

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14356 OF 2022**

Zoya Iram Nehal Ahamad ...Petitioner
Versus
The State Common Entrance Test Cell ...Respondents
Maharashtra & Ors

Mr Rameshwar N Gite, *with Rohit D Gorade, Ashwin Pimpale & Sunita Sanap, for the Petitioner.*
Mr Sameer Khedekar, *for Respondent No. 1.*
Mr VM Mali, AGP, *for Respondent-State.*

**CORAM G.S. Patel &
 Sharmila U. Deshmukh, JJ.**
DATED: 23rd November 2022

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1. Rule. Respondents waives service. By consent, the Petition is taken up for hearing and final disposal in view of the demonstrable urgency.

2. The Petitioner is an 18 year-old aspiring medical student. In this Petition, she challenges the order dated 4th November 2022 passed by the 2nd Respondent, the District Caste Certificate Scrutiny Committee, Dhule. By that order, the 2nd Respondent invalidated the Petitioner's caste certificate of being Chapparband

(14). That caste certificate was dated 5th November 2020 under No. 39561260770 and was issued by the Sub-Divisional Officer, Shirpur, Taluka Shirpur, District Dhule. The 1st Respondent is The State Common Entrance Test Cell, Maharashtra. The 3rd Respondent is The State of Maharashtra.

3. The Petitioner's claim is that she belongs to a Vimukta Jatis or Denotified Tribe recognised under the Constitution (Scheduled Tribes) Order, 1950 as periodically amended. The Petitioner studied up to the 12th standard in the science stream at the Malegaon High School and Junior College, Malegaon, District Nashik. Her caste claim was forwarded from that institute to the 2nd Respondent Dhule under Section 6(2) of The Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act 2000 (**"The Caste Certificate Act"**).

4. Annexed to the Petition are various documents including a copy of the impugned order. The impugned order is at Exhibit "E" at page 40. In paragraph 2 at page 41 of the paper book is a listing of the documents that the Petitioner submitted. These included her own caste certificate showing her caste as Chapparband (14). Another document had the endorsement Muslim Chapparband. One of her father's documents said Musalman (Tadvi). The grandfather's document showed the endorsement "Musalman". But her father's own caste validity certificate showed the endorsement Chapparband (14), precisely what the Petitioner claims. This is

noted at sr No. 8 of the tabulation of documents in the impugned order.

5. The submission on behalf of the Petitioner by Mr Gite is not that the father's or blood relatives' caste validity certificate means that all enquiry is to be dispensed with. He does not suggest that the caste scrutiny committee considering the Petitioners application had merely to rubber stamp it on the basis of the father's caste validity certificate.

6. His submission is somewhat different. Certainly there should be an enquiry to the extent necessary and required by law. This may be a less detailed enquiry in cases where the father's caste validity certificate has been produced as a supporting document. His submission is that the state of the law is that a caste validity certificate previously issued to a blood relative, and especially to an ancestor on the paternal side, cannot be later questioned, doubted or disregarded merely because the committee considering the Applicant's claim views it differently. If the relative's or ancestor's caste validity certificate has been invalidated, then the matter stands on a different footing. It is, however, not for the committee considering the Applicant's/Petitioner's application to doubt the validity of a caste validity certificate issued to one of her ancestors, in this case her father. Notably; the father's caste validity certificate is of 23rd December 2009. In all this time, nobody has questioned it. It has never been invalidated. Despite this, the 2nd Respondent committee noted at page 46 that the issuance of the caste validity certificate on 23rd December 2009 to the Petitioner's father was

doubtful and could not be taken into account. This approach is to be deprecated. It has been deprecated in several orders and judgments of this Court.

7. Our attention is drawn to our order of 21st July 2016 in *Aquib Javed Kadri v State of Maharashtra & Ors* in Writ Petition No. 8401 of 2015. Paragraphs 2, 3, 4, 5 and 6 of that order at page 58 to 61 reads thus:

“2. In the grounds of the writ petition at page 8, the petitioner specifically averred that the respondent No. 2 Committee had in the past adjudicated the caste claim of the real sister, real uncle and cousin uncle of the petitioner. The Committee has validated the claim of the real sister and the real uncle on the same documentary evidence and issued Caste Validity Certificates in their favour.

3. When the petitioner relied upon these orders and Certificates, the Committee has not only discarded them but proceeded to assign mechanical reasons, namely, that those Validity Certificates were issued without any proper inquiry, and that at the relevant time the entire set of rules and the procedure set out for the same was not in vogue or was not followed.

4. We were most unhappy at such state of affairs for this is not a solitary or a single case in which the Committee has acted in this manner. We have been noting that though authoritative pronouncements by the Hon'ble Supreme Court of India and this Court guide these Committees and it is required that they give due credence

and respect to the Caste Validity Certificates of the family members and close relatives from the paternal side, unless such Certificates can be termed as fraudulent or obtained by misrepresenting the correct factual position or misleading the Committee by not producing the relevant and necessary material. In the absence of clear fraud, misrepresentation and misleading of the Committee in the above nature, ordinarily all such Certificates should be held to be binding on the Committee and when it comes to the same family. In one family it cannot create a situation of one person or the son being a Scheduled Caste or Scheduled Tribe, but a daughter or another son not entitled to claim this status.

5. Since this Committee of Nashik is repeatedly indulging in such acts, as have been found to be completely illegal and contrary to the mandate of the Constitution of India itself, that we were constrained to summon them and to remain personally present before us.

6. We indicated to the Members who were present before us that bearing in mind such repeated orders and from the Nashik Committee, ordinarily, we would have been justified in removing them and disbanding this Committee with a direction to the Secretary in the Department concerned to appoint fresh Committee or replace the present Members, with new appointments, it is only because Ms Bhende requests the Court that the Committee be given an opportunity to correct itself and that it would not repeat such mistakes in future, that we refrain from passing any drastic order today. We have emphasized upon the Committee Members that their conduct is generating litigation and dragging not only the Government and Government machinery to Court, but

also forcing litigants to approach this Court in small and trivial cases. The Committee should not be in an adversarial position all the time. In the circumstances, while we accede to the request of Ms Bhende and do not pass any order of removal of the Committee Members, we think that if the tendency has to be curbed and of repeatedly flouting orders and directions of this Court, then, we must impose costs. We set aside the impugned order. We direct the Committee to issue Caste Validity Certificate to the petitioner on the same lines as that of the real sister and real uncle and such Certificate shall be issued within one week from today. The respondents shall pay costs quantified at Rs.10,000/ to the petitioner within a period of two weeks from today.”

8. We are in respectful agreement with the observations of the Division Bench. The approach is certainly one that not only commends itself to us but is one that binds us. We are unable to see any meaningful distinction between the facts of that case and the facts of the present case. There are other decisions including that of the Division Bench of this Court in *Apporva Nichale v Divisional Caste Certificate Scrutiny Committee & Ors*¹ which says in terms that an ancestor’s or blood relative’s caste certificate cannot be whimsically disregarded in this fashion.

9. In our view, on this document alone the finding in the impugned order at page 51 of the paper book that the Petitioner had not produced a single documentary evidence or proof in support of her claim simply cannot be sustained. The vigilance report discloses

1 2010 SCC OnLine Bom 1053 : 2010 (6) Mh J 401.

an investigation and questions being put to the Petitioner's father. He explained at the time of the vigilance enquiry and this is noted in the impugned order as well that the appellation 'Chapparband' actually relates to the nature of the traditional activity of the community, i.e., those dealing with the erection or repairs to roofs of structures. There is no reason to doubt this and in fact it has not been shown to a false statement. The vigilance report looks at the birth registers and other documents of other relatives. But these cannot be a reason to completely disregarded and discard out of hand the father's own and unquestioned caste validity certificate that dates back to 2009.

10. We are entirely unable to comprehend what is meant when the scrutiny committee says that the father's caste validity certificate is unacceptable or was not properly issued. Nobody has questioned it and we cannot but help asked where the 2nd Respondent derives a power to suo motu review a caste validity certificate that is not a subject matter of Petition or application before it.

11. In the result, Rule will have to made absolute. Prayer clauses (a), (b) and (c) of the Petition at pages 17 and 18 read thus:

“a. This Hon'ble Court by way of appropriate writ of Mandamus/Certiorari or any other writ in the nature of Mandamus be pleased to quash and set aside Judgment and Order dated 04/11/2022 passed by The District Caste Scrutiny Committee, Dhule in Case no. 520/2022 ED-2022-00576574.

b. This Hon'ble Court by way of appropriate writ of Mandamus/Certiorari or any other writ in the nature of Mandamus be pleased to direct Respondent no. 2 to issue Caste Validity Certificate of Chapparband being Vimukta Jati in favour of Petitioner.

c. This Hon'ble Court by way of appropriate writ of Mandamus/Certiorari or any other writ in the nature of Mandamus be further pleased to direct State Common Entrance Test Cell Maharashtra to re-allot the institute to the petitioner concerning for MBBS course as per her caste category i.e. VJA(W)."

12. We make Rule absolute in terms of prayer clauses (a) and (b). The necessary caste validity certificate is to be issued to the Petitioner within three days from today. The 2nd Respondent will act on production of an authenticated or ordinary copy of this order which we will endeavour to release at earliest as possible, possibly by this afternoon itself.

13. A few other directions are necessary because we cannot grant prayer clause (c) as it currently stands. The Petitioner did the NEET test and in the CAP Round-I was allotted a seat at the Government Medical College, Jalgaon. She had to join there by 28th October 2022 and she could only do so provided she furnish a copy of her caste validity certificate. It is true that her application before the 2nd Respondent was pending at that time but that application came to be rejected on 4th November 2022. Resultantly, the Petitioner could not report to the Government Medical College at Jalgaon. The seat that she was allotted thus passed to the pool of seats available for Cap Round-II of MBBS and BDS course and the Mop-up round as

noted in the NEET UG-2022 Information Brochure of Preference System for Admission to Health Science Courses in State Government, Cooperative Private and Government Medical College. A notice of 15th November 2022, a copy of which we are given, indicates that in Cap Round-II , Stage I, online preference and choice form filling began on 8th November 2022 and ends on 23rd November 2022 at 5.30 pm. The publication of the seat matrix for Cap Round-II for MBBS and BDS began on 21st November 2022. The dates for the declaration of second selection list and physically joining with all original documents have not yet been declared. As the Petitioner is clearly eligible to be considered in the Mop-up round, there is a possibility that she may not find a seat at Government Medical College Jalgaon. Mr Gite states on instructions that the Petitioner is not insisting on admission only to Jagaon Government Medical College. We note also that there is a time until 5.30 pm today for Stage-I, the online preference and the choice filling process. It is open to the Petitioner on the basis of this order and a soft copy of this order to enter that stage as well.

14. We understand that the actual caste validity certificate will not immediately be available to the Petitioner and will take a few days to be issued in hard copy or physical form. Until then, therefore, all authorities concerned, including those in charge of the medical admission process of MBBS and BDS are directed to act on an authenticated or ordinary copy of this order for all purposes including under Cap Round-II. All colleges where there are seats being offered will similarly act on production of an authenticated or ordinary copy of this order.

15. However, the Petitioner must undertake, where necessary, to produce the original or a certified copy of the caste validity certificate on physical joining of the college that may be allotted to her.

16. To make it abundantly clear, we expect and direct that the caste validity certificate for the Petitioner showing her as the Chapparband (14) Nomadic Tribes, Denotified Tribe Vimuk Jati will be issued and release to her no later than by 5.30 pm on Friday, 25th November 2022.

17. Rule is made absolute and the Petition is disposed of in these terms. There will be no order as to costs.

(Sharmila U. Deshmukh, J)

(G. S. Patel, J)