

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3678 OF 2022

Anita Vitthal Kamble and Anr. Petitioners

Vs.

The State of Maharashtra and Ors. Respondents

Mr.Narvekar Valmiky Harshad for the Petitioners

Smt.A.A.Purav, A.G.P. for the State

**CORAM: S.V.GANGAPURWALA &
VINAY JOSHI , JJ.**

DATED : APRIL 8, 2022

P.C.

1. Rule. Rule made returnable forthwith. By consent of the parties, matter is taken up for hearing.

2. Petitioners applied for issuance of caste certificate of Mahar Scheduled Caste. Application is rejected. Petitioners filed Appeal before the Scrutiny Committee. Appeal is dismissed. Aggrieved thereby, the present petition.

3. The learned counsel for the Petitioners submits that Petitioner nos.2 and 3 are residing with the Petitioner no.1. Petitioner no.1 Mother has taken divorce from the father and at that time, Petitioner no.2 was aged 6 years and Petitioner no.3 aged 2 years. Since 2006, father abandoned

the petitioners. Petitioner nos.2 and 3 are brought up by Petitioner no.1. In that event, the Petitioners caste ought not to be considered from the paternal side but from maternal side.

4. We have heard the learned A.G.P.

5. The issue that if the mother has been abandoned by the father and since infancy child is residing with the mother then the child would take caste of the mother. Reliance can be had to the judgment of the Apex Court in the matter of *Rameshbhai Dadbhai Naika v/s. State of Gujarat and Ors.*¹

6. Earlier when the application of the Petitioner was rejected, the Petitioner approached this court and this court under order dated 08.06.2021 in Writ Petition (ST) No.1958 of 2021 had directed Committee to consider the judgment in case of *Rameshbhai Dadbhai Naika* (Supra) and judgments delivered in Writ Petition Nos.2342 of 2018 and 4905 of 2018. The Committee, it appears, that has failed to consider the said aspect. At the time of issuance of caste certificate, the Sub Divisional Officer and / or the Committee has to be prima facie satisfied. The long drawn enquiry is not contemplated at the time of issuance of caste certificate. Even otherwise, the caste certificate has to undergo acid test during validation proceeding before the Committee. Mother of Petitioner nos.2 and 3 i.e. Petitioner no.1 is already issued with the caste certificate of Mahar Scheduled

¹ 2012 (3) SCC 400

Caste, as contended by the learned counsel for the Petitioner.

7. In the light of the above, impugned orders are quashed and set aside. Concerned Sub Divisional Officer shall issue caste certificate to Petitioner nos.2 and 3 of Mahar Scheduled Caste.

8. That caste certificate certainly will have to be referred to the Caste Scrutiny Committee for its validation.

9. Rule made absolute accordingly.

10. Writ Petition is disposed of. No costs.

(VINAY JOSHI, J.)

(S.V.GANGAPURWALA, J.)