

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9917 OF 2017

Bashir Adam Khedekar

...Petitioner

vs.

The State of Maharashtra and Ors.

...Respondents

Mr. R. K. Mendadkar a/w Ms. Priyanka Shaw for the Petitioner.

Mr. A. I. I. Patel, AGP for the Respondent/State.

**CORAM : B. P. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.**

DATE : 19/09/2019.

PC.:

. Caste claim of the petitioner as belonging to Gavandi which is recognized in 2007 as OBC and after 30/1/2014 as Muslim has been invalidated.

2. After hearing respective counsel we find that on 24/8/2007 certificate of validity is issued to the petitioner under section 6 of Maharashtra Act No.23/2001. This document is mentioned by the Scrutiny Committee in impugned order. However it has not relied upon it and observation that after Muslim-Gavandi became a Nomadic Tribe on 30/1/2014, the petitioner ought to have obtained a caste certificate showing that he belongs to Nomadic Tribe and then submitted it to Scrutiny Committee under section 6 for verification.

3. The other reason given is in all documents caste has been mentioned as Muslim and nowhere word "Gavandi" has been used. Statements made by witnesses that the family of the petitioner was working as Gawandi(mason) are discarded on the ground that those are by private

person and there are no public documents.

4. The fact that Muslim is not a caste is not in dispute before us.

5. In this situation, mere fact that word “Muslim” has been recorded in all documents cannot be used to the prejudice of the petitioner. The Committee ought to have seen that in none of these documents some other caste has been recorded. Petitioner also has adduced evidence of family members or others to show that he is working as mason. Said evidence relied upon cannot be discarded only because it is not coming from some government office or is not supported by public document.

6. The fact that the petitioner is Muslim is not in dispute. Validity issued to him under section 6 shows that his caste claim as belonging to Gavandi caste has been approved and, therefore, the certificate came to be prepared.

7. In the light of this material, the only question was whether after 30/1/2014 when said caste Gavandi came to be recognized as Nomadic Tribe it was necessary for the petitioner to undertake the exercise of obtaining caste certificate afresh and then to submit it again for verification as a person belonging to Nomadic Tribe. When Muslim-Gavandi(OBC) has been recognized as Nomadic Tribe as per G.R. dated 30/1/2014, we find insistence of the Committee on the petitioner obtaining certificate afresh is unsustainable.

8. At this stage, learned AGP pointed out that the document at Exhibit “I” claimed to have been issued under section 6 of the Act 23/2001 is not signed by any member of the Scrutiny Committee and as such it

cannot be held that validity has been given to the present petitioner as Muslim-Gavandi. Observations made by the Committee in its conclusion and particularly in paragraph No.1, explains that on 24/8/2007 the petitioner has been given the caste certificate as Gavandi (OBC).

9. As we have found insistence of the Committee that the petitioner must obtain a fresh caste certificate showing that he belongs to Gavandi-Nomadic Tribe unwarranted, we quash and set aside the order dated 22/8/2017 and restore the matter back to file of Respondent No.2 Committee for taking fresh decision in accordance with law. We direct the petitioners to appear before respondent No.2-Committee on 21/10/2019. The Committee shall thereafter give petitioner necessary opportunity to substantiate the facts noted supra and pass fresh order on his caste claim at the earliest, preferably within one year.

10. With these directions, we partly allow the petition and dispose it of. No costs.

(SANDEEP K. SHINDE, J.)

(B. P. DHARMADHIKARI, J.)