

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

WRIT PETITION NO.3188 OF 2020

Dakshata d/o Devrao Mangare
Aged about 23 years, Occ. Student,
R/o At Post Rashika Layout,
Near Darda Nagar, Yavatmal

... Petitioner

-vs-

1. The Vice-Chairman/Member Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Chaprasipura,
Amravati

2. The Principal
Dayabhai Maoji Majithia Ayurved
Mahavidyalay, Yavatmal

3. The Vice-Chancellor/Registrar,
Maharashtra University of Health
Sciences (MUHS) Mhasrul Road,
Nasik

... Respondents

Smt Preeti Rane, Advocate for petitioner.

Smt K. R. Deshpande, Assistant Government Pleader for respondent No.1.

Shri V. B. Bhise, Advocate for respondent No.2.

Shri Kiran Malokar, Advocate for respondent No.3.

CORAM : A. S. CHANDURKAR AND ANUJA PRABHUDESSAI, JJ.

DATE : January 12, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

The learned counsel for the petitioner invited attention to the schedule of examinations of the final year under graduate BAMS course which the petitioner is pursuing. It is submitted by the learned counsel that the last date for submitting the examination form is 15/01/2022 for the

Summer-2022 examination. In view of aforesaid, we have taken up the writ petition for hearing by issuing Rule and making the same returnable forthwith with consent of learned counsel for the parties.

The challenge raised in this writ petition is to the order passed by the Scrutiny Committee on 15/09/2020 thereby invalidating the tribe claim of the petitioner of belonging to 'Mana' Scheduled Tribe. The learned counsel for the petitioner has invited attention to two documents of pre-independence era namely, the birth extract dated 12/11/1933 indicating the birth of a son Ramkrushna to one Dhondya. In the said birth extract word "Mana" has been written. It is submitted that this document was sought to be placed before the Scrutiny Committee along with reply/explanation of the petitioner to the report of the Vigilance Cell. This was done on 03/09/2020 by forwarding a soft copy of that document and also by sending the same by registered post. It is submitted that though the Scrutiny Committee decided the proceedings on 15/09/2020 this birth extract dated 12/11/1933 has not been taken into consideration.

The second document to which reference is made is another birth extract dated 19/09/1935 indicating birth of a son Tukaram to Kondba (Mana). In this regard it is submitted that the Scrutiny Committee has observed that the petitioner could not establish relationship with Tukaram or Kondba and that word "Mana" had been subsequently written therein. On behalf of the petitioner attention is invited to the family tree, details of

which were furnished by the petitioner on 04/09/2020 in Form-F to urge that such relationship has been clearly disclosed therein. It is thus submitted that failure to consider the birth extract dated 12/11/1933 and the incorrect observation as regards absence of relationship with Tukaram has vitiated the order of the Scrutiny Committee.

2. The learned Assistant Government Pleader for the respondent No.1 has supported the impugned order. It is submitted that based on the report of Vigilance Cell, the Scrutiny Committee had applied its mind and had proceeded to invalidate the tribe claim of the petitioner. It is however not disputed that on 03/09/2020 the petitioner had furnished a soft copy of the birth extract dated 12/11/1933.

The learned counsel for the respondent No.2 submits that the petitioner has been admitted at the respondent No.2-College and is pursuing her education. The respondent No.3 would abide by the order that would be passed in the present proceedings.

3. We have heard the learned counsel for the parties and we have perused the material on record. It is seen that the Vigilance Cell furnished the copy of its report to the petitioner on 09/03/2020 and sought the petitioner's response. Pursuant thereto the petitioner furnished her reply to the aforesaid report on 29/07/2020. In the said explanation it was stated

that the name of Tukaram was not mentioned in the genealogical tree that was submitted to the Vigilance Cell on the ground that said Tukaram had expired shortly after his birth. It is however seen that in the family tree details of which were furnished on 04/09/2020, the name of Tukaram as son of Kondba (Mana) has been shown. It is also stated therein that said Tukaram expired shortly after his birth.

As regards the birth extract dated 12/11/1933, it is seen that the petitioner has placed on record the e-mail by which the soft copy of that extract was furnished to the Scrutiny Committee in pdf form. A hard copy was also furnished to the Scrutiny Committee by registered post and the receipt in that regard dated 14/09/2020 is also placed on record. However the impugned order dated 15/09/2020 does not indicate consideration of this birth extract. Since the aforesaid two documents pertain to pre-independence era and have great probative value, we are of the view that the tribe claim of the petitioner deserves fresh adjudication after taking into consideration the effect of the aforesaid two documents. Failure to consider the birth extract dated 12/11/1933 has definitely caused prejudice to the case of the petitioner. Hence for the aforesaid reasons the order dated 15/09/2020 passed by the Scrutiny Committee is liable to be set aside.

4. Accordingly the order dated 15/09/2020 passed by the Scrutiny Committee invalidating the tribe claim of the petitioner is set aside. The

proceedings are remanded to the Scrutiny Committee for fresh adjudication in accordance with law by taking into consideration all relevant material. The petitioner shall appear before the Scrutiny Committee on 01/02/2022 and the Scrutiny Committee shall take appropriate steps to decide the claim within a period of four months from that date. All questions are kept open and the Scrutiny Committee shall not be influenced by any observation made in this order. In the meanwhile the respondent Nos.2 and 3 are directed to permit the petitioner to continue to pursue her studies. The respondent No.3 shall declare the result of third year BAMS course which has been pursued by the petitioner. It is however clarified that further continuation of the petitioner in the said course would be subject to final decision of the Scrutiny Committee in the validity proceedings.

Rule is made absolute in aforesaid terms with no order as to costs.

(Anuja Prabhudessai, J.)

(A. S. Chandurkar, J.)

Asmita