

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

WRIT PETITION NO. 5581 OF 2019

Akash S/o. Surendra Alset,

Aged about 20 years, Occ. Student of
Final Year B.E. (Civil Engineering),
R/o. Inside Amba Gate, Dahisath Road,
Wathodkar Lane, Amaravati

... Petitioner

.. Versus ..

1) State of Maharashtra

through its Secretary,
Ministry of Tribal Welfare and Social Justice,
Mantralaya, Mumbai – 400 032

2) District Caste Certificate Scrutiny Committee,

Akola, Administrative Building, 2nd Floor,
Collectorate Office, Akola

**3) Prof. Ram Meghe College of Engineering and
Management,**

New Express Highway, Badnera,
Amaravati - 444 701 through its Principal

4) Sant Gadge Baba Amravati University

Through its Registrar, Amaravati

...Respondents

Mr. N.C.Phadnis, Advocate for petitioner.

Ms. Kalyani R. Deshpande, Assistant Government Pleader for
respondent nos.1 and 2.

Mr. R.D. Bhuihar, Advocate for respondent no.3.

Mr. N.S. Badhe, Advocate for respondent no. 4.

**CORAM : A.S. CHANDURKAR AND
SMT. M.S. JAWALKAR, JJ.**

DATED : 04/04/2022

ORAL JUDGMENT (Per : Smt. M.S.Jawalkar, J.)

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The petitioner is aggrieved by invalidation of his 'Wani' OBC claim made by order of District Caste Scrutiny Committee dated 28-01-2019. The Chairman of the Committee has held in favour of the petitioner and validated the claim. Whereas, the other two members i.e. Member-Secretary and Member of the Committee invalidated the claim without considering the three entries prior to 1967 showing caste of his forefathers as 'Wani'

3. It is contention of the petitioner that after passing SSC, he obtained diploma in Civil Engineering and upon completion, he had taken admission in Second Year B.E. Course of Civil Engineering in August 2017 against a seat reserved for OBC category and for the same, he had received certificate of 'Wani' OBC category and also a Creamy Layer Certificate issued

by the Competent Authority as belong to 'Wani' OBC. Till today, the petitioner has completed six semesters i.e. 3 years of the course and presently, he is the student of 7th semester of the last year i.e. 4th year of the course.

4. That the claim of the petitioner of 'Wani' OBC came to be forwarded to the District Caste Certificate Scrutiny Committee, Amravati through respondent no. 3 College. Subsequently, as the petitioner and his family found to be original resident of Akola District, the claim of the petitioner was returned by the Amravati Committee to the petitioner and thereafter, the proposal was forwarded to the respondent no. 2.

5. The first OBC List was published by the Government of Maharashtra dated 13th October, 1967 having total entries 180. The 'Wani' Other Backward Class was for the first time included in the Other Backward Class List by Government Resolution dated 25th June, 2008 at Serial No. 190. Therefore, the relevant date would be 25th June, 2008 to demonstrate that the petitioner belongs to Other Backward Class.

6. The petitioner submitted the following documents in support of his 'Wani' OBC claim.

- School Leaving Certificate of Madhukar Keshav (grandfather of the petitioner) mentioning the period from 05-07-1935 to 15-10-1939.
- School Leaving Certificate of Purushottam i.e. brother of Grandfather of the petitioner mentioning the period from 12-04-1929 to 20-01-1934.
- Genealogy.

7. There are many documents prior to 1967 period i.e.

(i) School Leaving Certificate of Madhukar Keshav for the period from 05-07-1935 to 15-10-1939 and (ii) School Leaving Certificate of Purushottam i.e. brother of Grandfather of the petitioner mentioning the period from 12-04-1929 to 20-01-1934.

Apart from these documents, the petitioner placed on record one sale deed dated 10-08-1956 wherein Madhukar Keshavrao is shown as purchaser and his caste is shown as 'Jain-Wani'.

8. After submission of aforesaid documents, the Committee called for Vigilance Cell Report. The Vigilance Cell found that the old entries are proper and the same were verified from the school itself. In some of the documents, 'Jain Wani' is mentioned. The 'Jain' is not a caste or tribe, listed in any of the reserved category. Factually 'Jain' is a religion and not a caste or backward class. Upon receipt of this Vigilance Cell report, it

found to be in support of the claim of the petitioner, the petitioner prayed before the Committee to decide his claim on the basis of available documentary evidence.

9. Accordingly, the Scrutiny Committee by impugned order by majority invalidated the 'Wani' OBC claim of the petitioner. Out of three Members, the Chairman of the Committee held in favour of the petitioner, on the basis of old documentary evidence and the other two members incorrectly discarded those documents for invalidating the petitioner's claim.

10. The petitioner in support of his contentions further submitted that the respondent no. 2 Committee invalidated the OBC claim of the petitioner is unjustified and unsustainable in law. The cut-of date has to be treated as 13-10-1967 for OBC candidate is concerned, the petitioner has placed on record the oldest documents of 1929, 1935 and 1956 respectively wherein his forefathers were shown as 'Wani'.

11. Lastly, the petitioner prayed for to quash and set aside the order passed by respondent no. 2 District Caste Certificate Scrutiny Committee, Akola dated 28-01-2019 and prayed to declare that the petitioner belongs to 'Wani' OBC and

he is entitled for all the benefits available thereunder. He further prayed to give direction to the respondent no. 2 District Caste Certificate Scrutiny Committee, Akola to issue validity certificate of 'Wani' OBC to the petitioner. The respondent no. 3 college be restrained from canceling the admission of the petitioner as a student of B.E. (Civil Engineering) Course and declare his result of 8th Semester.

12. As against this, Ms. K.R. Deshpande, learned Assistant Government Pleader for respondent nos.1 and 2/State opposed the petition and submitted that there is variance in the past record of the documents. In some of the documents, it is mentioned as 'Jain Wani' and in some of the documents, it is mentioned as 'Wani'. In view thereof, the order passed by the Caste Scrutiny Committee is perfectly justified.

13. We have heard both the parties at length. There are documents of pre-independence era showing caste of forefathers as 'Wani'. There is no dispute about genealogy. The petitioner placed on record the document of Caste Scrutiny Committee pertaining to his grandfather i.e. Madhukar Keshav. This document is school leaving certificate, wherein date of birth of

Madhukar Keshav is mentioned as 13-05-1929, his date of admission is shown as 05-07-1935 and date of leaving school is shown as 15-10-1939. In this document, his caste is shown as 'Wani'. Similarly, he placed on record his cousin grandfather's document i.e. school leaving certificate of Puroshottam Keshav showing his caste as 'Wani' and date of leaving school showing as 20-01-1934. These two entries are predominant entries and having greater probative value. There is one sale deed dated 09-06-1956 wherein Madhukar Keshavrao is shown as purchaser and his caste is shown as 'Jain-Wani'. The Caste Scrutiny Committee without applying its mind committed error in appreciating this document, came to the conclusion that there is variance in the caste. While coming to the conclusion, the Caste Scrutiny Committee ought to have considered that in respect of the said Madhukar Keshavrao itself, the school record of 1929 is showing his caste as 'Wani'. Therefore, the oldest entry has to be considered while deciding the validity of caste. Moreover, there is no caste by 'Jain Wani', nor there is any such finding recorded by the Caste Scrutiny Committee to that effect. There is an independent caste by name 'Jain Wani'. Subsequent entries are showing as 'Jain Wani' or 'Jain' have to be read as 'Wani'. There

is no finding recorded by the Caste Scrutiny Committee that there is any 'Jain-Wani' Caste in existence. 'Jain' is the religion and therefore, the Caste Scrutiny Committee ought to have considered old documents in its proper perspective.

14. As per the Vigilance Cell report, the applicant's claim is clearly established from the documents i.e. school leaving certificates of grandfather and cousin grandfather so also sale deed dated 10-08-1956.

15. Though there is no finding that the petitioner has failed to establish the affinity, the report of Vigilance Cell is also showing affinity of the petitioner. In answer to the enquiry, it is also revealed that the 'Kuldevta' of applicant is Mahavir. They celebrate 'Mahavir Jayanti' and Paryushan Parva. They are vegetarian and by profession, their business is of grocery selling. It is pertinent to note here that the Chairman of the Caste Scrutiny Committee has given his minority decision and validated the caste claim of the petitioner after considering the entire material on record. In fact, there was no justifiable reason for Member-Secretary and Member of the Committee to invalidate the caste claim.

16. It is not the case that the documents were fraudulently procured by the petitioner or were bogus documents. The predominant entries are of 'Wani' in the old documents of the years 1929, 1935 and 1956. As such, the petitioner has discharged his burden and duly established that he belongs to 'Wani' OBC and has also demonstrated his affinity towards 'Wani' OBC. The impugned order has been passed in blatant breach of the procedure contemplated under Rule 17 of the Rules, 2012.

17. In view of the aforesaid, the order passed by the Caste Scrutiny Committee is liable to be quashed and set aside. Accordingly, we pass the following order:

ORDER

The order passed by the Scrutiny Committee dated 28-01-2019 invalidating the caste claim of the petitioner is set aside.

It is declared that the petitioner belongs to 'Wani' (OBC) which is Entry No. 190 in the list of Other Backward Classes. Consequently, Civil Application No. 282/2022 is also allowed. The respondent No. 4 is directed to issue the final year

(8th Semester) mark sheet of Civil Engineering course of the petitioner and also issue a provisional degree certificate and transfer certificate to the petitioner within period of two weeks from production of copy of this order.

Rule is made absolute with no order as to costs.

[SMT. M.S. JAWALKAR, J.]

[A.S. CHANDURKAR, J.]

B.T.Khapekar, PA