

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2427 OF 2012

Habib Ali Shah S/o Anwar Ali Shah,
Age : 24 Years, Occu. : Education,
R/o Behind Bhikulal Petrol Pump,
Tilak Road, Parbhani.

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Social Welfare Department,
Mantralaya, Mumbai – 400 032.
2. The Scheduled Caste, Vimukta Jatis,
OBCs and Special BCs, Welfare
Divisional Caste Certificate
Scrutiny Committee No. 1,
(through its Member Secretary and
Divisional Social Welfare Officer),
Aurangabad Division,
Aurangabad.
3. The Principal Saraswati Dhanwantari
Dental College and Hospital,
Pathri Road, Parbhani.
4. Maharashtra University of
Health Sciences, Nashik.

.. Respondents

Shri S. S. Kazi, Advocate for the Petitioner.

Shri S. B. Pulkundwar, A.G.P. for Respondent Nos. 1 and 2.

Ms. Cedric Fernandes, Advocate h/f Shri A. N. Kakade, Advocate
for the Respondent No. 3.

Shri V. R. Dhorde, Advocate for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.
DATE : 15TH OCTOBER, 2018.**

ORAL JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The caste claim of the petitioner as belonging to Chapparband (V. J.) is invalidated.

3. Mr. Kazi, the learned counsel for the petitioner submits that, the entry of Musalman in the caste is not a contra entry. It only depicts the religion and not the caste. According to the learned counsel the school record of the petitioner shows caste recorded as Chapparband. According to the learned counsel in the documents of his grandfather, the name Shah and/or Fakir is recorded. Same is synonym to the Chapparband. The learned counsel submits that, cousin brother of the petitioner namely Mohammad Mushtaue Ahemad Mohmmad Ali Shah is issued with validity certificate of Chapparband (V.J.) on 24.03.2012. According to the learned counsel cousin sister of the petitioner namely Kum. Yusra Fatema Mohammad Mushtaque Ahmad is also issued with the validity certificate of Chapparband on 04.04.2015.. The Committee has not considered the vigilance

report. In view of the validation of caste claim of the cousins of the petitioner, the petitioner's claim also needs to be validated.

4. The learned Assistant Government Pleader supports the order and submits that, there is no evidence worth the name to suggest that the petitioner belongs to Chapparband caste. The validities relied by the petitioner would be of no avail to the petitioner. The Committee has considered each and every aspect of the matter and has rightly negated caste claim of the petitioner.

5. We have considered the submissions canvassed by the learned counsel for respective parties. We have also gone through the judgment delivered by the Committee.

6. From the perusal of the record, it appears that, except school record of the petitioner, there is no other record suggesting the caste of the petitioner as Chapparband (V.J.). The entry of Shah/Fakir as against the name of the grandfather and other relatives of the petitioner would be of no avail, as the said circular issued by the Government is no longer in vogue and has been set aside by this Court.

7. It appears that, though there are no documents except school record of the petitioner recording caste as Chapparband,

however, at the same time, we do not also find any contra evidence on record. In majority of the documents in the column of caste, "Musalman" is recorded. The same would depict the religion and would not be indicative of particular reserved caste.

8. In the vigilance report the name of Mohammad Mushtaue Ahemad Mohmmad appears. The said person has been issued with validity certificate on 24.03.2012. Subsequently, it has been averred by the petitioner that one cousin namely Kum. Yusra Fatema Mohammad Mushtaque Ahmad is also issued with the validity of 04.04.2015. It is for the Committee to consider the relevancy of validity issued in favour of these persons. The evidence considered by the Committee while issuing validity in favour of these persons is required to be considered. So also committee has to consider, whether all the evidence before the Committee while invalidating the caste claim of the petitioner was before the committee while issuing validity certificates to the cousins. Whether the fact of invalidation of petitioner's claim was brought to the notice of the committee while validating the caste claims of petitioner's cousins will also have to be considered.

9. For the aforesaid reasons, we set aside the judgment of the Committee and relegate the petitioner before the Committee. The Committee shall consider the record of the validities issued

in favour of Mohammad Mushtaue Ahemad Mohmmad and Kum. Yusra Fatema Mohammad Mushtaque Ahmad and thereafter to decide the proceedings afresh expeditiously and preferably within a period of three (03) months from the date of appearance of the petitioner. The petitioner shall appear before the Committee on 01st November, 2018. Depending upon the judgment that would be delivered by the Committee, the respondent Nos. 3 and 4 shall take further recourse with regard to the issuance of degree certificate or otherwise. The respondent Nos. 3 and 4 may declare the result of the petitioner, however, shall not issue the degree certificate till the judgment of the committee.

Rule is accordingly made partly absolute. No costs.

Sd/-

[R. G. AVACHAT, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Oct. 18