

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

WRIT PETITION NO. 10693 OF 2023

**PATHAN JAVERIYA AFROZ MOHSIN KHAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND ANOTHER**

...

Advocate for Petitioner : Mr. Sagar S. Phatale
AGP for Respondents : Mr. A.A. Jagatkar

...

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

DATE : 28 AUGUST 2023

PER COURT :

. Heard the learned Advocate for the petitioner and learned AGP.

1. The petitioner is challenging invalidation.
2. Considering the exigency, the matter has been taken up for final disposal at the admission stage.
3. The petitioner claims to be belonging to Tadvi scheduled tribe. She tried to substantiate her claim by producing a genealogy and an affidavit of one Ahmed Burhan Pathan stating therein that she is his niece. Obviously the petitioner was seeking to rely upon the school

record of Burhan Khan, which was of the year 1920 wherein he was described in the school record as Tadvī.

4. It appears that during vigilance enquiry the vigilance officer recorded statement of that Ahmed Burhan Pathan *inter alia* to the effect that his affidavit filed by the petitioner was sworn under duress. He expressly stated that she was no related to him and gave a separate genealogy. The statement is stated to have been recorded by the vigilance officer and annexed to his report dated 12.08.2022.

5. Pertinently the same individual Ahmed Burhan Pathan (Tadvī) seems to have submitted an application with the Scrutiny Committee on 24.08.2022 resiling from whatever was reported by the vigilance officer and again supporting his statement made in the affidavit which was produced by the petitioner before the Committee on a stamp paper. There is an acknowledgment on the office copy purportedly showing that this application was received by the respondent/Scrutiny Committee on the same day i.e. 24.08.2022.

6. We have gone through the original papers of the Scrutiny Committee wherein the alleged statement of Ahmed Burhan Pathan dated 08.08.2022 can be found, as also his original affidavit on a stamp paper. We do not see as to how this statement recorded by the vigilance officer could have been treated by the Committee as a statement on oath. The Committee observes that because of this statement on oath

recorded before the vigilance officer it was not ready to give weightage to the earlier affidavit filed on a stamp paper. Independently either the vigilance officer has undertaken any scrutiny to verify the genuineness of the school record of Burhan of the year 1920. The Committee has readily discarded this affidavit of Ahmed Burhan Pathan on a stamp paper. The earlier statement made by that individual was on a stamp paper duly sworn before a person authorized to administer oath. It could not have been discarded against a bald statement before the vigilance officer by treating it again as a statement on oath when it was admittedly not a statement on oath.

7. Again if the same individual Ahmed Burhan Pathan had approached the Committee with an application resiling from the statement recorded by the vigilance officer, the impugned order does not demonstrate about the Committee having considered it. As can be noticed from the Roznama of the case, this very person Ahmed Burhan Pathan was even present before the Committee on 18.07.2023. His signature was also obtained in the margin of the Roznama. If at all there were inconsistent stands being taken by the individual, we cannot comprehend as to how and why when that person was available to be enquired with before the Committee again, he was allowed to let go without recording any statement of his or making any enquiry with him.

8. So here is a case where there was a statement on oath on a stamp paper, which was sought to be resiled by the individual on bald

statement recorded by the vigilance officer which was again resiled by the individual, he was present before the Committee and still the Committee did not find it convenient and suitable to make any enquiry with him. When the Committee is supposed to exercise a quasi judicial power, it was imperative for it to have taken some positive steps instead of remaining passive while considering the social status which is so vital. We cannot approve of such conduct of the Committee. The Committee ought to have undertaken serious enquiry in respect of this stand of Ahmed Burhan Pathan and ought to have considered the school record of Burhan of 1920 which apparently was in support of the petitioner's claim.

9. Apart from the above state of affairs, it appears that the petitioner is also relying upon a Nikah-nama in urdu of 1376 fasli corresponding to 1966 A.D. which she has produced with the writ petition. Her learned Advocate submits that it was produced before the Committee on 12.03.2021. However, the learned AGP could not trace it from the original file of the Committee. Besides, the vigilance report does not refer to any scrutiny having been undertaken in respect of that Nikah-nama which is of 1966. The impugned order also does not contain any statement and analysis in respect of that piece of evidence.

10. All in all, the enquiry undertaken by the Scrutiny Committee particularly its observation regarding the stand being taken by Ahmed Burhan Pathan (Tadvi) is not what is expected of a quasi judicial

authority and the matter deserves to be remanded for a decision afresh in view of the fact that Burhan Khan's school record of 1920 seems to be decisive piece of evidence.

11. In addition when the petitioner is able to substantiate her claim by producing the Nikah-nama referred to herein-above, which does not find place in the file of the Scrutiny Committee and regarding which there is neither vigilance nor any objective finding of the Committee, this could be an additional reason to justify the remand.

12. The writ petition is partly allowed. The impugned order is quashed and set aside. The matter is remitted back to the Scrutiny Committee for decision afresh in the light of the observations made herein-above. It shall allow the petitioner to produce the additional documents if she so desires.

13. The petitioner shall appear before the Committee on 04.09.2023 and the Committee shall decide the proposal afresh within four weeks thereafter, by resorting to vigilance enquiry if it considers necessary.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]