

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

124 WRIT PETITION NO.9811 OF 2022

SHAH AFFAN AHMED BADRUL HASAN ALI

VERSUS

THE STATE OF MAHARASHTRA,
THROUGH ITS SECRETARY AND ANOTHER

...

Advocate for Petitioner : Mr. Rhshikesh A. Joshi.

AGP for Respondent Nos.1 & 2 : Mr. S. G. Karlekar.

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CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 16th March, 2023.

Per Court:

1. On 27th September, 2022, this Court passed it's first order
as under :-

"1. The petitioner has put forth prayer clauses 'A' and 'B'
as under :-

A) By issue of writ of certiorari, or any other appropriate writ, order or direction in the like nature, the order dated 07.04.2022 issued by Caste Certificate Verification Committee at Dhule may kindly be quashed and set-aside and it be held and declared that petitioner belongs to "Chapparband" community and respondent No. 2 Committee may kindly be directed to issue caste validity certificate in favour of petitioner within period of two weeks.

B) Pending hearing and final disposal of this Writ Petition, the execution, operation & implementation of impugned order dated 07.04.2022 issued by Caste Certificate Verification Committee at Dhule may kindly be stayed.

2. Issue notice to the respondents. The learned AGP waives service of notice on behalf of both the respondents. Considering that the petitioner is a student and the learned advocate for the petitioner prays for remand on the ground that his case was not properly considered, we are listing this petition on 13th October, 2022 in the urgent admissions category, in order to enable the learned AGP to be instructed and prepared in this matter.

4. All office objections shall be removed, on or before 10th October, 2022, failing which the matter shall stand dismissed without reference to the Court on 11th October, 2022.”

2. The grievance of the Petitioner is two fold. Firstly, that the vigilance cell inquiry was not independently conducted in his case. Secondly, various documents before the committee indicated the word “Musalman” in front of the Petitioner’s name, as well as his paternal relatives. This was construed to be a contra evidence. According to him, “Musalman” is not a caste, but a religion.

3. On the point of the circular dated 23rd March, 2011, by

which the State Government had propagated that the word “Shah” suffixing the full name of the candidate with the presence of the word “Fakir”, as a caste, should render a candidate eligible for a declaration that he belongs to the “Chhapparband - V.J. Category”. The said circular was subsequently withdrawn by the State Government vide another circular dated 16th February, 2015. Candidates who acquired validity certificates as belonging to Chhapparband - V.J. on the basis of the said circular, became a foundation for further claims, despite that circular having been withdrawn. This Court (Coram: Ravindra V. Ghuge and S. G. Mehare, JJ.) dealt with the said issue vide order dated 25th November, 2021 in ***Writ Petition No.11863 of 2015 (Ku Shah Nida Afrin Nawab Nizamuddin Vs. The State of Maharashtra and others)***.

4. The learned AGP, though opposes the Petition, submits on instructions, that the vigilance cell inquiry was not conducted in the case of the Petitioner.

5. In view of the above, we deem it appropriate to remand this matter so as to enable the committee to have the assistance of the vigilance cell, which could consider all the documents presently on record. The documents would be scrutinized from the angle that mere appearance of the word “Musalman” would not mean that the

Petitioner either belongs to or does not belong to the “Chhapparband - V.J. Category”. So also, the order passed by this Court in ***Ku Shah Nida Afrin Nawab Nizamuddin*** (supra), would also be taken into account by the committee while deciding the claim of the Petitioner.

6. As such, this Petition is partly allowed. The impugned order dated 7th April, 2022, is quashed and set aside and the Proceedings No.प्र.क्र.३९७४/२०२१ **ED-२०२१-००३८६५८५** stand remitted to the office of the Caste Scrutiny Committee at Dhule with the following directions:-

- a) The Petitioner is at liberty to tender an additional affidavit alongwith documents, as he may desire, to the said committee, on or before 15th April, 2023.
- b) The committee shall, thereafter, refer the matter to the vigilance cell inquiry.
- c) Let the vigilance cell inquiry be concluded, on or before 15th June, 2023.
- d) Besides service of hard copy of the notice and the vigilance inquiry report, the committee would also forward the notice and the report to the Petitioner on his e-mail address, which tendered to us today as “affanahemadshah@gmail.com”.

- e) With 15 days notice, the Petitioner would appear before the committee on the appointed day and submit his written submissions.
- f) The entire exercise, with the whole hearted cooperation of the Petitioner, be completed on or before 15th August, 2023.

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[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]