

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

WRIT PETITION NO. 14923 OF 2021

Jyoti d/o. Manikrao Prasad,  
Age: 52 years, Occu. Service,  
R/o. At Post Kharosa,  
Tq. Ausa, Dist. Latur.

**.. PETITIONER**

**VERSUS**

1. The State of Maharashtra,  
Through the Secretary,  
Education Department,  
Mantralaya, Mumbai.
2. The District Caste Certificate  
Scrutiny Committee  
Through its Member Secretary,  
Latur, Dist. Latur.
3. The Chief Executive Officer,  
Zilla Parishad, Latur.
4. The Education Officer (Primary),  
Zilla Parishad, Latur.
5. The Block Education Officer,  
Panchayat Samiti, Nilanga,  
Tq. Nilanga, Dist. Latur.

**.. RESPONDENTS**

...

Mr.T.M.Venjane, Advocate for the petitioner.  
Mr.P.S.Patil, Addl.G.P for the respondent-State.

...  
**CORAM : RAVINDRA V. GHUGE &  
S.G.DIGE, JJ.**

DATE : 06.04.2022

**ORAL JUDGMENT** [Per Ravindra V. Ghuge, J.] :

1. By this petition, the petitioner has put forth prayer clauses B, C, D, E and F, as under :

- B] By issuing a writ of certiorari or any other appropriate writ, order or direction in the like nature, the impugned order dated 09.06.2021 passed by the respondent No.2 District Caste Certificate Scrutiny Committee, Latur thereby invalidating the caste claim of the petitioner belonging to Rajput Bhamta, recognized as Vimukta Jati, may kindly be quash and set aside.
- C] By issuing writ of mandamus or any other appropriate writ, order or direction in the like nature it may kindly be held that, the petitioner belongs to Rajput Bhamta, recognized as Vimukta Jati and the respondent No. 2 District Caste Certificate Scrutiny Committee, Latur may kindly be directed to issue validity certificate to the petitioner forthwith.
- D] Pending hearing and final disposal of this Writ Petition, the implementation, execution, operation of the impugned order dated 09.06.2021 thereby invalidating the caste claim of the petitioner passed by the District Caste Certificate Scrutiny Committee, Latur may kindly be stayed.
- E] Pending hearing and final disposal of this Writ Petition, the respondents may be directed not to

take any coercive action against the petitioner on the ground of her caste invalidation.

F] Pending hearing and final disposal of this Writ Petition, be pleased to stay the effect and operation of the letter dated 30.11.2021 (**Exh."I"**) issued by Block Education Officer, Panchayat Samiti, Nilanga, Dist. Latur.

2. This matter was heard at length on 30.03.2022 and posted today for further hearing. The learned Advocates for the respective sides have been extensively heard even today. The petitioner relies upon the judgment delivered by the learned Full Bench of this Court in **Shilpa Vishnu Thakur Vs. State of Maharashtra & others** reported in 2009 (3) Mh.L.J. 995.

3. The contentions of the petitioner can be summarised as under:

- a) The petitioner claims to be belonging to the caste 'Rajput Bhamta', which is recognised as Vimukta Jati (De-notified tribes).
- b) On 17.05.1999 the Deputy Collector of Latur issued a caste certificate to the petitioner showing her to be belonging to 'Rajput Bhamta'.

- c) On 15.03.2000, the petitioner was appointed as a primary teacher on the post reserved for de-notified tribes in the Zilla Parishad Primary School at Latur. She is presently working in the same capacity.
- d) The petitioner tendered her claim for validation to the Competent Scrutiny Committee on 12.02.2013. She claims to have produced various documents inclusive of her caste certificate, school leaving certificate of herself and family members, genealogy, admission extracts, Khasara Pahani Patrak, her service book and the death records of her parents.
- e) During the pendency of her proceedings, her employer directed her to produce the validity certificate and decided to withhold her salary till such a certificate is produced.
- f) The petitioner approached this Court in Writ Petition No. 11074/2017. By the order dated 13.09.2017, the respondents were directed not to withhold her salary on the ground of pendency of her validation proceedings.
- g) By the order dated 09.06.2021, the Caste Scrutiny Committee invalidated the claim of the petitioner and concluded that she did not

belong to the 'Rajput Bhamta' Tribe.

- h) The grounds I to XII set out in the memo of the petition for assailing the impugned order, read thus:

[Reproduced verbatim]

I] That, the impugned order is illegal, improper and contrary to the provisions of law.

II] It ought to have been seen that, the Committee has not conducted affinity test of the petitioner and without considering the same invalidated caste claim of the petitioner.

III] It ought to have been seen that, the entire approach of the committee is negative and the order is perverse. Once it is found that, there is no any contra evidence about the petitioner, the claim cannot be denied on the ground that, the documents are post presidential.

IV] This Hon'ble High Court may appreciate that, while deciding the caste claim of the petitioner the committee has not followed the due procedure of law. Rules indicate service of report by RPAD, grant of 15 days time for filing reply to the V.C. report and thereafter, the date

of hearing is contemplated as per Rules. In the instant matter, the committee on 17.12.2018 given notice to the petitioner with Vigilance Cell report directing to submit reply on or before 26.12.2018. After perusal of Rojnama, it seems that the committee conducted the hearing in hurried manner.

V] It ought to have been seen that, the vigilance officer has not verified the Khasra Pahani Patrak of father of the petitioner and not observed anything about the Khasra Pahani Patrak.

VI] This Hon'ble High Court may appreciate that, in the vigilance report, it is specifically mentioned that, the police authorities visited village Kharosa and inquired to the respectable citizens of the said village and found that, the petitioner and her family residing in the said village since long and they belongs to Rajput Bhamta Caste. The Police Officer found positive remarks in the affinity test, despite this without considering the positive affinity test, the committee invalidated the caste claim of the petitioner.

VII] It is important to note that, the entire documentary evidence and entire things were

produced before the committee hence there was never suppression of facts by the family of the petitioner and on this ground the claim of the petitioner needs to be held valid.

VIII] This Hon'ble High Court may appreciate that, in school entry register of petitioner and her brothers, the caste is mentioned as Rajput Bhamta which is not considered by the Committee.

IX] This Hon'ble High Court may appreciate that, in death register, the date of death of father and mother is mentioned as 08.05.1973 and 31.07.2008, in which the caste is mentioned as Rajput Bhamta. This aspect has not been considered by the committee.

X] That, in the service book of the petitioner, the Caste of petitioner is mentioned as Rajput Bhamta the same is negatively considered by the committee.

XI] It ought to have been seen that, the Khasra Pahani Patrak of father of the petitioner of the year 1954 has not been properly and positively considered by the Committee.

XII] It ought to have been seen that, the

committee wrongly observed that, after verifying the school register of the school of the petitioner, there is no mentioning of caste of petitioner as Rajput Bhamta, but only Rajput is mentioned as caste of the petitioner. The petitioner got the certified copy of school register issued by the Head Master of Navbharat Vidyalaya, Kharosa, Tq. Ausa, Dist. Latur, in which the caste of the petitioner is mentioned as Rajput Bhamta.

- i) The school extract of the petitioner dated 24.01.2012 indicates status of her tribe as 'Hindu Rajput (Bhamta)'.
- j) The death certificate of the father of the petitioner carries the entry of 'Hindu Rajput (Bhamta)'.
- k) The vigilance report tendered by the Police Inspector attached to the District Caste Verification Committee would indicate that three respectable persons from the village have given statements to suggest that the petitioner belongs to the 'Rajput Bhamta' Tribe. This report is not considered by the Committee and hence the matter needs to be remanded.

- l) The school records and father's death certificate are adverted to by the Vigilance Committee and though the tribe is shown as 'Rajput Bhamta', the decision dated 09.06.2021 indicates that the petitioner does not belong to the said tribe.
- m) In *Shilpa Vishnu Thakur (supra)*, the affinity test has great importance and such affinity test would indicate that the petitioner's claim should have been validated.

4. The learned Advocate representing the validity Committee has dealt with each contention of the petitioner and submits as under:

- i) The school extract of the petitioner actually contains an entry as 'Hindu Rajput'. The word 'Bhamta' written into brackets is apparently in different handwriting and clearly appears to be an entry made surreptitiously.
- ii) The death certificate of the father of the petitioner also contains an entry as 'Hindu Rajput' and 'Bhamta' is written in a completely different handwriting in order to make the entry appear as 'Hindu Rajput (Bhamta)'.

iii) In the death certificate of the mother of the petitioner, which, by a single glance, appears to be written by the Village Development Officer where the word 'Bhamta' appears to be written into brackets as 'Bha'.

iv) The Police Inspector, who tendered the Vigilance Enquiry Report dated 13.10.2018, has clearly mentioned in paragraphs 1, 2 and 3 that every record pertaining to the petitioner and her siblings was scrutinised, there were consistent entries as 'Hindu (Rajput)'. None of the records carried the word 'Bhamta' either below the column of religion or caste.

v) In the interaction had by the Police Inspector with three persons, he has recorded their statements that the caste of the petitioner was Rajput Bhamta and their livelihood was by indulging in cheating and defrauding citizens.

vi) The Committee has carefully considered the entire record and found suspicious entries which clearly appear to be written in different handwritings. One such

entry is in the covering letter of the proposal for validation where 'Bhamta' is entered in front of the entry 'Hindu Rajput', is also in completely different handwriting.

vii) The Committee considered the entry in the school extract of the petitioner wherein 'Bhamta' has been subsequently written in a different handwriting. Similar is the entry in the death certificate of the father of the petitioner.

viii) Having considered such material and having noticed that the vigilance enquiry report did not advance the case of the petitioner, the Committee negated her claim.

ix) Not a single member of the family tree of the petitioner to the extent of her ancestors / any member of the family, has the caste certificate as Rajput Bhamta.

x) The petitioner is claiming to be a descendant of criminals merely to secure a validity certificate. Not a single family member or anybody from the family tree was an accused in any offence and there is no FIR registered

against any of such family members.

xi) He relied upon paragraphs 4, 39, 40 and 41 of the *Shilpa Vishnu Thakur (supra)* to buttress his contention that the Committee should develop confidence only upon being convinced that the claim of the petitioner deserves to be validated.

xii) He relies upon the judgment of the learned Division Bench of this Court in **Jayasing Dhondiram Rajput Vs. State of Maharashtra & others**, reported in **2006 (3) Mh.L.J. 642** wherein it has been held that as the petitioner could not furnish information regarding the traits, custom and usage of “Rajput Bhamta” and none of the forefathers have a recorded history of being cheaters or defrauders or criminals, that the claim of the petitioner was unacceptable.

5. We have considered the rival submissions as recorded herein above. It would be apposite to reproduce paragraphs 4, 39, 40 and 41 in *Shilpa Vishnu Thakur (supra)* as under :

**4.** *The reference to the Full Bench has been occasioned as a result of a conflict in the views*

*expressed in Judgments of this Court on the applicability of the affinity test. The points which have been referred by the Division Bench for determination of the Full Bench ( and as reformulated) are as follows:*

*“(i) Should the paramount consideration in determining the caste claim of a person be documentary evidence or, as the Supreme Court held, “anthropological moorings and ethnological kinship”; and is the “crucial affinity test” relevant and germane for such a decision?*

*(ii) (a) In cases where the documents produced by a person claiming to be belonging to a particular caste satisfy the requirement, for example, in the case of “Thakur”, if all the documents produced/filed and relied upon by a candidate denote his caste as “Thakur” then, without validating the caste claim with reference to the “crucial affinity test”, should the caste claim be validated or not?*

*(b) In a case where a person is not in possession of any document to meet the requirements of a particular caste claim can the claim be scrutinized on the basis of the “crucial affinity test”, and a validity certificate be issued?*

*(c) Where a person who claims to belong to a particular caste has some documents in his favour and/or partially satisfies the crucial affinity test, can the claim be certified and is the candidate entitled to his caste certificate being validated?”*

*39. We will now proceed to answer the questions framed for the determination of the Full Bench.*

***The Conclusions***

*40. Our answers to the questions referred are as follows:*

*(i) The burden of establishing that the applicant belongs to a tribe notified as a Scheduled Tribe is on the applicant under section 8 of the State Act. The Competent Authority which issues the caste certificate, the Appellate Authority and the Scrutiny Committee have powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, particularly in summoning and enforcing the attendance of persons; requiring the discovery and production of documents; receiving evidence on affidavit, requisitioning any public record and issuing commissions for the examination of witnesses or for the production of documents under section 9 of the Act. The Competent Authority before whom an application for a caste certificate is filed has to be satisfied about the genuineness of the claim under section 4(1). The Caste Scrutiny Committee is required by section 6 to verify each caste certificate before it issues a certificate of validity. Under the Rules, an application for grant of a certificate has to be accompanied by a full disclosure on affidavit containing information stipulated in sub-rule (2) of Rule 3 and documents referred to in sub-rule (3). Under sub-rule (9) of Rule 4, the*

*Competent Authority, if it is not satisfied with the claim of the applicant on a scrutiny of the evidence produced, is empowered to order a further inquiry as it deems fit. After considering the evidence produced by the applicant or any other person on his behalf and the statement of the applicant and after taking into account the material gathered by the Competent Authority, the Competent Authority has to issue a certificate if it is satisfied about the genuineness of the claim. In an appeal against the decision of the Competent Authority, the Appellate Authority is empowered under Rule 8 to receive or call for further documents before passing such further orders as it deems fit. Once the caste certificate is issued, an applicant has to submit documents for verification by the Scrutiny Committee under Rule 12(2) and an affidavit in Form-F containing full disclosure of the information relevant to the determination of the tribal status. Under Rule 12(2), the Scrutiny Committee, if it is not satisfied with the documentary evidence produced, has to forward the application to the Vigilance Cell for a school, home and other inquiry. Under sub-rule (4) the Vigilance Officer has to personally verify and collect all the facts about the social status claimed by the applicant. If the Scrutiny Committee is not satisfied about the claim of the applicant on the basis of the report of the Vigilance Cell and other documents available, a notice to show cause is issued to the candidate for a personal hearing. The Scrutiny Committee must be satisfied about the genuineness of the claim and the correctness of the Scheduled Tribe certificate. If it is not satisfied, it has to*

*pass an order of cancellation and of the confiscation of the certificate. The Competent Authority, the Appellate Authority and the Scrutiny Committee exercise quasi-judicial powers in arriving at a determination with reference to a claim to belong to a Scheduled Tribe. These Authorities must have regard to the entire body of evidence, including the documentary and oral evidence. The affinity test is an integral part of the determination of the correctness of the claim. As quasi-judicial authorities, each of these Authorities must apply settled principles of law in the evaluation of evidence. A claim can be allowed only where the Authority is satisfied about the genuineness and the correctness of the claim on the basis of the entire evidence on the record.*

*(ii) (a) The mere fact that the documents produced by a person reflect his surname as being synonymous with the name of a designated tribe, is not sufficient to establish that the applicant belongs to a Scheduled Tribe. Before a person can be regarded as belonging to a Scheduled Tribe, that person must demonstrably be a member of the tribe. Allowing claims merely on the basis of an overlap between the surname of the person as reflected in the documents produced and the name of a designated tribe may result in a grave miscarriage of justice and lead to the grant of benefits to persons who are not genuinely members of a designated tribe. In order to determine whether a person genuinely belongs to a designated Scheduled Tribe, the Scrutiny Committee must have regard to the*

*entire body of evidence including on the question as to whether the applicant has satisfied the affinity test.*

*(b) Where a person is not in possession of documentary evidence to meet the requirement of belonging to a particular tribe, he or she must make a disclosure to that effect in the application form to be submitted to the Competent Authority in the first instance and before the Scrutiny Committee subsequently. The absence of documentary evidence does not ipso facto result in the invalidation of the caste claim. The claim will have to be scrutinized by the authority concerned on the basis of all the material available, including the affinity established by the applicant to a tribe. The Competent Authority or, as the case may be, Scrutiny Committee shall apply established norms in the evaluation of evidence. The applicant has to discharge the burden of establishing his or her caste claim under section 8 of the Act. Whether the burden has been discharged is for the Competent Authority / Scrutiny Committee to decide on the facts of each case. The quasi-judicial function must focus on all relevant aspects such as whether the absence of documentary evidence is due to poverty, illiteracy and isolation or whether it is a plea in the nature of suppression to prevent the real status of the applicant from emerging before the authority.*

*(c) Where a person has some documents in his or her favour and/or partially satisfies the crucial affinity test, the question as to whether*

*certification should be granted would depend upon the overall view which is formed by the Competent Authority in the first instance and by the Scrutiny Committee subsequently on the preponderating weight of the evidence. The nature of the documents that have been produced, the genuineness and authenticity of the documentary evidence and the weight to be ascribed to the documents produced, are matters which must be decided by the authority concerned. If a candidate has satisfied the crucial affinity test in part, it is for the Competent Authority and the Scrutiny Committee to determine in each case as to whether, on considering the entire material on the record, the caste claim is correct and genuine. An answer in the abstract cannot be furnished. It is for the quasi-judicial authority in each case to arrive at its finding on the basis of the material on the record.*

*41. Before concluding, it is necessary for this Court to observe that both under the Act as well as under the Rules, the Competent Authority has to be satisfied about the genuineness of the claim. Rule 4 which lays down the procedure to be followed by the Competent Authority for the grant or rejection of an application for a certificate empowers the Competent Authority to hold an inquiry and to gather material for determining the correctness of the claim. The function of the Competent Authority is not ministerial but is a vital step in the verification of tribe claims. The Competent Authority must be provided with a sufficient infrastructure to process and verify the claims. We are of the*

*view that it would be necessary for the State Government to take immediate steps to provide infrastructure to the Competent Authorities in order to enable them to determine in the first instance the correctness of the caste claim before a decision is arrived at on the grant or rejection of the application. The State Government shall within a period of two months from today issue necessary administrative directions providing for infrastructure, including expert assistance and a Vigilance Cell to assist the Competent Authorities to discharge their duties. The material which is gathered by the Competent Authority under Rule 4 shall be transmitted by the Competent Authority to the Scrutiny Committee when an application is made to the Scrutiny Committee for the grant of a validity certificate. We have issued these directions in order to ensure that the process of issuing caste certificates by the Competent Authorities is not reduced to a mechanical exercise since both the Act and the Rules require the satisfaction of the Competent Authority in regard to the correctness of the claim. The benefit of the exercise which has been conducted by the Competent Authority should be made available to the Scrutiny Committees and the entire record before the former should be hence transmitted to the latter for the purposes of the proceedings before the Scrutiny Committee. The State Government shall act on the aforesaid directions and take expeditious steps in compliance within the time schedule that has been prescribed.*

6. It is, thus, obvious from the reproduced portion above, that there must be documentary evidence to indicate the caste claim of a person. If such documents satisfy that a person claiming to be belonging to a particular caste – tribe satisfies the requirements, then the claim of the candidate can be validated. If a person is not in possession of any document, the caste claim can be scrutinized on the basis of the ‘crucial affinity test’. The points that were formulated by the learned Full Bench, have been answered in paragraph 40. It has been held that the competent authority before whom an application for a caste certificate is filed, has to be satisfied about the genuineness of the claim under Section 4 (1). The Caste Scrutiny Committee is required, vide Section 6, to verify each caste certificate. The mere fact that the documents produced by a person reflect his surname as being synonymous with the name of a designated tribe, is not sufficient to establish that such an applicant would belong to such a scheduled tribe.

7. We have ourselves scrutinized the first page of the proposal of the petitioner forwarded by the employer to

the Competent Committee for validation. A single glance indicates that there is a subsequent introduction of the word 'Bhamta' in a different handwriting in front of the words 'Hindu Rajput'. This proposal is forwarded by the employer and we have a reason to doubt that the employer may not even be aware that the word 'Bhamta' is written on the first page of the form in a different handwriting and also in a different ink which is visible even from the photostat copy. The learned Advocate for the Committee submits that this application is written by the petitioner herself and it is unknown as to how in a different handwriting the word 'Bhamta' may have introduced, as this sheet would not have evidentiary value.

8. We have perused the family tree submitted by the petitioner through her own affidavit dated 31.01.2012. It is an admitted position that besides the petitioner, as on the date her application for validation was tendered, not a single member of the family tree (her forefathers) were issued with the caste certificate of Rajput Bhamta. Naturally, there was no occasion for any of them to seek validation of any caste or tribe claim.

9. We have perused the school extract of the petitioner wherein the caste was entered as 'Hindu Rajput' and word 'Bhamta' is written in a different handwriting. Similarly, the word 'Bhamta' is entered in a different handwriting in the death certificate of the petitioner's father. The Police Inspector from the vigilance cell mentions in his report in paragraph nos. 1, 2 and 3, pertaining to the enquiry in the schools, wherein the admission extract from every school register indicated the religion of the petitioner and her siblings as 'Hindu' and the caste is shown as 'Rajput'. The Inspector moved from school to school to check the records personally and noticed that in every such record, the religion was shown as 'Hindu' and the caste was shown as 'Rajput'. Below the title 'domestic enquiry', the Inspector has recorded that he visited the village of the petitioner and three persons have given statements that the petitioner belongs to the said village and her clan belongs to the 'Rajput Bhamta' Tribe.

10. It is well said that 'humans may lie, but documents would not lie' and 'the documents would speak

louder than the words'. While comparing the statement of the three villagers with the records available, we would be justified in relying upon the records as three persons have only stated orally that the petitioner belongs to 'Rajput Bhamta' Tribe. Whereas, none of the records, having persuasive value support such statement. The records indicate the religion as 'Hindu' and the caste as 'Rajput'.

11. In *Jayasing Dhondiram Rajput* (supra), the learned Division Bench of this Court had an occasion to consider the claim that the forefathers were indulging in cheating or defrauding people. It was held that if, for generations, the forefathers had indulged in such crimes, there has to be some entry in the police records vide which the criminal record or criminal history of such persons would be established. Considering the various factors available, the learned Division Bench concluded that the petitioner Jayasing (supra), had failed to furnish enough material to establish / support the claim of belonging to 'Rajput Bhamta'.

12. In paragraph 41 of the Judgment in *Shilpa Vishnu Thakur (supra)*, Court has struck a note of caution indicating that the competent authority has to be satisfied as regards the genuineness of the claim. There must be material available for determining the correctness of the claim. The function of the competent authority is not a ministerial job, but is a vital step in the verification of tribe claims certain directions are set out in paragraph 41 in order to ensure that the process of issuing caste certificates and the validity certificates is not reduced to a mechanical exercise.

13. We have come across several cases, wherein the competent committee is now re-opening the cases in which validities were granted, upon noticing that certain documents were fraudulently prepared and relied upon. This would indicate that the Committee has a challenging task on hand and has to be extremely cautious and careful while issuing validity certificates.

14. We ourselves find several documents which are schools records, to be extremely doubtful and suspicious.

The entry of the word 'Bhamta' in several records is found in different handwriting. In such circumstances, granting a validity certificate to a candidate, who is appointed on a post reserved for a particular category, would amount to depriving a legitimate candidate of a right to acquire the said post. We are conscious of the view taken by the Hon'ble Apex Court in the case of **Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others**, reported in (2017) 8 SCC 670.

15. In view of the above, we do not find any merit in this petition and the same is, therefore, dismissed.

16. The learned counsel for the petitioner submits that as the petitioner is in service, though no protection is granted in this petition filed on 22<sup>nd</sup> December, 2021, she may now be protected.

17. The learned Advocate for the Committee vehemently submits that the petitioner is without protection ever since the rejection of her claim. Even this Court is satisfied that the claim was unsustainable and that the

petitioner had acquired her appointment by playing a fraud on the authority while being issued with a caste certificate. Hence, he submits that granting protection to such candidates and moreso in the light of the judgment delivered in *Chairman and Managing Director, Food Corporation of India and others (supra)*, would amount to travesty of justice.

18. Considering the above, as we are convinced that the case of the petitioner smacks of fraudulent acts, we are unable to grant any protection to her at this stage in the light of the strict view taken by the Hon'ble Apex Court in *Chairman and Managing Director, Food Corporation of India and others (supra)*.

[S.G.DIGE, J.]

[RAVINDRA V. GHUGE, J.]

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