

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

WRIT PETITION NO. 9863 OF 2017

1. Kumar Sagar S/o. Balaji Bhakte,
Age : 11 years, Occu. Eduction,
Minor through his Guardian
Balaji s/o Kashinath Bhakte,
Age : 45 years, Occu. Legal Practitioner,
R/o. Ter, Tq. & Dist. Osmanabad.
2. Kum. Siddhi d/o Vinodkumar Rupnawar,
Age : 11 years, Occu. Education,
Minor through her Guardian,
Anusaya w/o Vinodkumar Rupnawar,
Age : 30 years, Occu. Household,
R/o. Ter, Tq. & Dist. Osmanabad. ... Petitioners

VERSUS

1. The Divisional Commissioner,
Jawahar Navodaya Vidyalaya,
Committee, Sheety Corporation Bhavan,
2nd Floor, "B" Wing, Bhamburde,
Senapati Bapat Road, Pune.
2. The Principal,
Jawahar Navodaya Vidyalaya,
Tuljapur, Tq. Tuljapur, Dist. Osmanabad.
3. The Collector, Osmanabad,
Tq. & Dist. Osmanabad. ... Respondents

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Mr Mahendra B. Kolpe, Advocate for the petitioners
Mrs Sudha Kulthe, Advocate for respondents No. 1 and 2
Mr C. S. Kulkarni, AGP for respondent/State
.....

**CORAM : PRASANNA B. VARALE &
MANISH PITALE, JJ.**

DATE : 11TH OCTOBER, 2018.

ORAL JUDGMENT [PER MANISH PITALE, J.] :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. The petitioners herein are minors represented through their guardian and they have filed this writ petition seeking a direction to the respondent No. 2 – the Principal of Jawahar Navodaya Vidyalaya, Tuljapur, Dist. Osmanabad, to grant admission to the petitioners in 6th std. in the said school. The other prayer made on behalf of the petitioners is a direction to the respondents to treat the petitioners as belonging to Other Backward Class (OBC) category instead of Scheduled Tribe (ST) category in the admission forms filled by them for admission to the said school under the Jawahar Navodaya Vidyalaya Selection Test, 2017.

3. The petitioners were both students of Zilla Parishad Primary School at Ter, Tq. & Dist. Osmabnabad in 5th std. and upon clearing the examination of 5th std., they had applied for appearing in the Jawahar Navodaya Vidyalaya Selection Test, 2017 for admission to the 6th std. As per the scheme for admission to the Jawahar Navodaya Vidyalaya, the applications of the petitioners were submitted through the Block Education Officer, Osmanabad, on

16.09.2016. In the forms of the petitioners, the category filled by them was ST category. The forms were obviously filled by the parents and the teachers of the petitioners and those were endorsed by the Headmaster of Zilla Parishad school in which they were studying. The petitioners belong to the tribe 'Dhangar', which is recognized under the Nomadic Tribe (C) i.e. NT(C) category as per relevant Government Resolution issued by the State Government. Despite the fact that the petitioners belong to the said NT (C) category, in the forms filled on behalf of the petitioners for the said selection test, the category was mistakenly filled as ST category.

4. The petitioners appeared for the said selection test on 09.01.2017 in which they were declared successful for admission in the 6th std. in respondent No. 2 – School at Ter, Dist. Osmanabad, but in the ST category, as per the forms filled on their behalf. When the process of verification of documents was undertaken, it was found that the petitioners actually belong to the Dhangar tribe, which was not in the ST category. In fact, the Central Government treats the Dhangar community under the OBC category. On this basis, since the petitioners were not found belonging to the ST category, they were not granted admission in respondent No. 2 - school. It is in this backdrop that the present writ petition was filed seeking reliefs as noted above.

5. Upon notice being issued by this Court, the respondents No. 1 and 2 filed their affidavit-in-reply opposing the prayers made in the writ petition. It was contended on behalf of the said respondents that admittedly, the petitioners did not belong to the ST category and, therefore, they being shown selected under the ST category in the aforesaid test could not lead to their admission in the respondent No. 2-school, because the reservation was only for SC & ST category in the said test conducted under the scheme of the Central Government and that there was no reservation for OBC category in the said test. It was submitted that, the petitioners did not deserve any relief because, wrong information was provided by them and their claim under the ST category could not be considered at all. The said respondents placed reliance on the prospectus-cum-application form of the said test pointing out that it was necessary for the child seeking admission to produce certificate of belonging to Scheduled Tribe issued by the competent authority before 15.05.2017 and that, since the petitioners were not in a position to produce such certificate, there was no question of their consideration for admission in respondent No. 2- school.

6. The learned counsel appearing for the petitioners fairly admitted that there had been a mistake in filling the forms of the

petitioners and that, since there was no reservation for OBC category in the aforesaid test, the claim of the petitioners could not be pressed for admission on the basis of reservation. A feeble attempt was made by the learned counsel to pray for the relief of correcting the category from ST to OBC or to treat the petitioners in the open category for admission in respondent No. 2 – school.

7. The learned counsel appearing for respondent Nos. 1 and 2 made submissions as per the affidavit-in-reply filed on behalf of the said respondents. It was further submitted that the entire process of admission was already over and that the reliefs claimed by the petitioners could not be granted.

8. Having heard the learned counsel for the respective parties and upon perusal of the record, we find that this is an unfortunate case where the petitioners (minor children) have suffered due to the mistake of their parents, teachers and Headmasters of the schools in which they were studying. Due to the mistake in filling the forms for the aforesaid test, the petitioners are finding themselves in the present situation. Taking into consideration the facts of the present case, we had specifically asked the learned counsel appearing for respondents No. 1 and 2 to seek instructions as to whether any seats were available in the respondent No. 2 – school in open category in

which the petitioners could be given admission on the basis of their merit and performance in the aforesaid selection test.

9. The present writ petition was adjourned specifically for the learned counsel appearing for respondents No. 1 and 2 to take instructions. The learned counsel for respondents No. 1 and 2 took specific instructions and submitted today before us that, all the seats have been filled in respondent No. 2 – school and that the major part of the academic session has been already completed. It was submitted that, since no seat was available in the respondent No. 2 – school, the petitioners could not be granted admission even if at this late stage, they were to be treated as belonging to open category.

10. In this situation, there is no way in which relief can be granted to the petitioners, particularly when all the seats even in the open category have been filled in respondent No. 2 – school and the petitioners cannot be considered for admission in the said school.

11. In the light of the above, the writ petition is dismissed. Rule is discharged.

[MANISH PITALE]
JUDGE

[PRASANNA B. VARALE]
JUDGE