

Corrected Order

**Corrections have been carried out in view of Speaking to Minutes
Order dated 18.10.2023**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12578 OF 2023

Kum. Afshan Anjum
Mohammad Farid Husain

.. Petitioner

Versus

1] The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32.
Through its Secretary

2] Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Through its Member Secretary

.. Respondents

...
Advocate for petitioner : Mr. Sagar S. Phatale
Addl. GP for the respondent – State : Mr. S.B. Yawalkar
...

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

DATE : 10 OCTOBER 2023

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. In view of the exigency, at the joint request of the parties, the matter is heard finally at the stage of admission since the petitioner is seeking to secure admission in the current centralized admission process.

2. The petitioner claims to be belonging to Tadvī scheduled tribe. By the impugned order, the scrutiny committee constituted under the Maharashtra Act No. XXIII of 2001, has confiscated and cancelled her tribe certificate.

3. It is a common order in respect of the petitioner and her brother. However, she alone has put up the challenge in this petition to the impugned order.

4. The learned advocate for the petitioner Mr. Phatale submits that the impugned order is perverse and arbitrary. He would point out that there is enormous record in respect of the petitioner and her blood relation wherein they have been described as Tadvīs. The committee had no reason to discard such consistent record. It has drawn inference only on the basis of the so-called manipulation in the school record of petitioner's grandfather. The inference drawn is not sustainable on facts. The petitioner is the first individual seeking validation and the evidence led by her was sufficient to discharge the burden under section 8 of the Maharashtra Act No. XXIII of 2001.

5. The learned AGP would submit that all the favourable entries of Tadvī relied upon by the petitioner, are of recent origin. The oldest entry relied upon by her in respect of her grandfather was found to be manipulated. The committee has assigned cogent and convincing reasons to substantiate its inference that there was

manipulation wherein the entry was inserted at the bottom of the page of the register of Nikah Nama. The petitioner has miserably failed to discharge the burden and the committee has taken a plausible decision. This Court cannot sit in appeal while exercising powers under Article 226 of the Constitution and the petition be dismissed.

6. We have carefully considered the rival submissions and perused the papers including the original file of the scrutiny committee made available to us by the learned AGP.

7. Needless to state that by virtue of section 8 of the Maharashtra Act No. XXIII of 2001, the burden is on the claimant to substantiate the claim of belonging to a particular caste or tribe. The petitioner tried to discharge such burden by producing school record, birth record, voter's card, Adhaar card etc. wherein her relatives have been described as Tadvī. Obviously, since all such record enlisted in the impugned order is of recent origin, as compared to the presidential order issued under Article 342 of the Constitution of India, it would be vulnerable for the simple reason that these entries could have been made designedly to secure the benefit of reservation.

8. The only old record heavily relied on by the petitioner is in respect of her grandfather. It was a school record maintained in Urdu. Its translation was obtained by the vigilance officer. The committee has

drawn an inference about this entry having been inserted by observing that the entry appears at the bottom of the page at serial no. 66 and is a cramped one and there is another entry of same serial no. 66 on the next page which appears at the top.

9. In order to satisfy ourselves about this inference, coloured photocopies of the relevant pages of the register of Nikah Nama are made available to us and can be found in the original file of the scrutiny committee. In our considered view, the observation of the committee and the inference drawn by it is wholly justified. If it is the register of Nikah Nama maintained in the ordinary course, there was no reason why there could have been two entries of same serial number 66. The entry appearing on the next page at serial no. 66 is purportedly located at the top at appropriate place whereas entry of the petitioner's grandfather apparently on the previous page after serial no. 65 *ex facie* seems to have been inserted by resorting to manipulation.

10. If such is the state-of-affairs, when an attempt has been made to derive the benefit by resorting to such manipulation of the school record, in our considered view, when the inference drawn by the scrutiny committee is based on correct appreciation of the circumstance, it cannot be said that the observations of the committee are either perverse or arbitrary in discarding the petitioner's claim. The committee has taken a plausible view and in exercise of the powers

under Article 226 of the Constitution, we cannot sit in appeal and substitute our views by re-appreciation of the evidence.

11. There is no merit in the petition and the same is liable to be dismissed.

12. The petition is dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/