

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.21461 OF 2019

Khan Namirah Khanum Abdul and Anr. ... Petitioners

Versus

State of Maharashtra and Ors. ... Respondents

Mr.R.K.Mendadkar for the Petitioners.

Mr.B.V.Samant, AGP for State.

CORAM :- S. C. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.

DATE :- AUGUST 01, 2019

P.C. :-

1. Heard both sides.
2. Rule. Respondent Nos.1 and 2 waive service. By consent, Rule is made returnable forthwith.
3. The two petitioners before us profess Islam religion. They are first cousins of each other. They claim to be belonging to 'Tadvi' Tribe notified as Scheduled Tribe in the State of Maharashtra.
4. The first respondent is the State Government through the Department of Tribal Development and the second respondent is the Scrutiny Committee which has been constituted in

accordance with Section 6(1) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (For short, “Maharashtra Act No.XXIII of 2001”). The third respondent is the competent authority empowered to regulate admission process for the Academic Year 2019-2020 for admission in the courses of Bachelor of Ayurvedic Medical Science, Bachelor of Unani Medical Science and Bachelor of Homeopathy Medical Science.

5. The claim has been invalidated by the second respondent-committee on 10th July, 2019 and on 15th July, 2019, a copy of the impugned order was received.

6. The petitioners applied for issuance of certified true copy of record and proceedings before the Committee and for the purpose that during the course of scrutiny and verification, the father of the petitioner No.1 produced a genealogy and family tree. He filed an affidavit. He stated that the common ancestor-Abdul Razzaque Khan was born on 5th May, 1941. There is a birth certificate issued proving the birth of the grandfather of the petitioners and in the caste column, the caste is recorded as ‘Muslim Tadvi’. The birth certificate is produced and it was pointed out that the said

Abdul Razzaque Khan was admitted in primary school and left it accordingly. He was admitted on 26th June, 1947 and his caste/tribe was entered as 'Muslim Tadvi'. The great grandfather was Haji Abdul Aziz Khan Habibulla Khan Pathan. He died on 12th December, 1958 and in the death certificate also, entry against caste/tribe column was entered as 'Muslim Tadvi'.

7. It is then stated that the grandfather was working with Central Railway and even in his service-book, the entry of 'Muslim Tadvi' Scheduled Tribe is made against the caste/tribe column.

8. The petitioners pointed out that there was a complaint made by a co-employee alleging that the grandfather of the petitioners does not belong to 'Tadvi Scheduled Tribe'. However, the above documents were filed by the grandfather in opposition of that complaint. This complaint was dismissed relying upon these documents and it is stated that these documents were thus accepted as evidence in support of the grandfather's claim.

9. It is stated that the Government of Maharashtra notified the Scheduled Tribes and there is no restriction as far as religion is concerned. Thus, scheduled tribe can be belonging to Muslim religion. It is, therefore, apparent that instructions were received

by the Government of Maharashtra to issue caste certificates and the scheduled tribe candidate was allowed to avail of the concessions and benefits meant for the scheduled tribe in education, employments and elections.

10. It is stated that the first and the second petitioner moved the second respondent-Committee on 10th August, 2015 and 9th August, 2017 and produced all the documents relevant and necessary for the verification and scrutiny of their claim. They, *inter alia*, relied upon the validity certificates issued respectively to their uncle and father. These certificates of validity indeed have great probative value, but the Committee seems to have indulged in an exercise of a vigilance scrutiny carried by the Vigilance Cell. The Vigilance Cell is stated to have visited Chandwad village in District Nashik. They have interviewed somebody elder in the village and from him, they ascertained that the petitioners' family was not the resident of that village. The petitioners' father and uncle gave an explanation to this remark in the vigilance record by pointing out that being in the service of Central Railway, the family moved out of the village in the year 1937 and settled in Mumbai. That is how the father and the uncle of the petitioners studied in primary and secondary schools in Mumbai.

11. Yet, we find the Scrutiny Committee disbelieving this version of the petitioners and resulting in invalidation of caste certificates. Now, the petitioners say that they have appeared for the Common Entrance Test at the National level, the results have been declared and today they have the prospects of education after taking admission against the reserved seat. It is claimed that the scrutiny and verification was done very perfunctorily.

12. In order to satisfy ourselves, particularly about the name and identity of the petitioners' family and the explanation given by them, we called for the original record. We posted the matter today for arguments.

13. Mr.Mendadkar submits that the original documents would reveal as to how the Committee has proceeded. The Committee took as many as 29 documents on record.

14. One of the set of the documents included the five validity certificates issued to the family members. Each one of them have been issued by the Scrutiny Committee at Thane. The Scrutiny Committee should have, therefore, only ascertained from the genealogy and the family tree, the relationship. The petitioners pointed out that Abdul Wahid Khan is the uncle of both the petitioners and he is the real brother of their father. The other

two certificate holders Abdul Hafiz Khan and Abdul Rahim Khan are the real uncles from the paternal side. Even if one does not refer to the certificate of validity issued to a woman in the family, still these three certificates of validity, according to Mr.Mendadkar, have great probative value. More so, when the petitioner No.1's father had satisfied officers and gave explanation to the remarks of the Research Officer, copy of which is at page 64 of the paper-book. Mr.Mendadkar relies upon page 93 of the paper-book. There is an explanation given by Smt.Shehnaz, who is the In-charge teacher. Apart from that, in relation to the remarks in the Vigilance Cell report, the father of petitioner No.1 gave his detailed explanation. That has also not been considered.

15. Mr.Samant appearing for the State does not dispute that there were certificates of validity issued to the close relatives from the paternal side. Yet, Mr.Samant justifies the conclusion on the ground that the village had no family by name of the petitioners residing therein.

16. It is for that purpose, we have perused the original records in the presence of both, the learned counsel as also the officer of the second respondent-Committee. It is unfortunate that the Committee goes ahead and invalidates the claim although every

attempt is made by the petitioners' family to give answers to the queries. Firstly, there is no dispute that on 9th August, 2017, the Allana Junior College of Science, Commerce and Arts founded by Anjuman-I-Islam and located at Kurla (W), Mumbai forwarded the application of the petitioner No.1-Khan Namirah Khanum Abdul Hamid. She is studying in 12th standard and the record of the college indicates that she is 'Tadvi'. That 'Tadvi' is the scheduled tribe recognised by the Maharashtra State is undisputed. That the father of petitioner No.1 is Abdul Hamid Abdul Razzaque Khan. In the School Leaving Certificate of petitioner No.1, her name is mentioned as Khan Namirah Khanum. The father's name is Abdul Hamid and mother's name is Aaisha Begam. The father explained as to how Amir Aziz Khan Pathan was the common ancestor. He has one son, namely, Abdul Razzaque Khan. The said Abdul Razzaque Khan had five sons, namely, Abdul Hamid Khan, Abdul Wahid Khan, Abdul Hafiz Khan, Abdul Wahab Khan and Abdul Rahim Khan. Namirah Khanum is the daughter of Abdul Hamid Khan. Abdul Hafiz Khan is the real uncle from the paternal side as also Abdul Rahim Khan is the real uncle from the paternal side. There is no dispute about this genealogy and the family tree. Abdul Rahim Khan, Abdul Hafiz Khan and Abdul Wahid Khan were certified as belonging to 'Muslim Tadvi' scheduled tribe. The certificate of validity has also

been issued to them. Relying on the certificate of validity issued to Abdul Wahid Khan, his daughter Ariba Ruman has been issued the certificate of validity by this very Committee. When Namirah has established relationship, her father has filed affidavit and that is also supported by the affidavit of the uncle, then, it is only because of the confusion in the names that the Committee seems to have carried out a totally uncalled for and unnecessary exercise. Apart from that, when there was a doubt expressed, the Committee should have gone to the oldest record and that was also available. It is not disputed before us that the School Leaving Certificate of the father of the petitioner No.1-Abdul Hamid Abdul Razzaque Khan was produced. That is dated 13th July, 1989. He was born on 4th June, 1968. He was admitted in the school on 13th June, 1977. He had, prior to that, attended Takia Ward Municipal Urdu School, Kurla. He also studied in Anjuman-I-Islam Kurla High School where the petitioners have studied. He left the school after finishing his tenth standard. The caste certificate issued to Abdul Hamid Khan was issued by the Sub-Divisional Officer, Mumbai Suburban District on 23rd June, 1983. Then we have the certificate of validity issued on 13th February, 2008 to Abdul Wahid Khan endorsing that he belongs to 'Tadvi' scheduled tribe. That is issued on the basis of the Scheduled Tribe Certificate dated 28th January, 1986. That is issued by the Executive

Magistrate, Greater Mumbai. Thus, this family throughout has been residing in Mumbai. There is an explanation given and that explanation is supported by a copy of the grandfather's School Leaving Certificate and that shows that the grandfather was born in Kurla. The date of birth is 6th June, 1941 and he was admitted in a school at Kurla, which is an Urdu Medium School, on 26th June, 1947. In the backdrop of this, the Vigilance Cell's report is stated to be relied upon. That is because a doubt is expressed as to whether this family hails from village Chandwad, Rahudghat, Taluka Chandwad, District Nashik and that the home visit was made. It is unfortunate that the Committee picked up some remarks from this Vigilance Cell's report. It is very clearly stated in the Vigilance Cell's report itself that Khan Namirah Khanum Abdul-petitioner No.1 before this Court did not dispute that the above was the village where this family originally resided. However, it was candidly stated that the family have no property and nobody is residing there. They have been residing at Kurla (W), Mumbai from 1935. It is said that the great grandfather of the petitioners left the village in 1935. To our mind, therefore, when the Vigilance Cell makes thorough inquiry and enters this position in its record, its report then cannot be said to be controverting the position and factual narration from the family, particularly, the version of the father of the petitioner No.1. The

Vigilance Cell may have informed the Committee that the visit paid to this village on 26th June, 2018 revealed that in this village, no Muslim or Tadvī family resided prior to 1947. However, that by itself and without anything more, the documentary evidence produced by the petitioners could not have been omitted from consideration. To our mind, a statement made by one Jahim Ahmed Nazir Patel residing in Chandwad village on 26th June, 2018 is also of no assistance. There is no requirement for obtaining any certificate from the Sarpanch of that village as well. The version of the petitioners is that they have left this village and their forefathers came to Mumbai way back in the year 1937. That is supported by relying on every single document, including caste certificates issued by the competent authorities in Mumbai. That is also supported by the explanation of the Headmasters of the schools where this family members studied.

17. To our mind, therefore, the certificates of validity issued to close relatives from the paternal side could not have been omitted from consideration in the manner done by the Committee. The Committee's order is thus perverse. It is vitiated by total non-application of mind. The Committee has introduced extraneous and irrelevant factors and eschewed relevant and germane factors in arriving at the conclusion that this claim is not proved.

18. The entire order having been perused by us in the backdrop of the original record, none of the findings and the conclusions in the same can be sustained. We, therefore, proceed to quash and set aside the impugned order. We allow the writ petition. We direct the second respondent-Scrutiny Committee to issue the certificates of validity to the petitioners certifying them as belonging to 'Muslim Tadvi' Scheduled Tribe. Let that be done as expeditiously as possible and latest by 2nd August, 2019 by 2.00 p.m.

19. The third respondent to this writ petition, however, shall act upon a copy of this order as this order itself validates the claim of both the petitioners before us. Our order is, therefore, enough to accept their tribe status and grant them admission to a reserved seat for scheduled tribe, provided, they are otherwise eligible for admission. Rule is made absolute in these terms. There would be no order as to costs.

(SANDEEP K. SHINDE, J.)

(S.C.DHARMADHIKARI, J.)