

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9809 OF 2023

Simran Parveen Sharif Khan Pathan,
Age 18 years, Occ. Education,
R/o. Darga Road, Parbhani Tq. &
Dist. Parbhani.

... **Petitioners**

VERSUS

- 1) The State of Maharashtra,
Tribal Development Department,
Through its Secretary
Mantralaya, Mumbai.
- 2) Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad office at
Aurangabad
Through its Member Secretary.

... **Respondents.**

...

Advocate for the Petitioner : Mr. Phatale Sagar S.
A.G.P. for the Respondent Nos. 1 & 2 : Mr. P.S. Patil

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 09.08.2023

PER COURT :

The petitioner having been allotted a college in the CAP round-1 in the NEET (UG) 2023 process, we have taken up this matter for final disposal at admission stage.

2. We have heard both the sides.

3. The petitioner's claim as belonging to 'Tadvi' scheduled tribe has been discarded by the committee by the order under challenge. Pertinently, the petitioner has been relying upon few old Urdu documents of 1353 and 1355

Fasli corresponding to 1943 A.D. and 1945 A.D. of her parental uncle and grand father, wherein they were described as '*Tadvi*'. Even she has been relying upon a sale-deed of 1355 Fasli (1945 A.D.) wherein her grand father has been described as '*Tadvi*'. The committee has not been able to undertake any objective scrutiny of such old record on the ground that it was not traceable in the concerned Tahsil office. So far as the sale-deed is concerned, the committee has not even discussed that piece of evidence which has a greater probative value being of a period prior to the Constitutional Order notifying the scheduled tribes.

4. The committee has then resorted to examine several entries in the school record of the blood relations wherein they have been described as 'Musalman'. In our considered view, '*Musalman*' or '*Muslim*' would be a religion rather than a caste and cannot be treated as an adverse entry to a claim of '*Tadvi*' scheduled tribe.

5. Again, the committee has recorded certain observations entertaining a doubt regarding the claims which have been validated by the then committees of the petitioner's near blood relations, on the ground that those were obtained by resorting to deceit and fraud.

6. So far as the alleged fraud or misrepresentation is concerned, admittedly, those validity holders who had allegedly obtained the validities by resorting to such vitiating circumstances are not before us. When the committee has now taken a decision to re-open their validities, those aspects will be directly and substantially in issue before the committee as to if there was indeed any misrepresentation or fraud while obtaining the validities. Any comment made by us in that regard would have a bearing on that enquiry and is likely to cause a serious prejudice to those validity holders. Therefore, we are consciously avoiding to discuss the circumstances being relied upon by the committee in the impugned order touching the alleged misrepresentation or fraud.

7. In view of such state of affairs, when there are several validities in the family, so long as those are not confiscated and cancelled by resorting to the procedure prescribed by law, the petitioner cannot be deprived of the benefit in the light of the decision in the matter of *Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and others; 2010 (6) Mh.L.J. 401*.

8. The Writ Petition is partly allowed. The impugned order is quashed and set aside. The respondent-committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Tadvi' scheduled tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matters which the committee has decided to re-open.

9. The petitioner shall not be entitled to claim equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-