

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

WRIT PETITION NO.11406 OF 2022

SUKHUBAI GANGARAM NARWADE ALIAS SAKHUBAI ALIAS
SHANKUNTALA BABAJI DUMBRE

VERSUS

THE STATE OF MAHARASHTRA THROUGH IT'S SECRETARY
AND OTHERS

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Advocate for Petitioner: Mr. M S Deshmukh a/w Mr. V S Panpatte
AGP for Respondents : Mr. P K Lakhotiya

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CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.
Dated: March 16, 2023

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PER COURT :-

1. The petitioner claims to be belonging to other backward class 'Kunbi' based on the caste certificate dated 17th December, 2020, which was subjected to validation before the respondent Committee.
2. Respondent-Committee vide its impugned order dated September 30, 2022 has negated the claim of the petitioner by recording reasons that the petitioner is unable to establish not only the family flow chart, but also relations with the persons mentioned in the flow chart and explanation to the old documentary evidence.

3. While questioning the order impugned, Mr. Deshmukh, learned counsel appearing for the petitioner would invite attention of this Court to the form no.14 in which three issues were shown to be borne to Haribhau Narvade viz. Son on 4.12.1884, a daughter on September 6, 1898 and another son on 23.10.1901.

4. It appears that as far as caste of the Hari is concerned or that of the son borne to Hari is recorded as Kunbi, said entry is almost 140 years old.

5. The petitioner has also produced revenue entries maintained under the provisions of the Land Revenue Code. Entry at Sr.No.183 demonstrates that Genu Hari Narwade died on 21.12.1929 and his legal heir Shankar Genu Narwade was brought on record on 1st March, 1930 which was verified by the Superintending Officer on 22nd March, 1930. Similarly, Shankar s/o Genu Narvade's name was mutated as referred to herein above alongwith Bala Hari Narvade with mutation based on oral family arrangement/ partition and accordingly revenue entry was effected which entry is at sr. no.1035, which was certified on 25.7.1958.

6. Based on the aforesaid entries, Mr. Deshmukh learned counsel would urge that, family tree which was submitted before the Caste Scrutiny Committee while tendering explanation to the show cause notice dated July, 19, 2022 ought to have been accepted to be proved. He would also urge that respondent-Committee has committed an error in rejecting the claim for validity inspite of the fact that evidence to the contrary was available; which is of pre-independence era.

7. Learned AGP has tried to substantiate/support the order of the Committee pointing out that the caste entry in the various school documents of the petitioner is recorded as 'Maratha', which is not explained. According to him, the documents sought to be relied on by the petitioner though were produced before the Committee, however, the petitioner is unable to provide explanation as has been canvassed before this Court and, as such, the decision of the Committee cannot be faulted with.

8. We have appreciated the aforesaid submissions.

9. From the order impugned, the documents which is maintained in the village form no.14 depicting son and daughter's birth to Hari in 1884, 1898 and 1901 could be inferred.

10. Further document of mutation vide entry no.183 on 22.3.1930 pursuant to death of Genu born to Hari and in view of further mutation entry of family arrangement/oral partition entered into between Shankar s/o Genu Narwade and Bala Hari Narwade, prima facie establishes the family tree.

11. The aforesaid documents are admittedly be the part of the record of the Scrutiny Committee.

12. A person achieved his caste by birth and merely because in a subsequent document, which is post independent-era, entry recorded 'Maratha' itself will not confer such status viz caste of the candidate, particularly, when old 140 years entry depicts and supports the case of the petitioner as that of belonging to 'Kunbi.'

13. In the aforesaid background what can be noticed is that the petitioner, had defaulted in giving proper explanation

before the Committee though there was sufficient documentary evidence made available to the Committee.

14. The aforesaid entries can be tested based on the explanation tendered by the petitioner to the show cause notice issued by the Committee. However, this Court is required to be sensitive to the fact that the petitioner not only has produced birth entry as regards his grand father and cousin grand father i.e. of 1884 and 1901 but also has produced on record revenue entries in relation to partition effected between such family members.

15. As such, this Court has formed a prima facie opinion that the petitioner has made out a case for consideration particularly that of remand before the respondent Committee as he needs to give such an explanation before the committee, which the Committee can consider and deal in accordance with law.

16. In this background, we quash and set aside the order impugned dated 30th September, 2020. We direct the petitioner to appear before the Respondent-Committee on 27th March, 2023 with her written notes of arguments and evidence to the show cause notice dated 19 July, 2022 to be final

documents. Once the petitioner appears before the Committee alongwith written notes of arguments and explanation, it shall be open for the Committee to hear the petitioner and pass appropriate order by 17th April, 2023.

17. However, since we do not see any fault on the part of the Committee in rejecting the claim as it was entirely for the petitioner to demonstrate her explanation about flow chart of her family tree and her relation with the members whose names are reflected in the revenue record, we deem it appropriate to direct the petitioner to pay costs of Rs.10,000/- (Rs. Ten Thousand) to be deposited before the Committee on the date of appearance i.e. on 27th March, 2023.

18. We expect the Committee to decide the claim of the petitioner without being influenced by the observations on facts recorded, as it is within the ambit of the Committee to re-appreciate the entire documentary evidence and record independent finding.

19. Writ Petition stands disposed off accordingly.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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