



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 453 OF 2021
WITH
INTERIM APPLICATION NO. 18234 OF 2022

Kum. Sanika Ajay Dara
Minor 17 years, through
Father & Natural Guardian
Ajay Govindswami Dara
Residing at 206, Shrikrishna Coop. Housing
Society Ltd. Shastri Nagar,
Kopar Cross Road, Dombivli (E),
Dist. Thane

...Petitioner/Applicant

V/s.

1. State of Maharashtra
through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai-400 032.
2. Scheduled Tribe Certificate
Scrutiny Committee, Konkan
Division, Thane, through its
Member Secretary, having its
Office at MTNL Building, 6th
Floor, near Ganesh Talkies,
Charai, Thane (W), Dist. Thane.
3. State Common Entrance Test
Cell, Government of Maharashtra
8th floor, New Excelsior Bldg.
A.. Nayak Marg, Fort,
Mumbai-400 001.
4. Deputy Collector, Thane
5. Vidyalkar Institute of Technology
through its Principal, Wadala,
Mumbai-400 031

...Respondents

Mr. R. K. Mendadkar a/w. Ms. Komal Gaikwad for Petitioner & Applicant.
Mr. V. M. Mali, AGP for Respondent Nos.1 & 2- State.

Mr. A. M. Shaikh a/w. Mr. Jainendra Sheth for proposed Respondent No.5.

**CORAM : SUNIL B. SHUKRE, AND
FIRDOSH P. POONIWALLA, J.J.**

DATE : 8th SEPTEMBER 2023

ORAL JUDGMENT (Per Sunil B. Shukre, J.)

INTERIM APPLICATION NO. 18234 OF 2022

1. Heard. This Interim Application to add additional party as Respondent No.5 i.e., Vidyalankar Institute of Technology, Wadala, Mumbai is allowed. Leave to carry out amendment is granted. We direct the Applicant to carry out the amendment to the cause title forthwith.

2. Mr. Shaikh, learned Counsel waives service for newly added Respondent No.5.

3. Mr. Shaikh makes a statement on the instructions of the institution that the Institution would not insist upon the Applicant/Petitioner to pay to it the tuition fee of Rs. 2,82,595/- as demanded from her treating her to be a candidate from open category. Statement is accepted and it would take care of the other part of this Application. However, we make it clear that the Petitioner would be liable to pay what ever fee she has to pay and other charges as a candidate belonging to the reserved category. We further make it clear that if there is any government scheme for reimbursement of fee to the reserved candidates, the State Government would have to give its benefit to the

Petitioner as well, from the date on which she secured admission to Respondent No.5- Institute. If any proposal in this regard is to be forwarded, same shall be done by Respondent No.5 at the earliest. We also clarify that till the reimbursement is made by the State Government, the Petitioner will be under a duty to pay to Respondent No.5 the fee which she is liable to pay as a candidate belonging to reserved category.

4. The Interim Application is disposed of on above terms.

WRIT PETITION NO. 453 OF 2021

1. Heard. Rule. Rule made returnable forthwith.

2. We have gone through the impugned order and also have taken into account the consideration bestowed upon various documents produced before the scrutiny committee and we are of the view, upon over all consideration of all the entries made in those documents, that the claim made by the Petitioner that she belongs to Mannewar Schedule Tribe is genuine.

3. It is true that in many of the entries, some of which are of pre Constitution period and some of which of post Constitution period but before the 'Tribe Mannewar' was declared to be Scheduled in the year 1976, such words as 'Hindu' and 'Telagu' have been prefixed to the word

‘Mannewar’. It is also true that in some of the documents there is no mention of the caste or the tribe ‘Mannewar’ and what has been mentioned against column of caste are such words as ‘Telangi’ or ‘Telagu’ or ‘Hindu’. But there have also been entries which only refer to the caste or tribe of the Petitioner as exclusively “Mannewar”. The entries of the year 1941, 1963, 1946, 1945, which stand in such names as ‘Telagu Mannewaram’ and ‘Mannewar’, being of the period prior to Constitution and also prior to 1976, would be more relevant. These entries only show that the social status of the Petitioner's forefather was that of “Mannewar” and if the word Mannewar is prefixed by such word as “Telagu”, it would only be an indication of the language spoken by the forefathers of the Petitioner, as held in many of the judgments of this Court some of which are in the cases of ***Surendra Murlidhar Kopulwar*** in Writ Petition No.360 of 2022, decided on 19th October 2022, ***Shri. Anil Ramdas Mede Vs. State of Maharashtra***, reported in ***2004(4) ALL MR 639***. and ***Ku. Aditi D/o/ Vikas Swami Vs. The State of Maharashtra & Anr.*** in Writ Petition No. 5779 of 2022 decided on 12th October 2022. When these entries are considered in the light of the law already settled by said judgments, and taken to be showing the social status of the Petitioner as that of “Mannewar”, the other entries appearing in various documents produced before the Scrutiny Committee would also stand accordingly explained and, therefore, it would have to be held that the entries in such names as ‘Hindu Mannewar’ or ‘Telagu Mannewar’

would have to be considered as entries indicating the social status of the Petitioner's forefathers as that of "Mannewar". The caste "Mannewar", needless to say, has been declared to be a Scheduled Tribe by the 1976 amendment carried out to the Schedule Tribes Order, 1950 and the entries which we consider here as more relevant are of the period prior to 1976 and they, on a broader canvass, do show the social status of the Petitioner as "Mannewar" now a scheduled tribe.

4. We must say it here, at the cost of repetition, that in a matter like this, and over all consideration of all the entries appearing in various documents produced by a claimant in support of his or her claim has to be made for the reason that social practices which prevailed before Constitution were very different and they underwent change after the concepts of "Scheduled Castes" and "Scheduled Tribes" were introduced to the society by the Constitution of India and benefits of State affirmative action were made available to persons belonging to categories of Scheduled Castes and Schedule Tribes. Before advent of rule of Constitution, the society was such as would recognize social status of a person mostly by caste, sometimes by religion and sometime the language spoken or the region to which the person originally belonged. That is why, we would say that in a case like this where the issue is about "Mannewar Tribe" a broader consideration of all entries is required and that is what we have done in the present case. Accordingly, we find that the Petitioner has succeeded in

proving her claim that she belongs to “Mannewar’ Scheduled Tribe deserving allowing of this Petition.

5. The Petition is allowed.

6. The impugned order is hereby quashed and set aside. The Respondent No.2 is directed to grant Validity Certificate to the Petitioner that she belong to “Mannewar Schedule Tribe” within a period of four weeks from the date of the order.

(FIRDOSH P. POONIWALLA, J.)

(SUNIL B. SHUKRE, J.)