

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11863 OF 2015

KU SHAH NIDA AFRIN NAWAB NIZAMUDDIN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Anand P. Bhandari and Mr. Hrishikesh A Joshi
AGP for Respondent Nos. 1 and 2 : Mr. S. G. Sangle
Advocate for Respondent No. 4 : Mr. K. C. Sant along with
Mr. Bhargav Kulkarni
...

CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.

DATE : 25TH NOVEMBER 2021

PC :

1. Despite service of notice on respondent No. 3, no appearance has been entered in this matter on it's behalf.
2. The petitioner, who is a medical student, has put forth prayer clauses "B", "C" and "D", which read as under :

“(B) By issuing Writ of Certiorari or any other appropriate writ, order or directions in the like nature, the impugned judgment and order dated 14.10.2015 issued by respondent No. 2 Committee whereby the Caste claim of the petitioner belonging to Chhaparband Community is invalidated may kindly be quashed and set aside.

“(C) By issuing or writ of mandamus or any other appropriate writ, order or directions in the like nature, it be held and declared that petitioner belongs to Chhaparband Community” and respondent No. 2 Committee be directed to issue caste validity certificate in favour of petitioner.

(D) Pending hearing and final disposal of this writ petition, the implementation, execution and effect of the impugned judgment and order dated 14-10-2015 issued by respondent No. 2 – Committee whereby the Caste claim of the petitioner belonging to Chhparband Community is invalidated may kindly be suspended.”

3. By the order dated 3rd February 2017, this Court has protected the petitioner by directing the Medical Institution, not to initiate adverse action against the petitioner on the ground that her tribe claim has been invalidated. It is informed that the petitioner has completed her M.B.B.S. Course education and is presently undergoing compulsory internship.

4. We have considered the strenuous submissions of the learned counsel for the petitioner, the learned AGP on behalf of respondent nos. 1 and 2 and Shri Sant, learned counsel on behalf of respondent No. 4. We have framed three issues, that have arisen for our consideration, in paragraph No. 27

5. The petitioner has a caste certificate (annexed at Exhibit – “A” to the petition), certifying that she belongs to Chhapparband - 14 Caste, which is recognized as Denotified caste (Vimukta Jati). Her full name is Nida Aafrin Nawab Nizamoddin Shah and she hails from Dharangaon, District – Jalgaon. Following are the documents before us :-

(a) The School Leaving Certificate bearing registration No.1931 dated 16-06-2006 indicates her religion and caste as “Islam Chhapparband”.

- (b) Yet another School Leaving Certificate from a different School bearing registration No. of Pupil 5193 indicates her religion and Caste as "Islam Chhapparband".
- (c) Both these certificates indicate her name, as is noted above.
- (d) A School Leaving Certificate dated 22-06-2015 of the Zilla Parishad, Urdu School No.2, Dharangaon pertaining to the father of the petitioner, which indicates the religion and caste as "Musalman". The date of leaving the School is 01-06-1979.
- (e) The father of the petitioner has not sought a validity certificate.
- (f) A School Leaving Certificate from the Zilla Parishad, Urdu School No. 2, Dharangaon pertains to paternal uncle of the petitioner, namely Nasiroddin Gulam Mohiuddin Shah, which indicates religion and caste as "Islam Musalman".
- (g) A School Leaving Certificate in the name of Gulab Mohiuddin Shah Bakshan Shah is the paternal grand father of the petitioner, whose caste is mentioned as "Islam Muslaman".
- (h) A School Leaving Certificate of Shah Gulab Gaus Bakshan Shah, who is real brother of grand father of the petitioner, indicates his caste as "Musalman".
- (i) A School Leaving Certificate of Zilla Parishad, Urdu Boys School No. 2, Yawal pertains to Bakshan Shah Bismilla Shah, who is the great grand father of the petitioner, indicates religion and caste as

'Musalman-Fakir'.

(j) Two biological brothers of the petitioner, namely, Ajahar Nawab Nizamuddin Shah and Danish Nawab Nizamuddin Shah have been granted validity certificates of belonging to the "Chhapparband Caste".

(k) General Register (Part 1, Rule 7) indicates at Registration No. 151 about the name of Bakshan Shah Bismillah Shah, who is great grand father of the petitioner and his caste is shown as "Musalman Fakir".

(l) It is undisputed that besides two biological brothers of the petitioner, no other member of the family from the paternal side has been granted validity certificate.

6. Learned counsel for the petitioner contends that the impugned order passed by the competent Committee does not indicate that the evidence placed before the Committee has been properly considered. The Vigilance Cell Report dated 21-09-2015 favours the petitioner. A show cause notice was issued on 23-09-2015 by the Committee, directing her to appear before the Committee. The petitioner appeared before the Committee on 29-09-2015 and on the very same date, the decision of rejecting her claim was pronounced, in undue haste as if the Committee did not want to spend even a single day for studying her case.

7. It is, therefore, strenuously contended that the Scrutiny Committee appears to have delivered its' order hastily and without

properly considering the record before it. It is common knowledge that the Committee is flooded with various validity claims and the Committee is unable to expeditiously decide the claim of every candidate. The petitioner's claim was registered on 05-03-2014 and after receiving the show cause notice, she appeared before the Committee on 29-09-2015. The Committee has hurriedly passed the impugned order on the same day which has resulted in miscarriage of justice.

8. The learned counsel for the petitioner submits that after completing her 12th standard education, she initially had got admission in 1st year Bachelor of Dental Surgery Course. Subsequently, on taking a second chance in the MH-CET, she could secure admission in the M.B.B.S. Course and naturally her admission for B.D.S. Course, was cancelled. Both her biological brothers were granted validity certificates on 27-07-2010 and 08-02-2012. A circular was issued by the State Government on 23-03-2011, thereby holding that in cases of such persons, when there is an evidence of the word "Shah" suffixing the full name of the candidate and when presence of the word "Fakir" as a caste is seen, such candidates should be granted validity certificate of belonging to the "Chhapparband - V.J. Category.

9. The learned Advocate for the petitioner further submits that as her elder brother Danish received the caste validity Certificate on 27-07-2010 and another brother Ajahar received his caste validity certificate on 08-02-2012, she preferred a claim for validity of her caste

through her case No. 10743-2014 on 05-03-2014, as she had secured admission in professional course on the basis of a seat reserved for V.J. category. She had preferred her application / claim when circular dated 23-03-2011 was in force.

10. The learned counsel for the petitioner has then relied upon a decision delivered by this Court at the Nagpur Bench in the matter of ***Arshad Faizan Shah versus State of Maharashtra, 2021 (3) Mh.L.J, 337***, to contend that the Court had relied upon an earlier order of the learned Division Bench delivered on 16-10-2019 in Writ Petition No. 5163 of 2018 filed by Ms Iftesam d/o Rajjak Shaha Versus State of Maharashtra and others and it was concluded that though circular of 2011 was withdrawn on 16-02-2015, when validity has been granted to various persons before 16-02-2015 and the State Government while recalling 2011 circular, is silent on the aspect, as to what should be the status of such caste claims based on withdrawal of the circular, the decision of the Committee to invalidate the claim of Arshad Faizan Shah is, therefore, bad-in-law.

11. Learned counsel for the petitioner has also placed reliance on the following Judgments:

- (i) **Apoorva Vinay Nichale Versus Divisional Caste Certificate Scrutiny Committee No., 1 Nagpur, 2010 (6) Mh.L.J. 401.**
- (ii) **Asad Javed Shaikh Versus the State of Maharashtra and others (Writ Petition No. 5540 of 2015, dated 13th February, 2019.**
- (iii) **Aquib Javed Kadri Versus State of Maharashtra and others (Writ Petition No. 8401 of 2016, dated July 21, 2016).**

- (iv) **Siddheshwar Versus Divisional Caste Certificate Scrutiny Committee No.2, Akola and another, 2015(5) Mh.L.J. 100.**
- (v) **Asad Shah Abdul Hameed Shah Versus State of Maharashtra and others, Writ Petition No. 3738 of 2014 decided on March 10, 2015.**
- (vi) **Sadeek Shaha Versus State of Maharashtra and others, 2009(3) Mh.L.J. 372.**

12. In **Apoorva Nichale** (*Supra*), this Court has laid down the law that when blood relatives, such as father, son, daughter, brother and sister have been granted validity certificates, the Caste Scrutiny Committee is not required to look any further and to avoid any anomaly, the applicant should be granted a validity certificate. It is only in case of a fraud having been played by any candidate for securing the caste validity certificate which forms the basis of the claim of the close relatives, it would be a different situation and it enables the Committee to refuse to grant the validity certificate, if the earlier caste validity certificate is tainted by fraud or granted without jurisdiction.

13. In **Asad Javed Shah** (*Supra*), claim of the petitioner seeking validity of belonging to 'Chhapparband - 14' V.J. category was denied by the Committee. This Court considered the validity certificates of close-blood relatives, relying on the decision delivered in **Apoorva Nichale** (*Supra*) and the petitioner was granted validity certificate since he fulfilled all the requirements for declaration of belonging to Chhapparband caste.

14. In **Acquib Javed Kadri** (*Supra*), this Court had expressed it's serious displeasure on the manner in which the Committee had

casually discarded the validity certificates of close-blood relatives despite orders of this Court and the law laid down in **Apoorva Nichale** (*supra*) should be followed.

15. Similar is the conclusion of this Court in the matter of **Siddheshwar More** (*Supra*).

16. The learned Advocate for the petitioner strenuously canvassed before us that though the 2011 circular was withdrawn and that too in a proceeding that was pending before the Nagpur Bench, when a statement was made before the Court, that instructions would be taken from the State Government and it was followed by withdrawal of the circular, the claim of the petitioner could not have been rejected merely because the circular was recalled. He refers to the finding of the Committee in paragraph No. 9, wherein the entry of the great grand-father of the petitioner of 1914 indicating the caste as "*Fakir*", was ignored. By way of passing reference, the Committee has referred to recalling of 2011 Circular and in a single sentence, concluded that as the Circular had lost its effect, merely because the petitioner belongs to Muslim religion or that there is one entry of 'Fakir' in relation to the great grand-father and the word "Shah" is found as suffix to her name, would not entitle her for grant of the validity certificate. He submits that the Nagpur Bench has rightly dealt with the issue pertaining to the situation post recalling of the Circular in **Arshad Shah** (*Supra*) and in **Ms. Iftesam Shaha** (*Supra*) and had granted validity certificate to the close relatives. An entry in the record of the great grand-father, is prior

to Chapparband being included in V.J. category vide the constitutional entry effected in 1961.

17. The learned AGP has strenuously opposed this petition, contending that the petitioner has to ably stand on her own footing, when it comes to claim of belonging to Chhapparband V.J. after the 2011 circular is withdrawn. Her claim can be validated if there is sufficient evidence on record. Merely because, the vigilance report is in her favour, can never be a clinching piece of evidence. All the attending circumstances have to be taken into account and only after the Committee arrives at the conclusion that the claim of the petitioner deserves to be validated, that such an order can be passed. 'Muslim Fakir' Caste also falls in the O.B.C. category. 'Chhapparband' could be found in the Hindus as well as Muslims. Unless the necessary ingredients are before the Committee for granting the validity, merely because the word "Fakir" or "Shah" is found in the name of the person professing Muslim religion, would not mean that the validity certificate needs to be granted. The withdrawal of the Circular of 2011 has changed the situation and all claims have to be scrutinised independently.

18. He submits that the petitioner could not produce any evidence *de-hors* the validity certificates issued to her biological brothers. The Committee was left with no option but to reject the claim. He refers to a judgment delivered by this Court in the matter of **Sayeed Shah Badush versus State of Maharashtra, 2007(4) Bom CR 339**, wherein

this Court has noted in paragraphs No. 3 to 17, which read as under :

“(3) The foundation of the petition is based on one legal proposition and another factual submission, which can be narrated as follows:-

[a] Whenever a person claiming to be belonging to De-notified Tribe - "Chhaperband" satisfies three conditions, namely [1] he is a Muslim, [2] his forefathers' names includes the term "Fakir", or they are locally known as "Fakirs", and [3] that the word "Shah" appears in the name of his forefathers as a suffix; he is entitled for validation of his tribe claim.

[b] On facts of case, according to petitioner, record of his forefathers is of 'Fakir', as well it consists of the suffix "Shah" and they belong to Muslim faith. The petitioner is, therefore, entitled to validation as 'Chapperband', Nomadic Tribe.

[c] The petitioner has placed reliance for this purpose on the report of Police Vigilance Cell, which, according to petitioner, helps him, since all the three conditions are found in favour of petitioner, namely being a Muslim, his ancestors known as "Fakirs and "Shah' being found as suffix to his ancestors' names.

[d] The petitioner also relies upon the Government Circular dated 20th August, 2002, which clarifies that if the word "Shah" is found in the name of the person, such person is liable to be considered as "Chhaperband".

4. Learned Advocate Mr. Mirza placed reliance on this Court's judgment dated 10th January, 2007 delivered in Writ Petition No. 1112 of 2006, to which

one amongst us [Shri Justice R.C. Chavan] was a Member, whereby this Court held that the petitioner in the said case was held by this Court to be belonging to Chhaperband [Vimukta Jati].

On perusal of this judgment, we find that this Court found that the fact that the said petitioner was known as "Fakir" was not a ground for invalidating the caste claim. Moreover, the said petitioner's real brother was granted validation, and this Court found it proper to rely upon said adjudication in given circumstances.

5. When questioned, learned Advocate for the petitioner has agreed with the position that all those who are Muslims and in whose names the term "Shah" appears as the suffix are not essentially Chhaperband.

6. The aforesaid preposition seems to be the background in which the Government was required to clarify that those of the 'Chhaperbands' in whose names suffix "Shah" appears, are eligible to get the validation. The corollary that every one, who has "Shah" as suffix or identified as Fakir, should, by the very fact of such identification or suffix, be Chhaperband, is not either a factual or dictate of law.

7. It is the admitted position that those who belong to the sect/caste "Fakir" belong to other backward category as it is a notified class. It is also well known that 'Chhaperband' is a "Vimukta Jati", namely a former criminal tribe.

8. A person, who claims to be belonging to a criminal tribe, will have to prove his linkage with his forefathers, who, by virtue of the occupation, were part of said De-notified Tribe. For such factuality, evidence could be produced before the Committee and candidate can prove that his forefathers belonged to that criminal tribe. It is incumbent upon a candidate to prove the facts of these facts which have to be a mater of his personal knowledge, or knowledge of his kiths and kins.

9. The burden to prove one's own caste claim is now indelibly recorded in Section 8 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes [Vimukta Jatis], Nomadic Tribes, Other Backward Classes & Special Backward Category [Regulation of Issuance and Verification of] Caste Certificate Act, 2000, and dependence on another notion would result in impairing proof of fact which claimant must prove, if he wants certification/validation of his claim.

10. Learned Advocate urged one more point that the Police Vigilance Cell ought to have gone into the factuality of petitioner's belonging to De-notified Tribe.

11. We find that in the Rules framed under the new Act, affinity test has been prescribed under Rule 12 of the Maharashtra Scheduled Tribes [Regulation of Issuance & Verification of] Certificate Rules, 2003. These Rules have been framed only to scrutinize the tribe claims. The Notification proclaiming the Rules also defines in Sub-Clause [g] of Rule 1 the term

"Scheduled Tribe Certificate." Admittedly, there is no other set of rules framed by the State pertaining to scrutiny of caste claims of other castes, such as Scheduled Castes, Other Backward Classes or De-notified Tribes. The term 'tribe' has occurred in De-notified Tribe, as it has nexus with the criminality of the group of persons. Moreover, these Rules are not by express notification applied to caste claim of other agencies.

12. Referring to the Test No. 4 laid down in the case of Madhuri Patil v. Additional Commissioner, Tribal Development 1, 1952(2) Bom. C.R. (S.C.)690: 1994 DGLS 769: A.I.R. 1995 S.C. 94, Lordships of Supreme Court have given emphasis to the ethnic test, particularly in relation to claim of Scheduled Tribe.

13. We find that an effort is made to connect the word 'tribe' to other than Scheduled Tribe as well. Any interpretation to this effect that affinity test shall be imperative for all other castes or De-notified Tribes or claims has not received any judicial sanction, and we do not consider it to be law or precedent. The test of ethnic linkage and affinity was applied to scrutiny of claim of Tribals', because tribals are having their distinction on these points as compared with all other members of civilized society."

14. We find, on facts of this case, that the Committee has found that barring the reliance that three factors [1] to be belonging to Islam, [2] being known as "Fakir", and [3] having the name "Shah" as

suffix, the petitioner has not brought on record other evidence of linkage or any nexus of the forefathers of petitioner with the criminal tribe.

15. In this background, we are of the view that holding affinity test is not imperative, more particularly when the candidate has failed to bring any evidence. After evidence is brought by the candidate, it would as well be open for the Case Scrutiny Committee to test veracity thereof by such means and measures as may be necessary and within the power of the Committee.

16. We find that whatever linkage a person from criminal tribe is his linkage with said "Criminal Tribe" and for this he may bring any such evidence which he deems relevant and it would be tested by the committee to the touchstone of proof of fact as per law in force.

17. This Court, therefore, finds that the decision of Caste Scrutiny Committee cannot be said to have been rendered in disregard to any material on record, or based on considerations, which were liable to be taken into account."

[Emphasis supplied]

19. The learned AGP, therefore, submits that as the requirements, which are specifically set out in paragraph No. 3 in **Sayed Shah Badush** (*Supra*), are not found in the claim of the litigant, the Scrutiny Committee would be justified in rejecting such a claim. This judgment was not cited before the Nagpur Bench in Arshad Faizan Shah (*Supra*) while allowing the petition.

20. He has further relied upon the judgment dated 18-07-2018 delivered at the Nagpur Bench in Writ Petition No. 2135 of 2018 filed by Irshad Mustaq Sayeed Versus State Government and others, wherein this Court has hold in paragraphs No. 2 to 8, which read as under:

“2. The caste claim of the petitioner as belonging to “Chhapparband”, Vimukta Jati-A, has been invalidated on 14.06.2016. The petitioner then was in employment with respondent Nos. 3 & 4. It appears that after said invalidation, in order to save his employment, he informed his employer that he would attempt to obtain OBC certificate and lastly also communicated that he should be treated as open category person. The employer has terminated him in view of invalidation as he was selected in Vimukta Jati (A) category.

3. The termination order dated 26.03.2018 has not been specifically questioned in present petition. The petitioner has questioned show cause notice dated 27.02.2018 in present writ petition. There is some dispute between the parties about receipt of service of termination order. At this juncture, we are not inclined to delve into it.

4. The perusal of impugned order passed by the Scrutiny Committee reveals that it has looked into a 1933 Birth entry and sale deed dated 24.06.1929. The documents are found to be genuine. The Committee records that there caste is mentioned as “Fakir. “Fakir” appears at Sr. No. 335 in the list of other Backward Class while Chhapparband is at Sr. No. 14 in the list of Vimukta Jatis. In view of this finding, as the petitioner could not produce any document showing that he belongs to

Chhapparband, the caste claim has been invalidated.

5. The State Government has on 23.03.2011 issued guidelines. The guideline is after judgment of this Court dated 27.01.2011 in Writ Petition No. 4560 of 2004. In first guideline it is observed that the Committee may considered the word "Shah" appearing along with the name of claimant and also find out whether entry "fakir" appears in the name of ancestors. The Committee is also advised to keep in mind that Chhapparband caste may also be found in Hindu religion.

6. We have perused the document of sale deed mentioned supra. There, in the name of great grand father of petitioner, the word "shah" appears. Similarly word "Fakir" is also mentioned in said sale deed and thereafter word Muslaman has been used. Thus, in the name of person purchasing the property, the word "Shah" appears thrice i.e. in the name of purchaser and with the name of father of purchaser and thereafter word "Fakir" appears.

7. In this situation, if the Committee had any doubt and felt that the caste was Fakir, it ought to have resorted to affinity test. That has not been done. It is to be noted that this document nowhere expressly mentions caste as "Fakir".

8. When the Committee had a doubt because the word "Fakir" appears in the entries, it ought to have looked into traits and customs and then gathered whether the petitioner hails from Chhapparband community or belongs to Fakir Caste. As the impugned order does not consider this aspect, it is quashed and set aside. The matter is placed back before respondent No. 2 committee. The petitioner to appear before the said Committee on

20-08-2018. The Committee shall thereafter proceed further in the matter as per law and pass fresh orders within next six months.”

[Emphasis supplied]

21. We find from the judgment delivered in **Sadeek Shaha** (*Supra*), that this Court has considered the claim of the petitioner in the light of the Circular dated 05-01-1999 issued by the Government of Maharashtra to overcome the difficulties faced by the persons claiming to be belonging to “Chhapparband”, which is included at serial No. 14 in the list of Vimukta Jatis. The translated portion of the Circular was reproduced below paragraph No. 3, which reads as under:-

“After considering all the aspects mentioned in their request application, the Government hereby directs that those who have claimed to be members of “Chhapperbandh” Mulsim community and those who are to be given certificates to this effect and also those who have suffixed their names with the word :Shah:, in such case the record of their fore-fathers be verified and it should be seen that the persons use to wander in the garb of “Fakir” and were indulged in coining fake currency and were trying to bring it into usage. If, proper proof in respect of such characteristics are submitted to the competent authority, then the caste certificate be issued to them as per rules. However, it would not be proper to regard that any of those except using the term “Shah” should not be included in “Chapperbandh” community (along with Muslims).

Members of Hindu community or even the members of Muslim community who are not using the

term “shah” can also be included in the Chapperbandh community.

The State Government thereafter it appears to have noted that in case of persons who have suffixed against their names the word “Shah” then the record of their fore-fathers, as set out therein be considered, to verify whether they belong to 'Chhaparbandh' community. At the same time, the Government also noted that merely because the term “Shah” is not included, would not preclude a caste certificate being issued if otherwise the applicant was able to satisfy from other material that he belongs to 'Chhapparbandh’.

22. Insofar as the producing of evidence of indulging in coining fake currency which became a serious hurdle as matter of proof in the path of the candidates claiming the validity, the Government had issued another Circular on 21-12-2002. This aspect has been considered by the Court in paragraph No. 4, which reads as under.

“4. The circular of the State Government in the matter of producing evidence of indulging in coining fake currency was creating difficulties in the matter of proof and as such the Government issued another circular on 21st December, 2002 and clarified as under :

“Each person applying for getting caste certificate, should produce proper evidence on the point that he belongs to Chhapparbandh Caste. What will be the nature of necessary evidence? It will depend on the different facts of

each matter. The condition about counterfeiting of coin and bringing it in currency is cancelled as per Government circular of Social Welfare Cultural Activities and Sports Department No.CBC-1495/378/C.No.57MVK-5 dated 5th January, 1999, for getting caste certificate of Chhapperbandh Caste. That condition has been cancelled by this Government circular."

Both these circulars were in respect of obtaining caste certificates and not for the purpose of determining their caste validity."

23. The Court has then dealt with the Circular dated 29-06-2006 issued by the Government, in paragraph No.5, which reads as under:

"5. Government issued another circular dated 29th June, 2006, which apart from being addressed to the competent authority issuing the caste certificate, was also addressed to the Caste Scrutiny Committee. In this, it was stated that to examine whether a person belongs to "Chhapparband" community, the following could be borne in mind:-

(I) Is he a Muslim ? (ii) in his name is "Shah" included? (iii) whether his ancestor record shows as "fakir"? The circular thus stated that, if these three factors are there, then there is no difficulty to issue caste certificate."

24. The learned Advocate for the petitioner submits that the State Government has issued several Circulars, upon noting certain difficulties that were being faced by the candidates seeking caste validity as "Chhapparband". Eventually, the Circular dated 23-03-2011

was introduced and which was quickly recalled by the State on 14-02-2015. Since then, there has been no further Circular issued by the State Government. In absence of the said Circular, the Nagpur Bench has allowed the claims of Ms **Iftesam Shaha** (*Supra*) and **Arshad Shah** (*Supra*). A similar view has been taken in ***Mustak Ahemad S/o Mohammad Waris Sayyad (Writ Petition No. 2434 of 2017 decided on 29-01-2020)***.

25. The learned counsel for the petitioner, therefore, submits that though a specific law may not have been laid down by the Nagpur Bench in these cases, the intention behind allowing such claims, appears to be that there should not be any anomaly, meaning that two real brothers have been granted the validity and the petitioner, who is the biological sister, is deprived of such validity.

26. We find that all the above cited orders passed by Nagpur Bench were in the light of the law laid down in Apoorva Nichale (*Supra*).

27. The issues before us, are :-

- (a) whether the very foundation of the validity of biological brothers has been the 2006 Circular (in the case of Danish) and the 2011 Circular (in the case of Ajahar) ?
- (a) as to whether this Court should, as a matter of course, accept the claim of the petitioner since her biological brothers have been granted validity, by virtue of circulars issued by the Government, which are withdrawn ?

- (c) whether it needs to be seen that her claim solely rested on the validity of her brothers, (as the date on which she had applied for validation, the 2011 Circular was in force) and, therefore, her case needs to be remanded to give her an opportunity to independently establish her claim ?

28. We are required to decide, that in the absence of a judicial pronouncement on the above issues as to what would be the position as regards the claim of such candidates in the absence of any Circular. If all earlier judgments granting validation are perused, it appears that at any given point in time, there had always been a Circular in force giving weightage to word “Shah” as suffix to the name and the caste being shown as “Fakir”. The case in hand seems one of such cases when no Circular is in force and the petitioner canvasses that even if the Circular is withdrawn, the claim of the petitioner be validated only to avoid an anomalous situation of two brothers having been granted the validation on the basis of the earlier Circulars.

29. The reliance is placed on **Ms. Iftesam** (Supra), contending that the Nagpur Bench has considered the withdrawal of 2011 Circular. We find from paragraph No. 4 of **Ms Iftesam** (Supra), wherein the learned Division Bench has held that, *“as the validity already exists in the family of the petitioner and it is necessary to avoid any anomalous situation arising, we are of the view that even this petitioner would be entitled to*

receive the validity of his (sic-her) tribe claim from the Scrutiny Committee.” In paragraph No. 5, the Court has held that, “the documents prior to November 1961 would have great probative value keeping in view the tribe “Chhapparband” was declared to be a Nomadic tribe on the basis of one letter dated 29-06-2006 issued by the Secretary to the State Government.”

30. It is, therefore, obvious that in the judgments delivered by the Nagpur Bench, which have been cited by the petitioner, the issue as to whether, after recalling of the Circular of 2011 preceded by recalling of all earlier circulars, whether validation should be blindly granted to the claimant, whether by granting such validity the Circular of 2011 would continue to have its effect, as such validation solely rests on the said Circular. We are dealing with the issues set out in paragraph no. 26 hereinabove. Accepting the claim of the petitioner founded on the basis of the validity of two brothers, solely rests on the Circulars, would amount to a deemed fiction that the circular would continue to be in operation. If this approach is to be adopted, though the State Government has withdrawn the Circular leaving open the claim of “Chhapparband” V.J. category, to be scrutinized on the basis of material entries in the records of the ancestors, it would amount to granting validities in all such cases, without scrutiny, only on the basis of the close relatives having been granted validation, which were solely based on such Circular.

31. We are, therefore, of the view that to avoid an anomaly, a case

cannot be stretched this far. The peculiar facts and circumstances in this case, are distinguishable and different from the facts and circumstances in **Apoorva Nichale** (supra). In **Apoorva Nichale** (Supra) claims of the close relatives were based on strong factors which had probative value and validity certificates were granted after detailed scrutiny of the claims and on assessing required factors which established the claim of close relatives. It was in such a situation, that this Court ruled that once close relatives had acquired validity on the merits of their claims, blood relatives need not have to re-establish his/her case when blood relatives have established such claim/s. In the peculiar case of petitioner before us, the claim of belonging to “Chhapparband” was not accepted by the Scrutiny Committee since all Circulars which made the path easier for such claimants, as is clearly visible from action of the State Government that the Circular was issued to remove the difficulties in their path, were withdrawn. Once such Circular is withdrawn, the necessity to independently establish the claim of belonging to “Chhapparband”, would have full force and effect as the relaxation granted by the Circulars stood withdrawn. Mechanical acceptance of claims will defeat a valuable right of a genuine V.J. candidate.

32. In **Sadeek Shaha** (Supra), this Court noted that there was no record showing “Chhapparband” previous to 20-11-1961, on which date by the Notification “Chhapparband” was recognized as Vimukta Jati (Nomadic Tribe). The Committee noted that in the school records of the petitioner, the petitioner claimed that word “Fakir” was mentioned.

It then concluded in paragraph No. 13, which reads as under :

“13. On behalf of the Committee, the learned counsel had drawn our attention to the fact that 'Fakir' is also notified as OBC and “Chhapparbandh” is a de-notified Tribe and that mere inclusion of word 'Fakir' by itself cannot result in the petitioner's establishing that he belongs to “Chhapparbandh”, Nomadic Tribe. We are in agreement with the view expressed by the learned counsel of the Committee. Mere presence of the word 'Fakir' or 'Shah' cannot by itself result in the caste certificate being validated. The applicant will have to establish, by cogent evidence his affinity to “Chhapparbandh”, Nomadic Tribe. The burden of proof which is caste on an applicant cannot be taken away by the Circulars, nor have the Circulars done so. The circulars basically are for issuance of caste certificates. Considering the provisions of the act, it is not open to any authority to issue any direction to the Committee. The Committee would be bound only by the provisions of the act and the Rules framed thereunder and proceed to answer the issues as a Tribunal or a quasi Judicial authority.”

[Emphasis supplied]

33. We find that the judgment in **Sadeek Shaha** (*Supra*), was also not cited in the case of Arshad Faizan Shah before the Nagpur Bench. Post withdrawal of the 2011 Circular, the issue is open to be scrutinized by the Committee, as to whether the claimant would establish his claim of belonging to “Chhapparbandh” tribe. Mere presence of the word “Fakir” or “Shaha” would not by itself result in the caste certificate being validated and the applicant has to establish by cogent evidence his

affinity to “Chhapparband” (Nomadic Tribe). It is settled that burden of proof is cast on the applicant, which cannot be taken away by Circulars, nor have the Circulars done so. The Circulars basically are for issuance of caste certificate, was a conclusion in paragraph No. 13, reproduced above.

34. As such, upon considering the law on the issue before us, it is clear that the law laid down in (a) Sayeeda Shah Badush (supra), (b) Mustaq Sayeed (Supra) and (c) Sadeek Shaha (Supra), which squarely apply to the issues before us, were not cited before the Nagpur Bench in Arshad Faizan Shah (Supra). We, therefore, answer issue nos. (a) and (b) by concluding that in such a peculiar case, the claim of the petitioner cannot be upheld.

35. *Prima facie*, we find that the petitioner was contending that her claim should be validated, as her brothers had secured validation, *albeit*, on the basis of the then existing Circulars and probably she may not have fully supported her claim after the Circular was withdrawn a few months prior to the decision in her matter. This should not be treated as the petitioner having failed to establish her claim since it may have been on the basis of advise that her claim will be allowed simplicitor as her brothers had received validity. If, by being under such perception, the petitioner may not have made a complete attempt to establish her claim, it would be unfortunate that her claim would stand negated, probably on account of complacency on her part. Therefore, she needs to be given a second chance to establish her claim without

placing reliance on the Circulars which are now no longer in existence. She might as well establish her claim independently and for which her case needs to be remitted back to the Committee for a decision.

36. We are aware of the impact of the law laid down by the Honourable Apex Court in the case of the ***Chairman and Managing Director Food Corporation of India and others versus Jagdish Balaram Bahira and others, (2017) 8 SCC 670***. The petitioner is a student of the medical faculty and, as such, we find it appropriate to give her a chance to appear before the Committee post stage of the vigilance committee's report which is purportedly in her favour. We, accordingly answer issue no. (c).

37. In view of the above, this petition is partly allowed. The impugned order dated 29-09-2015 is set aside with the following directions :

- (a) The petitioner is agreeable to appear before respondent No. 2 - Caste Scrutiny Committee, Jalgaon on 7th January, 2022 at 2.00 p.m. The notice to the petitioner is not necessary.
- (b) The Committee shall list her matter on dates, after 7th January, 2022, as per her convenience to be able to appear before the Committee, keeping in view that she is pursuing compulsory internship course and we do not expect that she should file leave applications frequently.

- (c) From the stage, post submission of the vigilance report, the Committee shall proceed to conduct the proceedings and after granting a reasonable opportunity of hearing to the petitioner, shall close the matter for judgment on or before 30th June, 2022.
- (d) Thereafter, the Committee would deliver a reasoned order on 15th July, 2022 at 3.00 p.m.
- (e) The copy of the judgment would be kept ready to be delivered to the petitioner as per rules and the petitioner can collect such a copy by 5.00 p.m. on the same day.
- (f) Needless to state that if any Circular with regard to excluding evidence of counterfeiting coins is in force, same would be taken into account by the Committee while considering the claim of the petitioner.

38. We deem it appropriate to continue the protection granted to the petitioner against any adverse action by the Educational Institution till 31st August, 2022.

39. Considering the peculiar facts and circumstances of this case and petitioner being a medical student who was advised to rely on the validity certificates her biological brothers, we do not find that this could be a fit case to impose costs while remitting her matter so as to give her a full opportunity to establish the case.

[S.G. MEHARE, J.]

[RAVINDRA V. GHUGE, J.]