

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

WRIT PETITION NO. 7017 OF 2022

Gulam Husain Ashraf Khan

..Petitioner

Vs.

The State of Maharashtra & Anr.

..Respondents

Mr. R. K. Mendadkar for the petitioner.

Mr. P. J. Gavhane, AGP for the State.

**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.**

DATE : OCTOBER 20, 2022.

P.C.:

1. The caste claim of the petitioner as belonging to Tadvi is invalidated.

2. Learned counsel for the petitioner submits that right from the year 1924, the documents of the petitioner's grandfather and father's record caste as Tadvi.

3. Learned counsel submits that not a single contra entry exists but still the claim of the petitioner is invalidated only on the ground that affinity test is not proved. Learned counsel relies on the judgment of the Supreme Court in *Anand vs. Committee for Scrutiny and Verification of Tribe Claims & Ors., (2012) 1 SCC 113* to contend that affinity test is not the litmus test.

4. Learned AGP submits that in fact the surname of the petitioner's father was Momin, the same was changed to Khan in a Gazette, however, the petitioner's grandfather and great grandfather's surname is shown as Khan. The learned counsel further submits that in some of the school record and birth record, the caste is recorded as Musalman. The petitioner has failed in the affinity test.

5. The petitioner has placed reliance on the following documents:

Sr. No.	Nature of document	Name of document holder	Relation with the Applicant	Entry of caste	Date of Registration
1	Caste certificate	Ghulam Hussain Ashraf Khan	Self	Tadvi	14/08/2020
2	Affidavit	Ghulam Hussain Ashraf Khan	Self	--	12/11/2020
3	Transfer Certificate	Momin Ghulam Hussain Ashraf	Self	--	10/12/2020
4	Gazette	Ghulam Hussain Ashraf Momin	Self	--	9-15/7/2020
6	Caste Certificate	Ashraf Fakir Mohammad Khan	Father	Tadvi	30/01/2020
7	Birth Certificate	Ashraf	Father	—	27/11/2020
8	Birth Certificate	Ashraf	Father	Muslim Tadvi	01/03/1946
9	School Leaving Certificate	Ashraf Khan	Father	Muslim Sunni	01/04/1952
10	Birth Certificate	Fakir Mohammed	Grandfather	—	18/01/2020
11	Birth Certificate	Fakir Mohammed Ladale Saheb Khan	Grandfather	Muslim Tadvi	09/06/1924
12	Death Certificate	Ladale Saheb Gufur Khan	Great Grandfather	—	29/10/2020
13	Death Register	Ladale Saheb Gufur Khan	Great Grandfather	Muslim Tadvi	11/10/1934

6. The entry Musalman cannot be construed as contra entry, as the same depicts the religion. The birth record of the petitioner's grandfather of the year 1924 records caste as Tadvi. The birth record of the petitioner's father in the year 1946 records the caste as Tadvi. There is not a single contra entry on record. The Apex Court in *Anand* (supra) had held that the affinity test is not a litmus test. The record of pre-constitutional era would have more probative value. Considering the

consistent documentary evidence on record, the petitioner has proved that he belongs to Tadvī S.T.. The impugned order is quashed and set aside. The Committee shall issue the certificate of Tadvī schedule tribe immediately.

7. Writ Petition is disposed of. No costs.

(R.N. LADDHA,J)

(S.V. GANGAPURWALA, J.)