

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6575 OF 2021

Pallavi Dnyaneshwar Jangam

..Petitioner

V/s.

The State of Maharashtra and Anr.

..Respondents

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Mr. Surel Shah a/w Vinod Sangvikar for the Petitioner.

Mr. A.I. Patel, Addl. G.P. a/w Ms. K. N. Solunke, AGP for the
Respondent/State.

Mr. Pratik Rohade i/b P.N. Joshi for Respondent No.2.

CORAM : R.D.DHANUKA, AND
M.M.SATHAYE, JJ.

DATE : 4th JANUARY 2023

P.C.

. By this petition under Article 226 of the Constitution of India, the Petitioner seeks writ of certiorari for quashing and setting aside the order dated 05.08.2021 passed by the District Caste Scrutiny Committee, Pune thereby invalidating the caste claim by the Petitioner.

2. The Petitioner claimed to belong to Beda Jangam community and relied upon the caste certificate issued by the Sub-Divisional Officer, Maval on 27.07.2006. The Petitioner had contested an election. The caste claim of the petitioner was referred to the scrutiny committee. The scrutiny committee

referred the claim to the Vigilance Cell for inquiry after verification of the record and the home inquiry. The Vigilance Committee submitted a report after recording the statement of three persons. Respondent No.1 Committee invalidated the caste claim of the Petitioner on various grounds.

3. Mr. Shah, the learned counsel for the Petitioner strenuously urged that the Respondent No.1 Committee failed to consider the affinity test. He also invited our attention to the Vigilance report submitted by the Vigilance Committee, which is annexed at page 26 of the petition and also the show cause notice. He placed reliance on the Judgment delivered by the Division Bench of this Court in Case of *Amey Mahendrasing Thakur v/s. State of Maharashtra, through its Secretary, Higher Education Department and others*¹ and in particular paragraph 19 in support of his submission.

4. The learned counsel also invited our attention to Rule 13(d) of the Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 ('the said Rules' for short) and submitted that the Vigilance Officer did not conduct any enquiry more particularly on the aspect of (anthropological mooring and ethnological kinship) which was mandatory to be

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conducted on the part of the Vigilance Cell under the Rule 13(d) of the said Rules.

5. Mr. Patel, learned Additional Govt. Pleader on the other hand invited our attention to the Statement of the Principal of the school. The documents produced by him were relied upon by the Petitioner. He submitted that the said principal, whose statement was recorded could not prove the caste of the Petitioner as claimed. On the contrary, the documents referred by the Principal would support the case of the Respondent and not the Petitioner. He also referred to various averments in the Affidavit-in-Reply and additional affidavit filed by the Respondents and submitted that none of the documents produced by the Petitioner were prior to the deemed date and whatever documents are produced subsequent to the deemed date proved otherwise and destroyed the case of the Petitioner.

6. It is submitted by the learned Additional Govt Pleader that in the school leaving certificate of the father of the Petitioner, the caste was shown as “Beda Jangam”. It is submitted that the Petitioner’s birth date and her father birth date was found to be after deemed date i.e. 10.08.1950. It is submitted that in the birth record of the grandfather of the Petitioner, the caste mentioned was “Jangam” and not “Beda Jangam”, which is the

caste under category of Sr. No. 58 in Other Backward Class and Beda Jangam is mentioned in Scheduled Caste No.9.

7. It is submitted by the learned Additional Govt Pleader that the Vigilance Cell has also inspected the original genealogy register maintained by the school of the Petitioner's father and in the school record, the caste of the Petitioner's father i.e. Dnyaneshwar is mentioned as Hindu-Lingayat, which itself destroys the case of the Petitioner.

8. With the assistance of the learned counsel for the parties, we have perused the record. The learned counsel for the Petitioner could not dispute that in the original genealogy register maintained by the school of the Petitioner's father, the caste of the Petitioner's father i.e. Dnyaneshwar is mentioned as Hindu-Lingayat and not Beda Jangam. He also could dispute that in the birth record of grandfather of the Petitioner, the caste mentioned was "Jangam" and not Beda Jangam, which is the caste in the category of Sr. No. 58 in Other Backward Class, whereas Beda Jangam is mentioned in Sr. No. 9 in the Scheduled Casts. We have perused 7/12 extract of paternal uncles grandfather, the caste shown is as Jangam and not Beda Jangam.

9. We have perused the impugned order passed by the Respondent No.1 Committee which indicates that Respondent No.1 has considered all the documents produced by the

Petitioner and has recorded the finding of fact that the caste claimed by the Petitioner in the document was not Beda Jangam but other caste which would not support the case of the Petitioner.

10. Insofar as the submission of the learned counsel for the Petitioner that the Vigilance Cell has not complied with the requirement under Rule 13(d) of the said Rules, is concerned, a perusal of the record indicates that the Vigilance Cell recorded the statements of three persons from the local village. None of the persons from the local village could support the case of the Petitioner. Insofar as the Judgment of the Division Bench of this Court in case of *Amey Mahendrasing Thakur* (supra) relied upon the learned counsel for the Petitioner is concerned, this Court in the said Judgment has referred to various judgments of this Court including judgment of the Full Bench of this Court in the case of *Shilpa Vishnu Thakur v/s. State of Maharashtra*². It is held that while applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional

2 (2009) 3 Mah LJ 995

characteristics of the tribe. Hence, affinity test may not be regards as a litmus test for establishing the link of the applicant with the Scheduled Tribe. In our view, the said judgment would not assist the case of the Petitioner, but would assist the case of the Respondents and is clearly distinguishable on facts. The findings of fact recorded by Respondent No.1 are not perverse and do not warrant any interference.

11. The writ petition is devoid of any merit and is accordingly dismissed. No order as to costs.

M.M.SATHAYE, J.

R.D.DHANUKA, J.