

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 571 OF 2022

Aqsa Fatema d/o Iqbal Pathan,
aged about 20 years, Student,
Resident of Taj Nagar, Galli No.2,
Manewada Road, Near Tukdoji Statue,
Nagpur.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through its Secretary,
Tribal Welfare and Social Justice Department,
Mantralaya, Mumbai – 400032.
2. District Caste Certificate Scrutiny Committee,
Bhandara, through its President/ Chairman.

RESPONDENTS

Shri N.C. Phadnis, Advocate for the petitioner.
Shri D.P. Thakare, A.G.P. for the respondents/ State.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : 13 JULY, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
Counsel for the parties.

2. The petitioner is aggrieved by the order dated 17/12/2021
passed by the Scrutiny Committee, thereby refusing to scrutinize the
petitioner's caste claim on the ground that old documents pertaining to
her father and his relatives were not produced before the Scrutiny

Committee.

3. It is the case of the petitioner that her parents were married on 6/1/2002 as per the Muslim Rites. Before the petitioner was born, the parents separated on 28/8/2002. The petitioner was born on 11/11/2002. In this backdrop, it is the case of the petitioner that since birth, she is residing with her mother and as per the mutual arrangement between her parents, she is in custody of her mother. The petitioner's mother had been issued a caste validity certificate of belonging to 'Pinjara' OBC on 24/8/1993. Since the Scrutiny Committee has refused to verify the petitioner's caste certificate which also bears the name of her mother, the order passed by the Scrutiny Committee is under challenge.

4. The learned Counsel for the petitioner submitted that since birth, the petitioner is residing with her mother who has separated from her husband. The petitioner's caste certificate dated 10/8/2021 also bears the name of her mother. It is not possible for the petitioner to obtain old documents of her father since her parents are separated. Relying upon the decision in *Rameshbhai Dabhai Naika Vs. State of Gujarat And Other* [(2012) 3 SCC 400], it is submitted that in such a situation, the Scrutiny Committee has to verify the petitioner's caste claim by considering the documents submitted by her mother. Reliance is also placed on the order

passed in *Ku. Avanti Malti Upadhye Vs. District Caste Certificate Scrutiny Committee, Wardha [Writ Petition No. 8381/2019 decided on 27/6/2022]* at the Nagpur Bench.

5. The learned Additional Government Pleader for the respondents supported the impugned order. According to him, in the absence of old documents of the petitioner's father, the Scrutiny Committee was justified in refusing to verify the petitioner's caste claim.

6. Having heard the learned Counsel for the parties, we find that the Scrutiny Committee was not justified in refusing to verify the petitioner's caste claim. It is undisputed that the parents of the petitioner are separated and in the proceedings for restitution of conjugal rights preferred by the father, it has been agreed to keep the petitioner under the guardianship of her mother. The petitioner's caste certificate also reflects her mother's name. In these facts, by following the law laid down in *Rameshbhai Dabhai Naika (supra)*, we find that it would be necessary for the Scrutiny Committee to consider the documents from her mother's side. It may be noted that the petitioner's mother has been issued a validity certificate on 24/8/1993 and thereafter her paternal uncle has also been issued a validity certificate on 16/7/2021.

7. In the aforesaid facts, the following order is passed :

i. The order passed by the Scrutiny Committee dated 17/12/2021 is set aside. The proceedings are remanded to the Scrutiny Committee for fresh consideration. The petitioner is free to rely upon the documents from her mother's side including the validity certificates issued to her blood relatives. Since the petitioner is a Student, the verification proceedings be completed within a period of six months from the date of petitioner's appearance before the Scrutiny Committee. The petitioner shall appear before the Scrutiny Committee on 25/7/2022.

ii. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

Sumit