

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

WRIT PETITION NO. 8842 OF 2018

Shivkanya Nagnath Khatyale
@ Shivkanya Nandkumar Swami .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri A. S. Golegaonkar, Advocate with Shri M. A. Golegaonkar,
Advocate for the Petitioner.

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

Shri S. T. Shelke, Advocate for the Respondent No. 5.

Shri V. D. Sapkal, Advocate for the Respondent No. 6.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

CLOSED FOR ORDERS ON : 05.07.2019
ORDER PRONOUNCED ON : 10.07.2019

FINAL ORDER :

. The caste claim of the petitioner as belonging to 'Mala Jangam' (Scheduled Caste) is invalidated. Aggrieved thereby present writ petition.

2. Mr. Golegaonkar, the learned advocate for the petitioner submits that, the petitioner has submitted 38 documents demonstrating that the petitioner belongs to Mala Jangam caste (Scheduled Caste). The documents produced by the petitioner were the school record of the petitioner, her brother and niece. The stamp paper executed by the grandfather of the petitioner

namely Shri Mahadev Nandayya Swami of the year 1954 written in Urdu language and marathi translation of the same is produced. The said document records the caste as Mala Jangam. The petitioner had also produced Pahani Patrak No. III of the year 1952. In the said revenue record the caste of the grandfather of the petitioner is recorded as Mala Jangam. The old documents have high probative value. Same was required to be relied upon. The document on stamp paper of Rs. 02/- was discarded only on the ground that it is not registered. Genuineness of the document was never doubted by the Committee. Same ought to have been relied.

3. The learned counsel further submits that, the document Pahani Patrak No. III in the name of the grandfather of the petitioner of the year 1952 would clinch the issue in favour of the petitioner that the petitioner belongs to Mala Jangam caste. The Committee had called information from the Deputy Superintendent of Land Records, who in his report submitted that, in village Mudgal taluka Pathri, Dist. Parbhani Sy. Nos. 1 to 118 are only recorded and Pahani Patrak is of Sy. No. 119. The said document is issued by the Sub Divisional Officer, Pathri. He ought to have been called. Though letter was issued to him, he did not remain present. Same cannot be construed adverse to the petitioner. Initially genealogy that was submitted was not complete genealogy. Subsequently complete genealogy was also submitted. The said aspect has not been considered.

The learned counsel submits that, the validities issued in favour of the members of the same family have not been considered. The learned counsel further submits that, the caste certificate is issued by the competent authority, but the Committee has raised suspicion only on the ground that record was not available with the said office. It is not the case that record was available and said document was not found.

4. Mr. Sapkal, Mr. Shelke and the learned Additional Government Pleader for respondents/State support the judgment of the Committee and submit that, the caste certificate produced by the petitioner is not issued by the office. Same is a forged document. If the file is not traceable in the office, the petitioner could not have produced the true copy. All these facts show that, caste certificate is false and forged. According to the learned counsel, the document allegedly executed on stamp of Rs. 02/- is false and forged document. In the year 1952 this region was part of State of Hyderabad and Rs. 02/- stamp paper on which the document is executed by the grandfather of the petitioner as alleged by the petitioner is issued by the Bombay State. This region became a part of the Bombay State only after State Reorganization in the year 1955-56. The Pahani Patrak No. III is also a forged document. No Sy. No. 119 exists in the said village as per the letter issued by the Deputy Superintendent of Land Records. The Committee has not committed any error.

5. We have considered the submissions canvassed by the learned counsel for respective parties. We have also gone through the judgment of the committee and the original record produced by the Committee in respect of caste validity proceeding of the petitioner.

6. The petitioner has contested the election and was elected as President of Municipal Council. Her caste claim is invalidated. It is contended that, now fresh elections are also held. Even otherwise, if the validity certificate is not produced within a period of one year as per the ordinance, the person stands disqualified. In view of that, even if the petitioner is issued with validity, the same would be of no avail as far as post of President or election of the President is concerned.

7. The school record of the petitioner as produced suggests that caste is recorded as Mala Jangam. It appears, the Committee came to the conclusion that the petitioner could not establish relationship with Bandu Babu Ayya, whose school record of the year 1965 records caste as Mala Jangam. The petitioner it appears, initially had submitted one genealogy, which according to the petitioner is incomplete and subsequently a complete genealogy is submitted. It is for the petitioner to establish the relationship.

8. The old document has more probative value. If the document of the year 1954 i. e. the receipt executed by the

grandfather of the petitioner is genuine document, then the petitioner would be on higher footing. Only because document is unregistered, same cannot be discarded, however, the petitioner will have to lead appropriate evidence by way of affidavit or so to prove the same and the Committee will have to assess the said evidence. The document of the year 1952 i. e. Pahani Patrak No. III issued by the Sub Divisional Officer, Selu records caste as Mala Jangam. The said document would certainly be of a high probative value and will assist the petitioner in proving her claim of Mala Jangam caste. In fact, the Committee had called the information from the Sub Divisional Officer, Selu, but he did not respond, therefore, the information was sought from Deputy Superintendent of Land Records. According to him, the said village Mudgal, Tq. Pathri has survey numbers upto 118 only and the Pahani Patrak is of Sy. No. 119. The Sub Divisional Officer to whom notices were issued by the Committee ought to have responded to the Committee. The Committee had asked the Sub Divisional officer Pathri, so also Sub divisional Officer, Selu to produce the original record so as to verify it by the Committee, however, they did not respond. As responsible officers, it was their duty to respond to the notices issued by the Committee.

9. Considering the fact that, the matter involves social status of the petitioner and the document i. e. Pahani Patrak No. III of the year 1952 will go long way in proving the case of the petitioner, if same is found to be genuine, we are inclined to

grant one more opportunity to the petitioner.

10. In the result we pass following order.

11. The impugned order is quashed and set aside. The matter is remitted back to the Committee for deciding it afresh. The Committee shall direct the Sub Divisional Officer, Pathri and Sub Divisional Officer, Selu to get the record of land Sy. No. 119 of village Mudgal, Tq. Pathri of which Pahani Patral No. III of the year 1952 is produced by the petitioner. The Sub Divisional Officer, Pathri and Sub Divisional Officer, Selu shall respond to the same and produce the said record. The Committee shall after hearing all the parties concerned decide the said proceeding afresh. The parties are entitled to file additional document, if they so desire, which would be considered by the Committee. The parties shall appear before the Committee on 22.07.2019. The Committee shall thereafter decide the proceeding expeditiously and preferably within a period of six (06) months from the date of appearance of the parties.

12. With the above directions and observations, the writ petition is disposed of. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]