

3. The caste claim of the petitioner as belonging to Rajput Bhamta, Vimukta Jati was referred to the committee. The same is invalidated. Aggrieved thereby, the present petition.

4. Mr. Bayas the learned counsel submits that voluminous documentary evidence was submitted before the authority. There was not a single contra evidence on record. Only on the ground that the record prior to 1961 is not submitted, the claim is invalidated. The learned counsel submits that even the vigilance cell report is not considered, the affinity has been taken into consideration by the Committee.

5. The learned AGP states that as there was no old record available, the Committee has rightly considered the said aspect.

6. We have perused the judgment of the committee. Upon perusal of the judgment, it is manifest that the committee has not at all discussed about the affinity test in the judgment. Though affinity test cannot be the sole consideration for determining the caste claim, however, the same can be a corroborative piece of evidence. It is also not a rule of universal application that unless the documents prior to 1961

are produced, the validity should not be granted. The committee has to be satisfied about the documents produced on record, its genuineness, affinity, the traits and then take a conscious decision.

7. The documentary evidence on record of the petitioner and his relatives shows caste recorded as Rajput Bhamta. The Committee could have considered the affinity test and ought to have arrived at a probable conclusion. As the affinity has not yet been considered, the impugned judgment cannot be sustained. In view of that the impugned judgment and order is quashed and set aside. The matter is relegated before the Committee.

8. The petitioner shall appear before the Committee on 1st March, 2017. The committee shall consider the affinity test and also the documents produced on record, afresh, on its own merits and decide the caste claim of the petitioner expeditiously, preferably within six months from the date of appearance.

9. Depending upon the judgment, that may be delivered by the Committee, respondent No.3 may take further course of action.

10. The petitioner shall file an undertaking with the institution that in case his caste claim is invalidated, the petitioner will pay full fees as per open category candidates.

11. Rule is made partly absolute. There shall be no order as to costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC