

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8017 OF 2017

Veena Ashok Godse &
Veena Hemant Sonawane,
Age : 31 years, Occu.: Agri.,
R/o. Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar,
Presently residing at :
Jejuri, Tq. Purandar, Dist. Pune

.. Petitioner

VS.

The State of Maharashtra
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai and others

.. Respondents

Mr. Anandsingh Bayas, Advocate for the petitioner
Mr. S.B. Yawalkar, A.G.P for the respondent/State
Mr. S.B. Talekar, Advocate i/b. Mr. B.R. Kedar, Advocate for respondent
no.6 and 7

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

**RESERVED ON : 23-06-2017
PRONOUNCED ON : 02-08-2017**

ORDER :

1. This Petition challenges the order passed by the District
Caste Certificate Verification Scrutiny Committee, Ahmednagar
(Second Respondent).

2. The petitioner is a citizen of India. She is presently residing at Jejuri, Tq. Purandar, District – Pune. Father of the petitioner is resident of Shrirampur, District – Ahmednagar. Petitioner states that she is born and brought up at Ahmednagar. She belongs to Wani Other Backward Class (for short “Wani OBC”). She applied for the Caste Certificate from the Competent Authority at Shrirampur. The Competent Authority issued the Caste Certificate, certifying that the petitioner belongs to Wani OBC, notified at Serial No. 190 in the list of OBC, published by the State Government.

3. Petitioner submits that in the year 2005, she was married to one Hemant Ramchandra Sonawane, resident of Jejuri, Tq. Purandar, District – Pune. That is how, she is based at Purandar.

4. The General Elections of the Municipal Council, Jejuri were declared. The petitioner contested the election to the post of President of Municipal Council, Jejuri, which was reserved for OBC. She contested this election and secured the highest vote than the other candidates and was declared elected. The copy of the certificate issued by the Election Officer is annexed as Annexure “B”. The

petitioner submits that the Election Officer forwarded the Caste Certificate of the petitioner to District Scrutiny Committee at Ahmednagar. That was forwarded prior to the submission of the nomination form. The petitioner forwarded several documents to support her claim. The documents are enlisted at paragraph 5 of the Petition and annexed as Annexure "C" Collectively.

5. The petitioner relied upon these documents, to submit that she belongs to Wani OBC. She would submit that the Pre-Constitutional documents have higher probative value and in that, her ancestors have been mentioned as Hindu Wani / Wani. It is in these circumstances, and relying upon the genealogy, family tree and affidavit, it was urged that the petitioner is OBC.

6. It is claimed that the defeated candidate forwarded a complaint and the Scrutiny Committee verified these documents and in the backdrop of the Vigilance Cell Report.

7. The Scrutiny Committee, upon appreciation and appraisal of all these documents, concluded that the petitioner does not belong to Wani OBC.

8. We have perused the impugned order. This Petition is tagged with Writ Petition No. 4945 of 2013.

9. We have also perused the Writ Petition and all the annexures thereto.

10. Though, the Petition is tagged with Writ Petition no. 4945 of 2013, what we have noticed is that the petitioner was issued the Caste Certificate on 16/11/2016, in her maiden name. The Certificate states that the petitioner is Smt. Godase Veena Ashok Daughter of Godase Ashok Shankar of village Ahmednagar, District – Ahmednagar.

11. First of all, the petitioner herself claims that she married Hemant Sonawane, who is not a resident of Ahmednagar District but of Pune District. After her marriage, the petitioner contested elections to the post of President of Municipal Council, Jejuri, as a Reserved Category candidate. The post was reserved for OBC category and the petitioner obtained the Certificate in her maiden name. In the Petition itself, the petitioner has stated that she has married Hemant Sonawane in the year 2005. Firstly, therefore, the petitioner ceased to be a

resident of Ahmednagar District. She has herself stated that since 2005, she is residing at Jejuri, Tq. Purandar, District – Pune. Secondly, even if one assumes that the petitioner continues to be OBC, which Authority was Competent to issue to her the Caste Certificate, has not been clarified in the impugned order at all. Thirdly, even if the petitioner could have obtained the Caste Certificate from the Competent Authority at Shrirampur, still, whether she can claim to be belonging to Other Backward Class, post marriage, has not been discussed and clarified at all.

12. It is common ground that the wife, on marriage, becomes member of the family of husband and is transplanted to the Caste, to which she moved. In the case of **Valsamma Paul (Mrs.) Vs. Cochin University and others** (Civil Appeals Nos. 3163-3164 of 1995 with Civil Appeal No. 1197 of 1981 decided on 04-01-1996) reported in **AIR 1996 SC 1011**, the Hon'ble Supreme Court held that merely because the appellant before the Supreme Court married a Latin Catholic, though she was a Syrian Catholic by birth, whether she can claim to be a reserved category candidate, is a question which has to be answered with reference to her caste by birth. In that case, by birth, appellant was a Syrian Catholic. She has advantageous start in

life having born in Forward Caste. After completing education and becoming a major, she was transplanted in a Backward Caste by marriage. It is this aspect of the matter, which would enable the Court to find out whether the facility of reservation given to parties, like the appellant before the Supreme Court, would tantamount to making a mockery of the Constitutional exercise of identification of socially and educationally backward classes of citizens.

13. We do not have before us anything, which would indicate whether the petitioner a OBC, married a OBC person or otherwise. We do not know the Caste or Tribe of Hemant Sonawane. The Committee proceeded on the basis that the petitioner can derive the benefit of reservation meant for OBC in Elective Posts even after her marriage. This was without ascertaining the Caste or Tribe of Hemant Sonawant. If he is OBC, then, there is no difficulty but if he is not, then, whether he is belonging to a Scheduled Caste or Scheduled Tribe, Vimukta Jati Nomadic Tribe, Special Backward Class, has not been indicated at all. This has a vital bearing on the controversy.

14. Finally, assuming everything in favour of the petitioner, the Committee expressed an opinion with regard to documents at Serial

No. 11 and 13, that the contents thereof support the claim of the petitioner and they are useful documents. Still, it came to the conclusion that considering the totality of the evidence, the petitioner does not belong to Wani OBC. The finding of fact is though the petitioner's grandfather was a Teacher, he has stated about the Caste/Class before the School Authorities, while admitting all his children (6 in number) that they belong to Kulwant Wani or are Kulwant Wani. The revenue records in relation to the petitioner's grandfather carries the entry in the Caste column, as Kulwant Wani. As against this, the petitioner's real sister - Shital Ashok Godse, grandfather - Shankar Madhav Godse and great grandfather - Madhav Narayan Godse have been referred in their school records as Wani. Similar is the case of the petitioner's cousin cousin uncle and cousin cousin grandfather. There, as well the entry as against caste in their school records is Wani. It is in these circumstances, and by relying on the entries in the school records of the petitioner's father, the Committee has proceeded to invalidate the claim. The Committee has held that there was no reason for the grandfather of the petitioner not to have entered the Caste/Class, as Kulwant Wani in the school record of his own sons and daughters. Pertinently, one of the son happens to be the petitioner's father. It is in these circumstances, that on

appreciation and appraisal of the entire documentary evidence, this finding and conclusion is reached.

15. We have, on perusal of this finding and conclusion of the Committee, no alternative but to arrive at a conclusion that the petitioner has failed to substantiate her claim that she belongs to Wani OBC. There are several hurdles and difficulties, including those pointed out above for the petitioner to be able to substantiate and prove her claim. These hurdles and obstacles, some of which have a strong legal base, enable us to agree with the findings and conclusions of the Scrutiny Committee.

16. We do not think that the appreciation and appraisal of the oral and documentary evidence, denotes any perversity or errors of law apparent on the face of record. We cannot substitute our opinion and view with that of the Committee, merely because the petitioner has produced before us the same documents and relied upon their contents, to indicate that the old out of the same have higher probative value. We cannot sit as an Appellate Authority and re-appreciate and reappraise the factual finding. That is not permissible in law.

17. As a result of the above discussion, this Writ Petition fails and is dismissed but without any order as to costs.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/