

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE CIVIL JURISDICTION****WRIT PETITION NO. 10367 OF 2017****Mariya d/o Feroz Khan****..... Petitioner****VERSUS****State of Maharashtra & Ors.****..... Respondents**

Mr.M.S.Deshmukh, i/b. Mr.Hemant V. Patil for the Petitioner.

Mr.A.A.Kumbhakoni, Advocate General, a/w. Mr.Akshay Shinde, Special Counsel, Mr.Sandeep Babar, A.G.P. for the State.

**CORAM : SHANTANU S. KEMKAR &
G.S. KULKARNI, JJ.**

DATE : 27th SEPTEMBER, 2017

P.C.

Through this petition filed under Article 227 of the Constitution of India, the petitioner has assailed the order dated 2nd September, 2017 passed by the 2nd respondent, Scheduled Tribe Certificate Scrutiny Committee, Aurangabad (for short the Committee) whereby the petitioner's claims for validation of her caste certificate as 'Tadvi' Tribe has been rejected.

2. According to the petitioner in support of her claim to the effect that she belongs to Tadvi Tribe, she had filed as many as 13 documents and also relied upon the judgment passed by this Bench at Aurangabad High Court in the case of

her father Firoze Ashfaq Khan. The reference of the said documents is available in paragraph (3) of the impugned order.

3. The case of the petitioner is that the Committee has wrongly discarded the said documents on the basis of the vigilance report. The Committee has also illegally discarded the ground raised by the petitioner that since her father has been granted certificate in pursuance to the judgment passed by this Court in Writ Petition No.994 of 1985 decided on 28th August, 1986, she is also entitled for the validation of her caste certificate. According to the petitioner the reason assigned by the Committee that since no vigilance was carried when her father was declared to be of Tadvi Tribe by the High Court, the claim of the petitioner cannot be accepted, is wholly erroneous.

4. We have considered the submissions made by the learned counsel for the parties and we have also gone through the impugned order.

5. It is not in dispute that the petitioner's father had filed a Writ Petition No.994 of 1985 before this Court. The said writ petition was allowed by this Court by an order dated 28th August, 1986. The relevant observations made by the Division Bench of this Court in the said order reads thus :-

“3. The Directorate of Social Welfare in its order dated 1st January 1985 has given reasons as to why the Petitioner could not be Recognized as a Tadvi Tribal. At this stage, we must clear one point, namely that the Petitioner is a Muslim by religion. The question would naturally arise as to whether persons belonging to such tribes as Tadvi, after conversion, could continue to be the members of the said tribe. The analogy of the loss of caste of a Hindu after conversion to another religion cannot be extended to the conversion of a member belonging to a tribe or the embracing by that person of another religion. That a person belonging to a tribe recognized as Scheduled Tribe continues to belong to that tribe despite that person embracing a religion has been recognized in fact, by the Government of Maharashtra itself. This is evident from a letter which was written by the Director of Social Welfare, Maharashtra State, Pune to one M.A.Hameedkhan son of Sherkhan of Aurangabad. A copy of this letter dated 4th of March 1978 has been annexed to this petition as part of Exhibit 'D' collectively; In this letter, it has been stated by the Director of Social welfare that the Government of Maharashtra by a letter dated 18th of February 1977 addressed to the Collector of Jalgaon and other Collectors of the different districts in the State of Maharashtra had communicated that the Tadvi caste is included in the Scheduled Tribes. It has also been stated that the people of Tadvi caste, may be of any religion, are eligible to get certificates of the Scheduled Tribe. A copy of the said letter of

18th of February 1977 has been included as a part of Exhibit 'D' collectively in this petition. The said letter in paragraph 2 states as follows :-

“Tadwi caste is included in the Scheduled Tribe. The people belonging to the Tadwi caste, may be of any religion, are eligible to get the certificate of Scheduled tribe. Therefore, for a person belonging to Tadwi (Muslim), it is not necessary to give affidavit to the effect that he does not belong to the Muslim religion”.

4. One must, therefore, proceed to consider the claim of the Petitioner to belong to the Tadvi (Scheduled Tribe) despite the fact that the Petitioner, as well as his ancestors, have, for some generations, been Muslims by religion.

5. The Director of Social Welfare in his order dated 1st of January 1985 has refused to accept that the Petitioner belongs to the Tadvi Tribe on several grounds. One of them was that the candidate's family led a Muslim way of life and the candidate was not aware of the traditional social customs of Tadvi Tribe. In our opinion, this is a wholly untenable ground, because if one has to proceed on the basis that irrespective of the religion, a person belonging to the Tadvi Tribe continues to be a Tadvi, then the ground that the family concerned follows a particular religious way of life is totally irrelevant. We are also of the opinion that if a particular candidate and in the instant case a candidate who is 18 years old, is not aware of

the traditional social customs of the Tadvi Bhils, it cannot be made a ground for holding that he does not belong to the Tadvi Tribe at all. It must be noted in this case that the family of the Petitioner is a well-educated family. The father of the Petitioner is an officer in the Maharashtra Tourism Development Corporation. While we examined the papers in this case, it was noticed by us that the mother of the Petitioner, who has made an affidavit in support of the petition, had signed the affirmation in English. We have been informed that the mother of the Petitioner is a holder of a Post-Graduate degree. From all angles, therefore, it is easily seen that the Petitioner and his parents are an educated family and in these circumstances, if the Petitioner is unable to tell what the traditional social customs of Tadvi Tribe are, it cannot be said that he ceases to belong to the Tadvi Tribe. Indeed, even if the family does not follow the traditional customs, it does not take them away from the Tribe, unless by some law it is so provided. May be in the instant case, this family has, in fact, outlived the disadvantages from disadvantages from which the said Tribe has suffered in the past. From this, is it possible for us to say that the family has ceased to belong to the Tribe ? The answer must necessarily be in the negative. Most of the reasoning contained in the order of 1st of January 1985 is based upon the ignorance of the Petitioner of the details of the Tadvi Tribe.

6. The Director also proceeded to state that the candidate

could not furnish adequate documents, such as, school leaving certificate, birth extract, and service record of his closest relative indicating the Tribe. In our opinion, this is a misstatement of fact. Annexed as a part of Exhibit 'C' collectively is a copy of the letter sent by one Ramazan Khan Tadvī, who is the second degree cousin of the Petitioner's father. The Petitioner, therefore, can be described as the nephew of the said Ramzan Khan Tadvī. This letter dated 28th of August 1984 addressed to the Director of Social Welfare, Maharashtra State, Pune recalls that the Petitioner had an interview on 27th of August 1984 and the Director made an oral suggestion that in support of the service book, which had been made available to the Director of Social Welfare for his perusal, an affidavit of Ramzan Khan Tadvī should be filed. This letter says that in compliance with that suggestion, an affidavit was being sent under the letter dated 28th of August 1984. It is, therefore, clear to us that the Director of Social Welfare was patently in error in saying that the service record of his closest relative indicating the Tribe was not furnished to him by the candidate.

7. Mr.Deshmukh, the learned Advocate appearing in support of the petition, has made available for our perusal the service record of Ramzan Khan Tadvī in which against the item 'Race (Jat)', Tadvī has been mentioned. Therefore, there cannot be any doubt that Ramzan Khan Tadvī did and does belong to Tadvī Tribe. If it is found that he is the uncle of the

Petitioner, we do not see how it can be said that the Petitioner does not belong to Tadvī Tribe.

8. The Additional Commissioner has practically endorsed the reasoning of the authority below him and confirmed the finding recorded by that authority. However, some examination has been made of the documents on which reliance had been placed by the Petitioner both before the Director of Social Welfare and the Additional Commissioner. Some of them have not been accepted for reasons which we cannot characterise as irrelevant. Nonetheless, we do not see how the Director of Social Welfare in the first instance and the Additional Commissioner in appeal could ignore such a valuable document as the service record of Ramzan Khan Tadvī which had been, as the material record clearly shows, made available to the authorities. It has not been shown to us that the letter of Ramzan Khan Tadvī of 28th of August 1984 has not been received by the Director of Social Welfare. It has also not been suggested, let alone proved to our satisfaction, that the Director of Social Welfare had not told that an affidavit should be filed in support of the entry in the service record of Ramzan Khan Tadvī. The affidavit was, in fact, sent. In that affidavit, which was sworn before the Tahsildar of Aurangabad, it was specifically stated that the Petitioner, namely, Feroz Khan Tadvī, was the nephew of the deponent from the paternal side.

9. It is true that some of the documents have come into existence after the occasion for obtaining the certificate arose. But, we are sufficiently impressed by at least two documents, which should put the claim of the Petitioner as belonging to the Tadvī Tribe beyond reasonable doubt. One is certificate bearing No.42 with Discharge No.221 issued by the Kasturba Vidya Mandir, Sweagram. No doubt, it is a duplicate and it mentions the caste of the Petitioner as Tadvī. It also states that the Petitioner left the school on 31st of May 1974. This date is long before the question to consider the caste of the Petitioner could have arisen. The ground on which this certificate has been disbelieved is not a reasonable one. It has been stated by the Additional Commissioner that the primary evidence and not the duplicate certificate should have been produced. It is a matter of common knowledge that people like the Petitioner have to file such certificates before different authorities. In the instant case, the certificate, which must have been issued, must have been filed necessarily with the school with the Petitioner later joined. It has been noticed by us that in some cases the Director of Social Welfare deposes an officer to check the original record of the schools. With this risk involved, it would be difficult for us to imagine that the certificate bearing No.42 issued by the Kasturba Vidya Mandir, Sewagram, could be a false certificate or a forged certificate.

11. The second document which has impressed us is the

service record of Ramzan Khan Tadvī. The authorities below have not referred to this document at all. Despite the fact that the Director of Social Welfare himself had asked for an affidavit in support of the contention that the Petitioner was a nephew of Ramzan Khan, who was found to be belonging to Tadvī Tribe as evidenced by his service record, the Director of Social Welfare had not considered this valuable material at all.

12. Mr.Choudhari, the learned Government Pleader, has resisted the claim of the Petitioner in this petition on the grounds which are those mentioned in the orders of the authorities below. Mr.Choudhari also suggested that there is nothing to indicate that the said Ramzan Khan was the uncle of the Petitioner. Though we were not impressed by this argument of Mr.Choudhari, we still wanted to be sufficiently sure that in that the Petitioner is the nephew of the said Ramzan Khan. Pursuant to our direction, the Petitioner's father Ashfaq Khan has sworn an affidavit before us today and in this affidavit, he has given a genealogy which clearly shows that Ramzan Khan and the Petitioner's father are second degree cousins. Ramzan Khan's grandfather Hasan Khan and Ashfaq Khan's grandfather Dule Khan were brothers. If it is found later the information which is given on this affidavit is false, no doubt the deponent will be liable to action for perjury. But, today, we do not see why Ramzan Khan's affidavit and the affidavit of the father of the Petitioner cannot be acted upon. This is especially so in the light of the service record of

Ramzan Khan Tadvi. This document has come into existence long before the authorities could ever contemplate that occasion for proving the tribe of the Petitioner would arise. This document, therefore, is of sufficient persuasive value to be acted upon. The authorities below having completely ignored such a document, have committed an error which needs to be corrected by this Court in exercise of jurisdiction under Article 226 of the Constitution.

13. In the result, the petition succeeds. The orders passed by the two authorities below are set aside and it is directed that the Petitioner does belong to the Tadvi Tribe, which is a Scheduled Tribe, and is entitled to be admitted to the First M.B.B.S. Course in Medical College, Aurangabad, conducted by the Government, provided he satisfies the requirements of the other rules governing the admission of the students to the Medical College. No order as to costs. ”

6. Having regard to the aforesaid clear findings recorded by this Court in relation to the documentary evidence as well as also for discarding and disagreeing with the reasons assigned in the order dated 1st January, 1985 impugned in the said writ petition holding the father of the present petitioner to be of Tadvi Tribe, in our considered view the observations made by the Committee Tribe for invalidating the petitioner's claim cannot be sustained.

7. The Committee has also ignored the fact at the time when the petitioner's father was granted certificate, there was no Vigilance Cell constituted as undisputed by the Vigilance Cell was constituted for the first time on 15th March, 1996.

8. Be that as it may, since the High Court in the said judgment has given categorical finding recording the fact that even though in the certificate of the petitioner's father, there was mentioning of the fact that he being Muslim Tadvī that would not make any difference while validating the claim as being of Tadvī Tribe. It is also not in dispute that the said judgment passed by the Division Bench of this court has attained finality and the observations made by the Division Bench in regard to the documents that are filed by the petitioner's father which have also been filed by the petitioner have become conclusive.

9. As a result the petition is allowed. The impugned order is set aside. The Caste Scrutiny Committee is directed to issue validity certificate to the petitioner forthwith on receipt of the authenticated copy of this order.

(G.S. KULKARNI, J.)

(SHANTANU S. KEMKAR, J.)