

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

WRIT PETITION NO. 13356 OF 2017

Sabahat Sartaj Khan Minor through
her father Sartaj Mohammad Khan
Gulam .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri S. R. Barlinge, Advocate for the Petitioner.

Shri P. S. Patil, Addl.G.P. for Respondent Nos. 1 to 4.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVALA, JJ.**

DATE : 03RD MAY, 2018.

PER COURT :

. The tribe claim of the petitioner is invalidated. Aggrieved thereby present writ petition.

2. Mr. Barlinge, the learned counsel for the petitioner submits that, the Committee failed to consider the old record of the pre-independence period. The certificate issued by the Controller of Examination to Akbarkhan Tadavi, the great grandfather of the petitioner shows the name as Tadavi. The document is of 1349 Fasli equivalent to 1939. The school record of the petitioner records caste as Tadavi. The father of the petitioner has been issued with the validity certificate of Tadavi (Scheduled Tribe) in

the year 2001 by the competent Committee. The paternal aunt of the petitioner is also issued with tribe certificate of Tadavi (S.T.) on 25.08.2005. The service book of the petitioner's father records caste as Tadavi (S.T.).

3. In the school record of the father, caste is recorded as Muslim. Muslim is a religion. The learned counsel submits that, there is not a single contra evidence on record. The old document has not been considered. The same document was relied by the Committee while granting validity certificate in favour of the father of the petitioner. The Committee has failed to consider these aspects in its proper perspective.

4. Mr. Patil, the learned Additional Government Pleader for respondents submits that, the petitioner's ancestors are residing at Aurangabad. In Aurangabad persons of Tadavi community never resided. The petitioner's father's surname is Khan, as such they are Pathans and not Tadavies. The affinity has not been proved. The old document relied by the petitioner of Akbarkhan Tadavi is not considered by the vigilance. The translation is not proved. The learned counsel submits that in the father's record only Musalman is recorded. Tadavi (S.T.) in Muslims can only be of those who are converted, otherwise basically in Muslims Tadavi (S.T.) cannot be found. The Committee has considered all the relevant aspects of the matter. The petitioner has also failed in the affinity test.

5. We have considered the submissions canvassed by the

learned counsel for respective parties.

6. It is a matter of record that, the father of the petitioner has been issued with the validity certificate of Tadavi (S.T.). The same is issued after conducting vigilance. The old document in favour of great grandfather of the petitioner of 1349 Fasli (1939) was also subject matter of consideration in the proceedings granting validity to the father of the petitioner. The same document is placed on record in the present matter also. The Committee has not disputed the relationship as claimed by the petitioner with Akbarkhan Tadavi. The Committee has also not raised any doubt in respect of said document. It was for the Committee to verify the said document.

7. The school record of the petitioner consistently records caste as Tadavi. The school record of the father of the petitioner records caste as Muslim. Muslim is a religion and cannot be construed as a contra evidence. There is not a single contra evidence on record.

8. The Division Bench of this Court at its principal seat at Bombay in Writ Petition No. 10367 of 2017 under judgment dated 27th September, 2017 has held that, the Director of Social Welfare, Maharashtra State, Pune has issued letter dated 04th March, 1978. It is stated by the Director of Social Welfare that the Government of Maharashtra by letter dated 18th February, 1977 addressed to the Collector, Jalgaon and other Collectors of different districts in the State of Maharashtra communicated that, Tadavi

caste is included in the Scheduled Tribe. It has also been stated that, Tadavi caste may be of any religion are eligible to get certificate of the scheduled tribe. It was further held in the said judgment that, if a candidate is not aware of traditional social customs of Tadavi Bhil, it cannot be merely a ground for holding that he does not belong to Tadavi tribe at all. The Division Bench further observed that, if the petitioner is unable to tell what the traditional social customs of Tadavi tribe are, it cannot be said that, he ceases to belong to Tadavi tribe.

9. In the present matter, there are no contra evidences. Father of the petitioner is issued with validity certificate. The paternal aunt of the petitioner is also issued with the validity certificate of Tadavi (S.T.). The old document of 1939 of the great grandfather of the petitioner records name as Akbarkhan Tadavi. The same document was also part of the proceedings in which father of the petitioner was given validity certificate of Tadavi (S.T.).

10. In view of all these facts, the judgment of the committee is quashed and set aside. The Committee shall issue the validity certificate to the petitioner of Tadavi (Scheduled Tribe). The writ petition is accordingly allowed. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]