

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.6295 OF 2016**

Mathurabai W/o Shankar Benade
Age 36 years, Occ.Household,
R/o Jamner, Taluka Jamner,
Dist.Jalgaon. ... Petitioner.

Versus

1. The State of Maharashtra,
through the Secretary,
Social Welfare and Special
Assistance Department,
M.S.Mantralaya, Mumbai.

2. The District Collector,
District Jalgaon.

3. The Sub-Divisional Officer,
Jalgaon Sub-Division,
District Jalgaon.

4. The Municipal Council,
Jamner, through the Chief
Executive Officer,
Taluka Jamner, Dist.Jalgaon.

5. The Divisional Caste
Certificate Scrutiny
Committee, Nasik No.2,
Dhule.

6. Sunita W/o Sanjay Benade,
Age 38 years, Occ.Household,
R/o Jamner, Taluka Jamner,
District Jalgaon. ... Respondents.

Mr.R.S.Deshmukh, advocate for the petitioner.
Mr.P.S.Patil, Additional Government Pleader for
the State.
Mr.G.V.Wani, advocate for the Respondent No.4.
Miss.P.S.Talekar, advocate for Respondent No.6.

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

**Reserved on : 02.03.2017
Pronounced on : 05.05.2017**

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

1. The caste claim of the petitioner as belonging to Pardesi (OBC) is invalidated by the Divisional Caste Certificate Scrutiny Committee, Nasik No.2, Dhule under its judgment and order dated 11.5.2016. The said judgment is assailed in the present Writ Petition.

2. Mr.R.S.Deshmukh, learned counsel for the petitioner strenuously contends that the petitioner had filed voluminous documents on record to substantiate her caste claim. The documents were also of pre-independence period having great probative value. However, the Committee committed grave error in discarding the said documents. The learned counsel submits that

the petitioner in support of her caste claim as belonging to Pardesi (OBC) had submitted extract of appendix 14 of Births and Deaths Register of pre-independence period of the great grand-father of the petitioner, so also the death certificate of the great grand-father of the petitioner Mithusing Jaising Pardesi. The name itself shows the caste of the petitioner's great grand father. Even the extract of mutation entry register of village Gondkhel, Taluka Jamner, District Jalgaon corroborates the case of the petitioner and the sawp6295me is in conformity with the genealogy submitted by the petitioner. The said document also proves the caste of the petitioner and her fore-father as Pardeshi. The learned counsel further submits that during the course of the proceedings the Respondent No.5 Committee addressed a letter to the expert of Modi script i.e. Rajwade Research Centre, Dhule, and sought its expert opinion about the interpretation of the word "Pudeshi". The expert i.e. Rajwade Research Centre communicated to the Respondent No.5 and confirmed that the word "Pudeshi" is to be read as Pardesi. According to the learned

counsel, the said fact would unequivocally establish that in pre-independence document of the great grand father of the petitioner, the caste is consistently recorded as Pardesi.

3. The learned counsel further submits that while passing the judgment perverse observations are made by the Respondent No.5 Committee and the observations show total non-application of mind of the Members of the Committee. The petitioner never claimed that she is descendant of Maharana Pratap, yet the Committee in its judgment recorded that the petitioner claimed to be the descendant of Maharana Pratap. The Committee failed to appreciate that it is the specific case of the petitioner that son of Mr. Jaising Tansing Pureshi is her grand father and Pureshi has to be read as Pardeshi is clarified by the expert. It is submission of the learned counsel that the petitioner discharged her burden to establish her relationship with the child born to Mr. Jaising Tansing in the form of the statement of Madan Pardeshi, coupled with the revenue record. Madan

Hari Pardesi, has also further stated that petitioner is her niece and clarified about the relationship of Kesarbai, so also that Mithusing, Mitharam and Ramchandra are names of one person. Madan Hari Pardeshi being a member of the said family has special knowledge of his ancestors and relationship. The said statement of Madan Pardeshi would have a strong evidential value. There is no contra evidence on record to disbelieve his statement. Kesarbai is the sister of the great grand father of the petitioner and in her record the caste is shown as Pardeshi. The said document is also of pre-independence period. The Vigilance cell report also specifically states that the Vigilance verified the details of Kesarbai Jaising Pardesi and it was found that her caste has been recorded as Pardeshi. All this record proves the caste of the petitioner as Pardeshi.

4. The learned counsel for the petitioner further submits that the caste certificate obtained by the son of the petitioner of Rajput would not come in the way of the petitioner to

establish her caste as Pardesi as the petitioner would get her caste from her paternal family and the son would get his caste from his parental family i.e. her husband.

5. Mr.Deshmukh, learned counsel further submits that the Committee ignored the reports submitted by the Vigilance Cell from time to time. The Respondent No.5 Committee incorrectly recorded observations about the occupation of ancestors as stated by the petitioner. The petitioner specifically stated in her evidence that occupation of her ancestors was theft, dacoity etc. Over the period, the occupation has changed from theft, dacoity to agriculture and such social change is bound to occur due to spread of education and awareness across generation. The Committee incorrectly appreciated statement of Bhagatsing Pardeshi. In his statement he specifically stated that his caste is Pardeshi, however, the Committee recorded in its judgment that he stated his caste as Pardeshi Bhamta. According to the learned counsel in the affinity test, the Respondent No.5 found the

rituals followed in the case of birth, death, soundal are not similar to those followed in Pardeshi, however, this is not conclusive proof to decide the caste claim of the petitioner. At the same time the Respondent No.5 Committee has not observed any inconsistency in the statement of petitioner with regard to ritual followed in marriage, Khanamati, Telmandav, deity, surnames, Halad Samarambh. The learned counsel submits that merely on the basis of affinity test and ethnic linkage the whole caste claim ought not to have been decided and the Committee was expected to consider the caste claim in light of the documents of pre-independence period, the report of Vigilance.

6. The learned counsel to substantiate his contention that the evidence of Madan Hari Pardeshi ought to have been accepted with regard to relationship relies on the judgment of the Apex Court in the case of **"Dolgobinda Paricha Vs. Nimai Charan Misra and others"** reported in **AIR 1959 Supreme Court 914**. The learned counsel relying on the judgment of the Apex Court in a

case of **"Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others"** reported in **AIR 2012 Supreme Court 314**, submits that the documentary evidence produced has to be considered in a proper perspective and the documents of pre-independence period will have more evidential value and the affinity test may not be regarded as a litmus test.

7. Learned counsel further submits that proper opportunity is not given to the petitioner. The petitioner was present on the given date, since morning, however, it was wrongly recorded in the Roznama that the petitioner remained present before the Committee at 5-25 p.m. The same is erroneous. While remitting the matter in the earlier round of litigation, this Court never expected the Respondent No.5 to disturb any other issue, that of genealogy or identity of the petitioner and sisters but was expected to give its comment only on affinity test. The Committee could not have reopened the issues at the instance of Respondent No.6. The learned counsel submits that the

judgment of the Committee be set aside and the caste claim of the petitioner as belonging to Pardeshi (OBC) be validated.

8. Miss. Talekar, learned counsel for Respondent No.6 submits that the opportunity of hearing was given to the petitioner on two occasions and yet the petitioner and her lawyer did not appear on both the occasions. The Committee decided the matter based on written statement of the petitioner, the vigilance reports, documents and also the affinity and ethnic linkage. The learned counsel submits that Ramchandra Mithusing, Mithu and Mitharam are not one and the same person. If their record is perused, the date of birth of all these persons is different. The date of birth of Ramchandra in different records is recorded as 1.6.1990, that of Mithusing Jaising is recorded as 29.7.1919. As far as Mithu Jaising, there is no record of date of birth, so also there is no record of date of birth of Mitharam Jaising. When their date of birth is separately recorded, they can not be one and the same person. The petitioner has failed

to establish her- genealogy. The School record of the cousin grand father of the petitioner Hari Jaising Pardeshi of 1.5.1931 records caste as Rajput, whereas the record of 1.10.1934 records caste as Pardeshi. The real brother of the petitioner namely Dilip Shivram Rajput, is issued caste certificate of Rajput on 2.8.1988 and has taken benefit of VJ category while seeking his appointment as a Teacher in the School. The son and daughter of the petitioner are using the caste certificates of Rajput, the same falls in VJ category. Four times Vigilance has been conducted. There is also contradiction in the statements of the petitioner regarding the sibling of her grand father whose record she claims to rely to show Pardeshi caste. According to the affidavit showing genealogy sworn by the petitioner one Nathabai Jaising Pardeshi was having only two children, Mithu Jaising and Hari Jaising, whereas according to the statements made before 4th Vigilance by the petitioner and her cousin brother Madan Hari Pardeshi, Nathabai Jaising had two male and two female children.

9. Learned counsel further submits that in the record of Mithusing @ Ramchandra Jaising Pardeshi, wherein date of birth is said to be 1.6.1919, caste is recorded as Rajput. In the record of Hari Jaising Pardeshi cousin grand father of the petitioner - caste is shown as Rajput. Kesar Jaising Pardeshi i.e. grand father's sister shows caste as Pardeshi but her real brother's caste is recorded as Rajput. According to the learned counsel four times Vigilance is conducted and contradictory statements are given with regard to occupation, family deity. The record of the father of the petitioner also depicts caste as Rajput. The petitioner can not prove her caste as Pardeshi either from documents nor from affinity. The Committee has rightly rejected the caste claim of the petitioner.

10. The learned A.G.P. appearing for Respondent No.5 also supports the judgment.

11. We have considered the submissions canvassed by the learned counsel for respective

parties, so also have gone through the documents produced.

12. If we go through the documents produced on record, it is manifest that as far as School record of the petitioner is concerned, the same is not consistent. In one School record, the caste of the petitioner is recorded as Hindu Bhamta Rajput. In the School record of the real brother of the petitioner, caste is recorded as Rajput Bhamta. The real brother of the petitioner has obtained the caste certificate of Rajput Bhamta. The service record of the petitioner's real brother Dilip records his caste as Rajput Bhamta. Even in respect of the School record of the father of the petitioner of the year 1953, the caste is recorded as Hindu Rajput. As far as cousin grand father of the petitioner is concerned, one School record of said Hari Jaising Pardeshi records caste as Pardeshi and another document as Rajput. As far as great grand father of the petitioner is concerned, there is a dispute. In the School record of the great grand father namely Ramchandra Jaising, the

caste is recorded as Rajput, whereas that of Mithusing does not record the caste. The petitioner contends that Ramchandra, Mithusing and Mithalal are all names of one person. If that is so then the School record of Ramchandra specifically record caste as Rajput. The documents are not consistent to show the caste of petitioner as Pardeshi but the uncontroverted documents of the real father of the petitioner, real brother of the petitioner shown caste being recorded as Rajput. The record of the father of the petitioner dates back to the year 1953. Even the record of the grand father Ramchandra shows the caste recorded as Rajput. Coupled with all these documents, the petitioner also could not successfully prove the affinity test.

13. It is true that affinity test can not be a litmus test to prove caste. It can be a corroborative piece of evidence. In the present case majority of the documents on record of the petitioner and her ancestors refer the caste as 'Rajput'. The affinity test would be relevant. However, as observed by the Committee, the

petitioner could not also prove ethnic linkage and the affinity with that of Pardeshi caste. The Committee certainly has to scrutinise the documents and for the said purpose Vigilance has been conducted four times. Going through the judgment delivered by the Committee it transpires that the Committee has considered Vigilance report and the documents thread-bare and has arrived at a plausible conclusion. The judgment can not be said to be perverse. The petitioner could not explain the documents. The Vigilance has scrutinised the documents showing the caste recorded as Rajput in respect of her father, real brother and cousin grand father, so also great grand father. Though in the School record of the real sister of the grand-father of the petitioner Kesarbai, the caste is recorded as Pardeshi, still, the said document would lose its evidential value when in the record of the real brother of Kesarbai, the caste is recorded as Rajput. Moreover, the father and real brother of the petitioner also claim to belong to Rajput caste. The real brother of the petitioner has also taken benefit of the said caste while

seeking appointment as a Teacher.

14. Considering the aforesaid conspectus of the matter, we do not find any error committed by the Committee in invalidating the caste claim of the petitioner as belonging to Pardeshi caste.

15. In the result, the Writ Petition is dismissed. However, there shall be no order as costs.

Sd/-

(K.L.WADANE, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

