

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5540 OF 2015

Asad Javed Shah .. Petitioner
Vs.
The State of Maharashtra and ors. .. Respondents

Mr.C.Bhangoji I/b Mr.R.K. Mendadkar, for the Petitioner.
Mr.V.M. Mali, AGP for Respondents No. 1, 2 and 4 - State.

**CORAM : S.C.DHARMADHIKARI &
M.S.KARNIK, JJ.**

**RESERVED ON : 06th FEBRUARY, 2019
PRONOUNCED ON: 13th FEBRUARY, 2019**

ORDER (PER M.S.KARNIK, J) :

. Rule. The respondents waive service. By consent,
Rule is made returnable forthwith.

2. This is a Petition under Article 226 of the
Constitution of India challenging the judgment and order dated
13/04/2015 of the respondent No.2 – Caste Scrutiny Committee
No. 1, Nashik Division rejecting caste claim of the petitioner as
belonging to 'Chapparband 14' under Vimukta Jati category.

The brief facts of the Petition are as under :

3. At the time of filing of the Petition, the petitioner was pursuing his studies as a medical student (M.B.B.S.) in Bhausaheb Hire Government Medical College, Dhule. The petitioner claims to belong to V.J. category and got admission in the VJ quota. The petitioner claims to belong to Musalman Chapparband Fakeer and contends that his ancestors hailed from district Dhule. Even prior to the filing of this Petition, caste claim of the petitioner was rejected by respondent No.2 on 10/01/2014. The said order was challenged before this Court in an earlier round of litigation by filing Writ Petition No. 6995 of 2014. By an order dated 30/09/2014, this Court remitted the matter back to respondent No.2 -Committee for considering it afresh.

4. By the impugned order dated 13/04/2015, the caste claim of the petitioner is rejected by respondent No.2 – Committee. As a result of this, the petitioner was not being

permitted to appear in the final medical examination of the first year. By an order dated 23/06/2015, this Court while issuing notice to the respondents, granted ad-interim relief in terms of prayer clause (E) which reads thus :

“(E) Pending hearing and final disposal of this writ petition, the respondent no.3 and 4 the Health University and the college respectively be directed to allow the petitioner to give the further ensuing examination and prosecute his studies regularly in the respondent no.4 college.”

This Court, however, made it clear that it is subject to final order of this Court and there is no question of claiming equity, if petitioner's claim is rejected finally.

5. During the pendency of this Petition, the petitioner completed the M.B.B.S. degree course. However, for want of caste validity certificate, respondent No.3 – Maharashtra University of Health Science, Nashik has withheld his result. By way of an additional affidavit dated 06/02/2019, these facts are brought on record. It is also brought on record that the

respondent No.2 - Committee adjudicated the caste claim of the petitioner's younger brother – Awais Javed Shah during the pendency of this Petition and has issued a validity certificate on 07/11/2017.

6. Learned Counsel for the petitioner in assailing the order of the Committee submitted that the respondent No.2 – Committee has issued a caste validity certificate dated 18/10/2006 in favour of paternal aunt of the petitioner by name Shah Nafisa Haider Ali which is Exhibit 'H' at page 41 of the paper-book. There is no dispute that the said Shah Nafisa Haider Ali is the paternal aunt of the petitioner. The petitioner also relied upon the caste validity certificate of his first cousin brother - Rizwan Ahmad Rafique Shah issued by the Caste Scrutiny Committee No.2 at Dhule dated 23/08/2013.

7. According to him the Committee has adopted an erroneous approach in discarding validity certificate of paternal aunt of the petitioner - Shah Nafisa Haider Ali on the ground

that in her father's (petitioner's grandfather) School record, caste is mentioned as 'Musalman'. This according to learned Counsel is in utter defiance of the law laid down by this Court in the case of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others 2010(6) Mh.L.J.** and several other decisions. He further submits that the vigilance report is not considered in as much as the report is very much in favour of the petitioner.

8. Learned AGP appearing on behalf of the Committee supported the impugned order. Learned AGP contended that based on the materials on record and as a result of the failure on the part of the petitioner to establish his caste claim, if the Committee has for just and appropriate reasons discarded the validity certificates issued in favour of the relatives of the petitioner, no error can be said to have been committed by the Committee in rejecting the caste claim of the petitioner. He invited our attention to the findings recorded by the Committee in support of his submissions. According to him, the said

findings cannot be said to be perverse.

9. Heard learned Counsel for the parties. We have gone through the Petition, the annextures and the impugned order passed by the Committee. It is not in dispute that Shah Nafisa Haider Ali is the paternal aunt of the petitioner and is a close blood relation. It is also not in dispute that Rizwan Ahmad Rafique Shah is the petitioner's cousin from the paternal side. Both of them have been issued validity certificates by the competent Committee having jurisdiction to grant such validity certificates. The Committee has discarded the certificates on the ground that caste validity certificates of the relatives fall in the category of other documents and cannot be treated as sole evidence in support of the social status claim. Moreover, insofar as the caste validity certificate of paternal aunt of the petitioner – Shah Nafisa Haider Ali, the same has been discarded by the Committee on the ground that in her father's (petitioner's grandfather) school record, the caste is mentioned as 'Muselman', hence benefit of her validity cannot be given to the

petitioner. Even the benefit of validity certificate issued in favour of the petitioner's cousin – Rizwan Ahmad Rqfique Shah is not considered in his favour by the Committee as according to the Committee, the validity certificate issued to Rizwan Ahmad Rqfique Shah is on the basis of validity certificate granted to the paternal aunt of the petitioner. In our opinion, reasoning of the Committee in rejecting the caste claim of the petitioner is completely untenable and contrary to the law laid down by this Court. It is not as if the Committee has recorded a finding that caste validity certificates issued in favour of Shah Nefisa Haider Ali and Rizwan Ahmad Rqfique Shah are tainted by fraud or vitiated by suppression of material facts and granted without jurisdiction. The law in this regard is by now very well settled and the decision of this Court in the case of **Apoorva d/o Vinay Nichale** (*surpa*) is followed consistently.

10. As indicated earlier, the caste validity certificates issued in favour of the paternal aunt of the petitioner and his cousin still subsist as there is no finding that the same are

tainted by fraud or issued without jurisdiction. Even otherwise such finding can be recorded only after giving an opportunity of hearing to the concerned in whose favour the validity certificate has been issued. As noted earlier, during the pendency of this Petition, even the petitioner's younger brother is issued with the certificate of validity by respondent No.2- Committee on 07/11/2017. In view of the law laid down by this Court in **Apoorva d/o Vinay Nichale** (*supra*), when admittedly, not only the close blood relatives of the petitioner are issued with the caste validity certificates by the Committee having jurisdiction, but even the petitioner's younger brother is issued with the certificate of validity during the pendency of this Petition, in which view of the matter, it is not possible for us to sustain the impugned order passed by the Committee. Even the Vigilance Cell report is not against the petitioner.

11. In this view of the matter, the impugned order is quashed and set aside.

12. The respondent No.2 - Committee is directed to issue

caste validity certificate in favour of the petitioner as belonging to Chapparband 14 caste of Vimukta Jati category forthwith.

13. Needless to mention, as this Petition is allowed, now there is no impediment for the University to declare the result of the petitioner.

14. Rule is made absolute in the above terms with no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)