

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.12037 OF 2018**

Vishwanath Sangamnath Hiremath  
Aged 30 years, residing at  
At Post. Mandrup, Tal. South  
Solapur, Dist. Solapur.

.... Petitioner

- Versus -

1. State of Maharashtra  
through its Secretary, Social  
Justice Department, Mantralaya,  
Mumbai – 400 032.
2. District Caste Certificate  
Scrutiny Committee, Solapur  
through its Member Secretary,  
having its office at Dr. Babasaheb  
Ambedkar Samajik Nyay Bhavan  
Solapur, Dist. Solapur.
3. Collector,  
Solapur, Dist. Solapur.
4. Tahsildar,  
South Solapur, Dist. Solapur.
5. Siddharam Ogasiddha Kale  
At Post. Mandrup, Tal. South  
Solapur, Dist. Solapur.
6. Vitthal Vhanmare  
At Post. Mandrup, Tal. South  
Solapur, Dist. Solapur.

.... Respondents

Mr. S.G. Deshmukh i/by Mr. V.A. Madane for  
the Petitioner.  
Ms M.P. Thakur, Assistant Government Pleader,  
for Respondent Nos.1 to 4.  
Mr. S.P. Rajepandhare for Respondent No.5.

**CORAM:** S.C. DHARMADHIKARI &  
B.P. COLABAWALLA, JJ.

**DATE** : MARCH 22, 2019

**ORAL ORDER (Per Shri S.C. DHARMADHIKARI, J.):**

1. By this petition under Article 226 of the Constitution of India, the petitioner is challenging an order of the District Caste Certificate Scrutiny Committee, Solapur, dated 15-10-2018, invalidating the claim of the petitioner as belonging to “**Beda Jangam**” Scheduled Caste.

2. To appreciate the sole contention of Mr. S.G. Deshmukh, learned Advocate appearing in support of this petition, we will have to refer to a few facts.

3. Mr. Deshmukh submits that, the petitioner is an Indian citizen and a resident of Solapur District. The Scrutiny

Committee had before it a certificate styled as Caste Certificate issued in his favour, copy of which is at Exhibit-B. This certificate is dated 29-9-2017.

4. The post of Sarpanch at Mandrup Gram Panchayat, Taluka South Solapur, District Solapur was reserved for Scheduled Caste. Relying upon this certificate, the petitioner contested this election and was elected as Sarpanch on 17-10-2017. He promptly made an application to the 2<sup>nd</sup> respondent-Committee for verification of his caste and along with the same he filed various documents, including a document in respect of his cousin grandfather, namely, Mallayya Baslingaya Hiremath. That document showed that this gentleman is Beda Jangam. It is a document of the year 1923.

5. The 5<sup>th</sup> respondent to this petition was a rival candidate and having lost, he filed a complaint before the Committee. The respondent No.6, though has not contested the said election, has also filed a complaint before the Committee. The Committee forwarded the case for vigilance inquiry and

called for a report of that Vigilance Cell. The inquiry was carried out and during the course of which the statement of the petitioner was recorded. The complaints of respondent Nos.5 & 6 were put before the Vigilance Cell and the petitioner placed a version which also finds place in the reply to the Show Cause Notice issued by the Committee, dated 8-2-2018.

6. The petitioner contended that he has filed documentary evidence of prior to 1950 in respect of his father, uncle and grandfather. He has also not held back from the Committee the factual position emerging from these documents and that the family of the petitioner claimed to be Other Backward Class, that is, Jangam. While it is true that such a certificate pertaining to Other Backward Class ("OBC" for short), which is quite distinct from a Scheduled Caste, was issued but at the relevant time the petitioner was a school going child. He had no idea of what the forefathers have indulged in. The petitioner gave a clarification that in the year 2005 he was minor and he pointed out from his school records that he belongs to Beda Jangam. In those times, it was very difficult for persons

belonging to Beda Jangam Scheduled Caste to obtain documents such as Caste Certificate evidencing their caste as a Scheduled Caste. They had suffered immensely. The officers were reluctant to assist them. Despite Government intervention, nothing fruitful emerged and that is why most of the recipients of such certificates had no opportunity to contest either elections or seek any benefits reserved for Beda Jangam Scheduled Caste.

7. Mr. Deshmukh submits that the petitioner came across a document in the nature of Khasra Patrak in respect of his grandfather, Gurusiddhaya Channayya Bedajangam, of the Fasli year 1352 and which is equivalent to 1942 and this is a decisive document. An application was made on 1-9-2018 to the Scrutiny Committee in writing requesting to read this document in evidence but the Committee has flatly refused. The Committee should have noted that its attention was specifically invited to this document during the course of the hearing but the Committee has failed to advert to its contents. That is how the impugned order suffers from serious legal infirmities.

8. Attention of the counsel was invited to an affidavit in reply filed by respondent No.5 to this writ petition, in which a categorical statement is made that the petitioner's family has never sought any concessions and benefits meant for Beda Jangam Scheduled Caste and they were satisfied with their claim being recognised as Jangam OBC. The brother of the petitioner Marularadhya Sangamnath Hiremath also possesses a Caste Certificate, certifying him as OBC. The father of the petitioner also, in his School Leaving Certificate, has mentioned his caste as OBC. No attempt has been made to correct these documents and these entries. In fact the Caste Validity Certificate has been issued to the real cousin sister of the petitioner Supriya Shivanand Hiremath. In these circumstances, allegation is made further by highlighting the position that Mallayya Hiremath is not the relative of the petitioner and he is taking disadvantage of the same surname. The son of Mallayya Hiremath, namely, Dayanand Mallayya Hiremath has made an affidavit before the Special Executive Magistrate and Tahsildar stating as to who his grandfather was and that the said

grandfather had no brother. This affidavit, copy of which is Exhibit-H to the affidavit in reply, is also noticed by us and we invited the attention of the counsel to this document.

9. Firstly, we enquired from Mr. Deshmukh as to why no rejoinder affidavit has been placed on record denying the statements made on oath or dealing with them.

10. Mr. Deshmukh fairly states that no rejoinder affidavit has been filed but says that even now such an affidavit can be placed on record. He also invited our attention to the amendments which have been carried out to the writ petition and further to the fact that the Scrutiny Committee has indeed made a reference, in the impugned order, to the persons whose names are set out in the affidavit of respondent No.5.

11. First of all, in the absence of any rejoinder affidavit and particularly contra evidence, we cannot accept the oral arguments and, secondly, the amendments to the petition would not nullify the effect of the statements made on oath by the 5<sup>th</sup> respondent.

12. Apart from that what we have found is that in the affidavit of respondent No.5 there are telling circumstances brought on record.

13. The first telling circumstance is that the petitioner belongs to the OBC category. A Caste Certificate was already issued, certifying him as OBC in the year 2005. From 2005 till 2017, the petitioner availed all the concessions and benefits meant for the OBC category. He took education also by accepting scholarship under the OBC category. Then, the real brother of the petitioner, whose name is mentioned in para 6 of the affidavit, is possessing a certificate, certifying him as belonging to OBC. The said brother is also receiving concessions and benefits availed of by the OBC. The caste of the father of the petitioner Sangamnath Hiremath has been shown as "Hindu Linga" in the School Leaving Certificate and later on even the Caste Certificate of the grandfather of the petitioner, which was issued on 13-2-1978, shows him as OBC. There are also conflicting entries in his case and his School Leaving Certificate

mentions, against his caste column, “Swami Lingayat”. Then the uncle of the petitioner has also obtained a certificate, certifying him as OBC. A Caste Validity Certificate has been issued to the real cousin sister of the petitioner Supriya, copy of which is Exhibit-G to the affidavit in reply.

14. In the above circumstances, we do not think that merely because the petitioner and the said Mallayya were alleged to be not related but now finding that the name of Mallayya appears in the impugned order, it will not carry the case of the petitioner any further. It is upon an overall consideration of the evidence on record that the Committee came to the conclusion that the petitioner cannot be held to be a Scheduled Caste.

15. Even if the petitioner’s request, as made in writing, could have been accepted, it was difficult to digest the explanation put forward by the petitioner that, while he was 16 years of age he did not understand what his father was doing insofar as the caste claim. His father may have indulged in

certain acts but at that time the petitioner being a minor could not follow and appreciate its repercussions. If this is so, then the petitioner should have also explained as to when he became major and understood the position properly, why did he continue to avail of the benefits and concessions meant for the OBC, why he went on claiming scholarship as well and received the amount. Surely from 2005 till 2017 there would have been some occasion to get all the records corrected, including that of the petitioner's father.

16. Pertinently, in the petitioner's family people claimed to be OBC and till the Caste Validity Certificate was issued in favour of the petitioner and even from the paternal side to Supriya Shivanand Hiremath, dated 17-2-2006, that none realised that they can also be termed as Scheduled Caste and an attempt should be made to correct everything pertaining to them.

17. As against this and when the Committee did not deem it fit and proper to take cognizance of the petitioner's

requests and which, according to us, were pure afterthoughts. It had before it the voluminous documentary evidence where, apart from the petitioner's self-generated claim, every document in relation to the petitioner's father, uncle, etc., denoted them as OBC. The document No.3 is a School Leaving Certificate issued by the Headmaster, Zilla Parishad School, Mandrup. The name of the petitioner is shown and as against the caste column the entry is "Hindu Beda Jangam". However, this document is of 8-6-1994. It is after the constitutional entries and a recent one. The Scheduled Castes and the Scheduled Tribes have been enlisted in a Schedule and under a Presidential Notification of 1950 when the Constitution of India came into force. It is in these circumstances that the documentary evidence was not taken into consideration.

18. As far the document at serial No.7 is concerned, that pertains to Mallayya Baslingaya Hiremath. As far as Mallayya is concerned, his School Leaving Certificate may carry the entry as Beda Jangam and this certificate is dated 13-11-1923. However, the Committee finds that the relationship of Mallayya with the

petitioner has not been established and proved.

19. This is also the assertion in the affidavit filed by the 5<sup>th</sup> respondent.

20. To get over that, an attempt has been made to show that this gentleman was indeed related to the petitioner. On oath before this Court, it is stated that the said Mallayya was related to the petitioner, and the petitioner was called upon to give an explanation with regard to this relationship. The petitioner indeed furnished such a proof. The proof is stated to be on the basis of an affidavit and the family tree as well. It is stated that the petitioner having produced this family tree, that will denote the relationship.

21. However, the Committee found that such an assertion is not enough for the simple reason that there is a contra claim. The contra claim is that in the teeth of this document of 1923, which is stated to be issued in favour of a close relative from the paternal side, why did the father of the petitioner and his other immediate family members relied upon

their certificates, certifying them as OBC, and claimed the benefits meant for this Class throughout. If they were armed with such a certificate and in relation to a close relative and that this close relative was certified in a pre-constitutional document to be a Beda Jangam, attempts were not made to correct the status.

22. On the other hand, in his affidavit in reply the 5<sup>th</sup> respondent has stated that the genealogy furnished by the petitioner is false and Mallayya is not at all a relative of the petitioner. It is a surname which is common and Mallayya's son Dayanand made an affidavit before the Special Executive Officer and Tahsildar stating that his grandfather had no brother and also furnished a totally different family tree and genealogy.

23. The Committee, in this case, has passed the impugned order on the basis of the materials on record on 15-10-2018.

24. It will be too late in the day if we allow the petitioner to get over a clear finding of fact based on

appreciation and appraisal of the oral and documentary evidence.

25. The petitioner may have given an application on 6-6-2018 in writing and stating that he is not trying to get over all the documents certifying the family as OBC but is seeking to give a genuine explanation.

26. With the assistance of Mr. Deshmukh, we have gone through this application and the explanation to the above extent appearing at serial No.5, page 59 of the paper-book.

27. On a complete reading of this explanation, we find that it is a clear afterthought. It is a desperate attempt to get over the certificate issued to the father and equally the Caste Validity Certificate issued to the real cousin sister. The Committee rightly did not attach any credence to such an affidavit and ignored it.

28. It is shocking and surprising that a lure of a political office emboldens a person to such an extent that he raises a

totally bogus and false claim. Once such persons enjoy a status in the Society and are certified as OBC, merely because there is no opportunity to run for a political post such as Sarpanch, that post is not reserved for the OBC but a Scheduled Caste, chances are taken. The extent to which people have gone while taking such chances and shifting their caste status, leaves us in no manner of doubt that this tendency is on the rise and we will see more such cases, unless we come down heavily on such claims.

29. Apart from the fact that the claim was bogus and false and must be visited with all the consequences under 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, termed as "the Maharashtra Act No.23 of 2001), additionally we are of the firm opinion that the tendency can be curbed by imposing costs.

30. We dismiss this petition with costs, quantified at

Rs.50,000/- (Rupees Fifty Thousand). The costs shall be paid to the 5<sup>th</sup> and the 6<sup>th</sup> respondents in equal sets within four weeks from the date of receipt of a copy of this order.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)