

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6031 OF 2021

Ujjwala Dattu Kambale
@ Heena Shafeeque Momin
Age 55 yrs, Occ. Social Service
R/at Municipal Corporation Vasahat
No.1038/B, Gurunanak Nagar, Bhavani Peth,
Pune-42

... Petitioner

vs.

1. State of Maharashtra
Through its Secretary, Justice and
Empowerment Cultural Affairs
Department, Mantralaya,
Mumbai 400 032
 2. Scheduled Caste, Scheduled Tribe
Denotified Tribes, Nomadic Tribes,
Other Backward Classes and Special
Backward Classes,
Divisional Caste Certificate Validity
Scrutiny Committee, Pune
Having its office at Jail Road, Behind
Commercezone I.T. Park, Yerawada Pune 411 006
 3. The Tahsildar @ Executive Magistrate,
Pune City, Pune
Respondent Nos.1 to 3 to be served
through office of Government Pleader,
P. W. D. Building, Bombay High Court, Mumbai
 4. Sau. Surekha Raju Khandale,
Age-Adult, Occ.
R/o Chamanshah Darga Chowk,
Kashiwadi, Bhavani Peth, Pune 42
- ... Respondents

Mr J. D. Khairnar, Advocate with Shri Vikas B. Shivarkar, Advocate for petitioner.
Mr R. M. Shinde, Assistant Government Pleader for respondent Nos.1 to 3/State.
Mr Drupad S. Patil, Advocate with Mr Suyash S. Sale, Advocate for respondent
No.4.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, JJ.
DATE : February 23, 2023

Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

The challenge raised in this writ petition is to the order dated 09/03/2021 passed by the District Caste Certificate Scrutiny Committee, Pune by which the validity certificate dated 23/01/2012 issued to the petitioner holding that the petitioner belongs to 'Mahar' Scheduled Caste was held liable to be cancelled and the petitioner's caste-claim was invalidated.

2. The facts in brief that are relevant for considering the challenge as raised are that the petitioner claims to belong to 'Mahar' Scheduled Caste. She was issued a caste certificate in that regard on 23/07/1985. The Scrutiny Committee after verifying the same was pleased to issue validity certificate to the petitioner on 23/01/2012. The respondent No.4 herein made a complaint with the Scrutiny Committee on 19/08/2019 seeking re-verification of the petitioner's caste validity certificate by urging that she was not entitled to claim to belong to 'Mahar' Scheduled Caste since she had married a person professing Muslim religion. A report of the Vigilance Cell was called for and such report was submitted by the Vigilance Cell on 05/11/2020 in which it was stated that the petitioner could not produce any

documents prior to 1950 to indicate that she and her forefathers belonged to 'Mahar' Scheduled Caste. The petitioner responded to the notice issued by the Scrutiny Committee by filing reply on 29/01/2021. The Scrutiny Committee considered the documents on record and noted that the petitioner had married a person professing Muslim religion and since she had converted herself into that religion, she was not entitled to seek benefit that was admissible to a member of a Scheduled Caste. It was reiterated that no documents prior to 1950 were submitted by the petitioner. Hence by the order dated 09/03/2021 the complaint made by the respondent No.4 was accepted and the claim of the petitioner as belonging to 'Mahar' Scheduled Caste was held to be not proved. Consequently, validity certificate as well as the caste certificate issued to the petitioner were directed to be confiscated. It is this order which is the subject matter of challenge in the present writ petition.

3. Mr J. D. Khairnar, learned counsel for the petitioner submitted that the Scrutiny Committee failed to consider various relevant aspects that were raised by the petitioner. The petitioner had been issued a validity certificate on 23/01/2012 by the Scrutiny Committee after following the prescribed procedure and despite that a finding was recorded that no document proving the residence of the family prior to 1950 was produced. A validity certificate was also issued to the petitioner's brother after following the due process of law as was prevailing when the said validity certificate was issued. It was

further submitted that mere fact that the petitioner was married and her husband was professing Muslim religion could not be treated to be a valid ground to refuse to grant benefit to the petitioner that was available on issuance of the caste certificate as well as the validity certificate. Caste being determined by birth, it was submitted that subsequent marriage would not dis-entitle the petitioner to stake her claim based on the caste in which she was born. In that regard the learned counsel placed reliance on the decision in *Sunita Singh vs. State of Uttar Pradesh and Ors.* **2018 (5) Mh.L.J.30**, judgment of Madras High Court in Writ Petition No.15193/2016 (*S. Paul Raj vs. The Tahsildar and anr.*), judgment of Karnataka High Court in Writ Petition No.3399/2022 (*Smt. Archana M. G vs. Smt Abhilasha and anr.*) as well as the decision in Writ Petition No.5618/2018 (*Mohammad Hussain Ishaque Khan vs. Abdul Gafoor Ahmad Pathan and anr.*) and Writ Petition No.12216/2019 (*Neha Khursheed Alam Shaikh vs. State of Maharashtra, Thr. Secretary, Social Justice & Special Assistance Dept. Mantralaya, Mumbai and ors.*) dated 24/02/2022. It was thus submitted that the validity certificate having been rightly granted to the petitioner, there was no reason to cancel the same on the grounds assigned by the Scrutiny Committee.

4. Shri D. S. Patil, learned counsel appearing for respondent No.4 on the other hand supported the impugned order. It was submitted that in absence of any document prior to 1950 being produced by the petitioner, the Committee was justified in refusing to uphold the caste validity certificate

granted earlier. The petitioner having converted herself after her marriage with a person from the Muslim community, she had started professing Mahomedan religion and therefore was not entitled to seek benefit of belonging to the caste of her birth. Unless the petitioner got herself re-converted to Hindu religion, she could not claim any benefit of belonging to 'Mahar' Scheduled Caste. In that regard, the learned counsel referred to the Constitution (Scheduled Caste) Order, 1950 to urge that since the petitioner was professing a religion that was different from Hindu, Sikh or Buddhist the religion she was not entitled to claim to seek benefit of belonging to 'Mahar' Scheduled Caste. The learned counsel in support of his submissions placed reliance on the decisions in *K. P. Manu vs. Chairman, Scrutiny Committee for Verification of Community Certificate (2015) 4 SCC 1*, *Manoj Parmeshwar Sidam vs. State of Maharashtra and ors. 2019(1) Mh.L.J. 905*, *Sunita Singh vs. State of Uttar Pradesh and Ors. 2018(5) Mh.L.J. 30*, Judgment of Madras High Court in Writ Petition No.15193/2016 (*S. Paul Raj vs. The Tahsildar and anr.*), *Chatturbhuj Vithaldas Jasani vs. Moreshwar Parashram and ors. AIR 1054 SC 236*, *Punjabrao vs. Dr D. P. Meshram and ors. AIR 1965 SC 1179*, *Perumal Nadar (Dead) By LRs vs. Ponnuswami 1970(1) SCC 605*, *M. Chandra vs. M. Thangamuthu and anr. (2010) 9 SCC 712*, *Kailash Sonkar vs. Maya Devi (1982) 2 SCC 91*, *S. Rajagopal vs. C. M. Armugam and ors. AIR 1969 SC 101* and *G. Michael vs. S. Venkateswaran AIR 2952 Mad. 474*.

5. The learned Assistant Government Pleader appearing for respondent Nos.1 to 3 supported the impugned order. It was submitted that after considering all relevant material and in the light of the undisputed fact that the petitioner was professing Mahomedan religion, there was not reason to interfere with the impugned order. The writ petition was thus liable to be dismissed.

6. We have heard the learned counsel for the parties at length and we have perused the documents on record. The Scrutiny Committee in its impugned order dated 09/03/2021 has based its consideration on the aspect that the petitioner had married a person professing Muslim religion and therefore she was not entitled to seek benefit of belonging to 'Mahar' Scheduled Caste. Another reason for the Scrutiny Committee to pass the impugned order is that the petitioner failed to place before the Committee documents prior to 1950. It is seen from the record that though the petitioner was born in a family that claims to belong to 'Mahar' Scheduled Caste she had married a person professing Muslim religion. In this regard it is to be noted that the caste of a person is determined by his/her birth and such caste cannot be changed by virtue of his/her marrying a person belonging to another community. The Honourable Supreme Court in *Sunita Singh* (supra) has held caste is determined by birth and it cannot be changed merely by virtue of one's marriage in another community. The situation however is different when there is an inter-religion marriage resulting in

conversion to the religion of the other spouse. In *Kailash Sonkar* (supra) it was observed that when a person belonging to a scheduled caste is converted to Christianity or Islam, the same involves loss of the caste unless the religion to which such conversion takes place is liberal enough to permit the converttee to retain his caste or the family laws by which he was originally governed. The effect of re-conversion to the earlier religion has also been considered in the said decision. It is also necessary in this regard to refer to the decision in *K. P. Manu* (supra) that was relied upon by the learned counsel for the respondent No.4. It has been observed in paragraph 38 thereof that three things need to be established by a person who claims to be a beneficiary of the caste certificate which are, that there must be clear proof that he belongs to the caste that has been recognised by the Constitution (Scheduled Castes) Order, 1950, there has been re-conversion to the original religion to which the parents and earlier generations had belonged and there has to be evidence establishing the acceptance by the community. These aspects are in context of re-conversion.

7. In the present case we are only concerned with the fact that the petitioner who claims to belong to 'Mahar' Scheduled Caste has married a person professing Muslim religion and therefore it is only the effect of conversion that will have to be considered. The issue with regard to re-conversion does not arise in the present case. In *Manoj Parmeshwar Sidam* (supra) the respondent No.3 belonged to 'Gond' Scheduled Tribe and said

respondent married a person professing Muslim religion. The said respondent sought to contest election on a post reserved for Scheduled Tribe candidates. It was held by the Division Bench that the burden was on the said respondent to indicate that even after her marriage she did not follow the rituals of Islam and continued to follow the rituals of 'Gond' Scheduled Tribe. Since the said respondent had failed to discharge such burden, it was held that she was not eligible to contest the election for the post reserved for Scheduled Tribe candidate. In our view this aspect would be relevant in the facts of the present case. Since the petitioner has married a person professing Muslim religion, inquiry is necessary whether after her marriage the petitioner continued to follow the customs and traits of the community in which she was born. In other words, the aspect to be considered is whether the petitioner was permitted to retain her caste and family laws by which she was originally governed or on conversion she accepted the religion of her husband and gave up her earlier religion. Viewed from this angle we find that the Scrutiny Committee in the impugned order has not gone into these aspects. It has given importance only to the fact that the petitioner has married a person from the Muslim community and therefore was not entitled to claim benefit of belonging to the Scheduled Caste. We find that it would be necessary for the Scrutiny Committee to record a finding that notwithstanding her marriage with a person professing Muslim religion, the petitioner continued to follow the practices that were followed by her family prior to her marriage and that her husband's family had also accepted the

same. The validity certificate issued earlier has not been restored on the ground that documents prior to 1950 were not available. We find that the aforesaid aspect would also require consideration and for that purpose it would be necessary to remand the proceedings to the Scrutiny Committee for fresh consideration. Since fresh adjudication of the petitioner's claim is found necessary, we have not referred to other decisions relied upon by the learned counsel for the respondent No.4.

8. For aforesaid reasons and to facilitate re-consideration of the claim, the order dated 09/03/2021 passed by the Scrutiny Committee is set aside. Notwithstanding the aforesaid and till the matter is considered afresh by the Scrutiny Committee, the petitioner would not be entitled to rely upon the caste validity certificate dated 23/01/2012 in the backdrop of the fact that the exercise of re-verification of such validity certificate was required to be undertaken in view of the orders passed by the Honourable Supreme Court in Civil Appeal No.2723/2015 (*Dist. Collector Satara and anr. vs. Mangesh Nivrutti Kashid*) decided on 01/10/2019. The Scrutiny Committee shall re-consider the petitioner's claim in accordance with law and in the light of the observations made herein above.

To facilitate re-consideration of the petitioner's claim, the petitioner shall appear before the Scrutiny Committee on 15/03/2023. Necessary exercise be completed by the Scrutiny Committee by the end of October 2023 after giving an opportunity to the concerned parties.

It is clarified that this Court has not examined the claim of the petitioner on merits and all aspects are left open for being considered by the Scrutiny Committee.

With these directions, the writ petition is partly allowed.

Rule is made absolute in aforesaid terms with no order as to costs.

(M. W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

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