document produced on record, the Committee concluded that the petitioners are belonging to 'Mahanubhav Bhopi'. The Committee is required to give its finding supported by reason.

5. Considering the above, the impugned orders are quashed and set aside. The parties are relegated before the Committee. The petitioners shall appear before the Committee on 22nd March, 2017. The Committee shall thereafter decide the validation proceedings expeditiously considering the fact that the matters are remanded back. The Committee shall decide the proceedings within six months from the date of appearance of the petitioners. The petitioners shall co-operate in expeditious disposal of validation proceedings.

6. Writ Petitions are partly allowed. No costs.

7. Authenticated copy of this order be supplied to the petitioners.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)

