

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.12414 OF 2015

Heena d/o Chandan Duggal,
age: 20 years, Occ: Education,
through Chandan Gurubachanlal
Duggal, age: 55 years,
Occ: Self employee, R/o Duggal Chal,
Ward No.6, Tq.Shrirampur,
District Ahmednagar.

Petitioner

Versus

01 The State of Maharashtra,
through Director of Medical
Education and Research,
Government Dental College &
Hospital, St.George Hospital
Compound, P.D'Mello Road,
Fort, Mumbai.

02 The Maharashtra University of
Health Sciences, Dindori Road,
Nashik.

03 The Divisional Caste Certificate
Scrutiny Committee, Nashik
Division, Nashik.

04 M.M.Patel Public Charitable
Trust's Ashwini Rural Medical
College, Hospital & Research
Centre, Kimbhari,
Tq. & District Solapur.

Respondents

Mr.Rahul A. Tambe, advocate for the petitioner
Mr.P.S.Patil, A.G.P. for Respondents No.1 and 3.
Mr.S.B.Patil (Bhosikar), advocate for Respondent No.4.
Respondent No.2 served.

**CORAM : R.M.BORDE &
K.K.SONAWANE, JJ.**

Reserved on : 30th September, 2016.
Pronounced on : 06th January, 2017.

ORDER (Per R.M.Borde, J.):

The petitioner, who claims to belong to “Hindu Kshatriya” caste, which is included in Other Backward Class category, is objecting to the order dated 21.09.2015, passed by Respondent-Scrutiny Committee, directing invalidation of caste certificate issued to her.

2 The petitioner has been admitted to medical course as against a seat reserved for Other Backward Class category in Respondent No.4-College in the year 2014. Since the petitioner secured admission, being a member of Other Backward Class category, the caste certificate issued to her was referred to the Scrutiny Committee for verification. The Scrutiny Committee has, however, directed invalidation of the caste certificate, which order is impugned in this petition.

3 The petitioner, to substantiate her claim, has relied upon the school record wherein there is entry in respect of her caste as “Hindu Punjabi”. The entries in the school record of father of the petitioner as well as her paternal aunt are recorded as “Hindu Kshatriya”. The certificate of Age, Nationality and Domicile issued in favour of grand father of the petitioner, in the year 1984, records entry in respect of his caste as “Hindu Khatri”. The entries in respect of caste recorded in the records of near relations of petitioner are either “Punjabi”, “Hindu Punjabi” or “Hindu Kshatriya”.

4 The Scrutiny Committee, considering the report of Vigilance Cell, recorded a finding that though father of the petitioner, has denied his relationship with Gulati and Alagh family, after verifying the genealogy submitted in the matter of Ravindra Gulati and Rajesh Alagh as well as petitioner, came to the conclusion that the family of the petitioner is related to the family of Alagh and Gulati. The caste certificates issued to Rajesh Hariram Alagh and Ravindra Girdharilal Gulati have been invalidated by the Scrutiny Committee and the orders of invalidation of their caste claims have been confirmed by this Court as well as the Hon'ble Supreme Court.

5 It is further observed by the Scrutiny Committee that, the caste "Kshatriya" in Maharashtra has affinity with *Somavanshiya Sahastrarjun Kshatriya Samaj* and entry in respect of caste "Kshatriya" recorded at Sr.No.126 in the list of Other Backward Class castes, is a sub-caste of caste "Patkar". Patkars, in Maharashtra are essentially weavers and they do not have any affinity with "Punjabi Khatri" or "Punjabi Kshatriya". Similar reasons have been recorded by the Scrutiny Committee while rejecting proposals in respect of verification of caste certificate of Ravindra Gulati and Rajesh Alagh, which orders have been confirmed up to Supreme Court.

6 The petitioner claims that her forefathers were ordinarily residents of West Punjab, which is now part of Pakistan. After partition in the year 1947, the family moved to India and by passage of time, settled in Ahmednagar district. The petitioner contends that reference to "Punjabi" in the school record of herself

and her relations is indicative of language and there is no caste as "Punjabi Kshatriya". The petitioner, therefore, contends that the proposal for issuance of validity certificate ought not to have been turned down merely because they have migrated from Punjab Province after partition. Though father of the petitioner has specifically contended that their family has no concern with family of Gulatis and Alaghs, it has been reported to the Scrutiny Committee that one Santram Duggal, who is son of Roopchand Duggal, is great grand father of the petitioner. The great grand father of the petitioner Santram and Amirchand, father of Smt.Kamlesh (mother of Rajesh Hariram Alagh) were real brothers. The contention of the petitioner that they do not have any concern with Gulatis and Alaghs is not correct as from the family genealogy submitted in the matter of Rajesh Hariram Alagh, it is revealed that Alaghs and Gulatis are near relations of petitioner. Apart from this, the Vigilance Cell has also recorded in its report that Rajesh Alagh and Ravindra Gulati are related to each other.

7 The caste certificates issued to Rajesh Gulati and Ravindra Alagh were invalidated by the Scrutiny Committee and orders of invalidation were challenged in Writ Petitions No.7968 of 2014 and 7777 of 2014. Both the petitions came to be dismissed by this Court. Rajesh Hariram Alagh raised challenge to the order of dismissal of writ petition by presenting Special Leave to Appeal © No.35903 of 2015. The SLP presented by Rajesh Alagh has been dismissed by the Hon'ble Supreme Court by an order dated 25.04.2016.

8 In the matter of **Rajesh s/o Hariram Alagh Vs. State**

of Maharashtra & others (W.P.No.7968 of 2014, decided on 01.12.2015), the Division Bench, to which one of us (**R.M.Borde, J.**) is a member, has observed in paragraph 9, thus:

“9 The scrutiny committee has considered the report of D.K. Gosavi, Commissioner, Backward Class Commission, Maharashtra State, who recorded his finding in respect of inclusion of caste Patkar at Sr.No.126 of OBC & other subcaste including Somwanshi Sahastrarjun Kshatriya etc. The castes Khastriya and Khatri are included as subcastes of Patkar and cannot be considered synonymous with Punjabi Khatri or Punjabi Kshatriya. The vigilance cell has recorded in its report, which has been accepted by the scrutiny committee, that the petitioner has failed to establish his affinity to the Kshatriya caste. It is also not a matter of dispute that the grand father of the petitioner has migrated from State of Punjab and as such there is a mention of Punjabi in the caste column of the petitioner. However, it has not been explained as to how the entry 'Sheekh Khastriya' is recorded in the school record of the father of the petitioner and the inconsistent entries in respect of caste of father's sister in the school record.”

9 In view of above, the contention raised by the petitioner that the caste “Punjabi Kshatriya” of the petitioner, who claims to be Kshatriya originally from Punjab, has to be considered as having affinity with the caste “Khatri” which is a subcaste of caste Patkar included at Sr.No.126 in OBC list in Maharashtra, cannot be accepted. Reliance is placed by the petitioner on the judgment in the matter of **State of Maharashtra and others Vs. Kumari Tanuja, AIR 1999 SC 791**, wherein it has been recorded that,

when Sindh was part of Bombay Presidency, admitted the Bawas of that region were also treated as belonging to Nomadic tribe in the entire Presidency of the then Bombay, even when Sindh got separated from Bombay Presidency, the subsequent Resolutions of the Bombay Government continued to show Bairagi and Gosavi communities with their synonyms as Nomadic tribes, without there being any regional restrictions. This is obviously because by then, many members of the Bawas community from Sindh region had migrated to various parts of Bombay Presidency. The Bawa community from Sindh is therefore, entitled to the benefits reserved for Nomadic Tribe vide Government Resolution dated 21.11.1961.

10 In view of the judgment in the matter of **State of Maharashtra Vs. Milind**, 2001 (1) Mh.L.J. (SC) 1, the contention raised by the petitioner, relying on the judgment in the matter of *Kumari Tanuja*, is not acceptable.

11 The petitioner has been admitted to medical course as against a seat reserved for Other Backward Class category in the year 2014. She has completed two years of Four and Half years degree course. On perusal of the judgment delivered by the Scrutiny Committee, it is noticed that petitioner has not relied upon and fraudulent record nor has indulged in suppression of facts. Admission secured by the petitioner to medical course, therefore, deserves to be protected considering the fact that petitioner has already completed two years of study.

12 In this regard, reliance can be placed on the judgment

in the matter of **Arun s/o Vishwanath Sonone Vs. State of Maharashtra & others, 2015 (1) Mh.L.J. 457**; and in the matter of **State of Maharashtra Vs. Milind, 2001 (1) Mh.L.J. (SC) 1 = (2001) 1 SCC 4**. Respondent authorities, as such, shall not take any adverse action against the petitioner and shall allow her to continue the degree course in medical education. The petitioner, however, shall not be entitled to claim benefits as a member of Other Backward Class category for further education and for securing employment or any other benefits available to other Backward Class category candidate. The petitioner, however, shall have to pay the fees to Respondent-College equivalent to the fees payable by an open category student.

13 Writ Petition stands dismissed. Pending Civil Applications, if any, do not survive and stand disposed of.

(K.K.SONAWANE)

JUDGE

adb/wp1241415

(R.M.BORDE)

JUDGE