



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 7257/2022

PETITIONER: Shweta d/o Vijay Maliye,
Aged about 19 years, Occu: Education,
R/o Dashera Nagar, Hariharpeth,
Old City Akola, District Akola.

...V E R S U S...

RESPONDENTS 1] District Caste Certificate Scrutiny
Committee, Akola, through its
Member/Secretary, having office at
Collector Office, Administrative
Building, 2nd Floor, Akola.

2] State Common Entrance Test Cell,
8th Floor, New Excelsior Building, A.K.
Nayak Marg, Fort, Mumbai-400 001
(M.S.).

3] P.R. Pote College of Pharmacy,
Through its Principal, Pote Estate,
Gajanan Township Road, Amravati,
Tah. & District Amravati..

Mr. A.M. Tirukh, counsel for the petitioner.
Mrs. K.S. Joshi, Additional G.P for the State.
Mr. M.A.Gaikwad, counsel for respondent No.2 .

CORAM : **AVINASH G. GHAROTE &**
URMILA JOSHI-PHALKE, JJ

DATE OF RESERVE : **06/09/2023**
DATE OF DECISION : **29/09/2023**

JUDGMENT : (PER : URMILA JOSHI-PHALKE, J)

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. The challenge raised in this writ petition is to the order dated 02/08/2022 passed by the District Caste Scrutiny Committee, Akola invalidating the petitioners' claim of belonging to 'Kumbhar Caste'.

3. The petitioner's contention is that the petitioner has passed out her 12th Class and preparing for her NEET examination. She applied for caste validity certificate, however, the Caste Scrutiny Committee has rejected the caste validity claim of the petitioner. The caste -Kumbhar, is at Serial No. 82 in the list of Other Backward Class. The petitioner's caste claim had been forwarded by Radhakishan Laxminarayan Toshniwal College of Science, Akola (M.S.) India on 21/12/2021 to the respondent/ Caste Scrutiny Committee. The petitioner had filed numerous documents before the Committee in support of her claim for Kumbhar Caste. The documents filed by the petitioner before the Caste Scrutiny Committee and the consistent entries in the documents show her caste as "Kumbhar". In some of the documents, it is shown as "Pardeshi Kumbhar and Ksha Kumbhar". However, the committee did not consider the

documents showing the caste as Pardeshi Kumbhar or Ksha Kumbhar, on the ground that there is no such caste as Pardeshi Kumbhar or Ksha Kumbhar, which comes under the Other Backward Class.

4. As per her contention, the school entries when her father was enrolled in the school also show his caste as Kumbhar. There are various documents which shows that the Sister of her father was also shown as Pardeshi Kumbhar and her grandfather's caste in the old documents is also shown as a Kumbhar. Thus, there are consistent entries showing that she belongs to the Kumbhar Caste, however, this fact is not considered by the Caste Scrutiny Committee, and illegally rejected her claim.

5. Mrs. K.S. Joshi, learned AGP for respondent No.1 submits that the petitioner has not placed on record the true Genealogy Tree to show her connection with Chaya Kanhaiyalal Maliye. The complete family tree is not produced on record. There are no pre-independence documents and therefore, the Caste Scrutiny Committee has rightly rejected the claim of the petitioner. Therefore, no interference is called for.

6. Heard Mr. A.M. Tirukh, learned counsel for the petitioner. He reiterated the contentions and invited our attention towards the various documents i.e. leaving certificate of the present petitioner issued by Shri

Radhakishan Laxminarayan Toshniwal College of Science, Akola (M.S.) India, Vishnupant Khedkar Vidhyalaya, Akola, which shows her caste as Kumbhar. He further invited our attention towards the Genealogy Tree and submitted that Kanhaiylal Maliye is the grandfather of the present petitioner, said Kanhaiylal was having one Daughter and one Son i.e. father of the petitioner. The father of the petitioner was recorded as Kumbhar in a School Admission register. The extract of the said register is also placed on record. Chya Kanhaiylal Maliye is her maternal Aunt, who was also recorded as Pardeshi Kumbhar. The school admission extract of said Chaya is also placed on record. The grandfather of the petitioner was Kanhaiylal, whose birth certificate issued by Akola Municipal Corporation is also filed on record which sufficiently shows that the petitioner belongs to Kumbhar Caste. She also placed reliance on one validity certificate issued to one Chetan Bramhanand Maliye, who according to her is her cousin's uncle. It is submitted by the learned counsel, these all documents consistently show that the petitioner belongs Kumbhar Caste are not considered by the Committee and illegally rejected the claim of the petitioner.

7. Mrs. K.S. Joshi, learned AGP for respondent No.1 and Mr. M.A. Gaikwad, learned counsel for respondent No.2 submitted that as the petitioner has not placed on record true genealogy tree and not established her relationship with Chetan Bramhanand Maliye to whom the validity was issued,

therefore, the committee has rightly rejected the claim, therefore, no interference is called for.

7-A. With the assistance of the learned counsel for the parties, we have perused the record of the Committee which was made available to us.

8. Section-8 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short 'the Act of 2000') casts obligation upon the petitioner to substantiate her caste claim. The affinity test is also one of the criteria to prove the caste claim.

Rule 11(2) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (for short the 'the Rules of 2003') enumerates a list of documents to be filed along with the application to the Caste Scrutiny Committee. Rule 12 prescribes the procedure to be followed by the Caste Scrutiny Committee on receipt of such application in the prescribed format. It provides that if the Caste Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it shall forward the application to the Vigilance Cell for conducting the school, home and other enquiry. Sub-rule(3) of Rule 12 requires the Vigilance Officer to visit the local place of

residence and the original place from where the applicant hails and usually resides. The rules further stipulate that the Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or guardians, as the case may be. He is also required to examine the parents or the guardians or the applicant for the purpose of verification of their tribe. It is evident that the scope of enquiry by the Vigilance Officer is broad-based and is not confined only to the verification of documents filed by the applicant with the application or the disclosures made therein. Obviously, the enquiry, supposed to be conducted by the Vigilance Officer, would include the affinity test of the applicant to a particular tribe to which he claims to belong. In other words, an inquiry into the affinity of the applicant to a particular Scheduled Tribe is required.

9. Needless to add, the burden of proving the caste claim is upon the applicant. She has to produce all the requisite documents in support of her claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinize the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his/her claim, the Committee cannot gather the evidence on its own to prove or disprove the claim.

10. The attention is drawn to the various documents

submitted by the petitioner before the Committee. As per the genealogical tree submitted by the petitioner before the committee, only shows that one Kanhaiyalal Maliye is grandfather, who was having one daughter and one son. Chaya Kanhaiylal and Vijay Kanhaiylal (father of the petitioner). In the petition, the petitioner has mentioned the genealogical tree by mentioning the names of other family members who were not included in the genealogical tree, which was submitted before the Committee. As per the genealogical tree mentioned in the petition, one Krushnaji Maliye had two sons, Gangaramji and Govindramji. Govind had two sons namely Namdeorao and Chauthmal. Namdeorao was having four sons i.e. Lalman, Balaram, Ramlal and Laxman. The grandfather of the petitioner namely Kanhaiyalal is the son of said Lalman who is having another brother namely Manohar, Bramhanand, Gajanan and Ashok are the sons of Ramlal. Though the petitioner placed reliance on the validity issued to Chetan Bramhanand Maliye, but the relationship with the said Chetan was not established by the petitioner before the Committee and therefore, the Committee has rejected the claim of the petitioner. Before us also there is no explanation coming forth for the improvement in the genealogical tree, that what was placed before the Scrutiny Committee.

11. Thus, the petitioner failed to prove the affinity test which is required to be established by the petitioner to

substantiate her claim. The other documents which are filed on record are the school leaving certificate of the father which shows his caste as a Kumbhar, whereas the school leaving certificate of Chaya Kanhaiyalal Maliye, who is the sister of the father of the petitioner shown as Pardeshi Kumbhar. Even, the relationship with the said Chaya Kanhaiyalal Maliye is also not established by the petitioner. Despite, sufficient opportunity by the committee, the petitioner failed to adduce the evidence to show the relationship with said Chetan Maliye and failed to prove the affinity test.

12. In the case of *Anand V/s Committee for Scrutiny and Verification of Tribes Claims and others, reported in AIR 2012 SC 314*, the Hon'ble Apex Court has held that the burden of proving the caste claim is upon the applicant. He has produced all requisite documents in support of his claim. The caste scrutiny committee merely performs the role of verification of the claim and therefore, can only scrutinize the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the committee cannot gather the evidence on its own to prove or disprove his claim.

13. Having examined the present case on the above said parameters, we are of the opinion that the petitioner failed to prove her claim by producing the relevant

documents. The petitioner has also failed to prove the affinity test by showing her relationship with Chetan Bramhanand Maliye, to whom the validity is granted.

14. It is pertinent to note, that no documents are produced related to the pre-independence era issued to the petitioner's forefathers to hold any probative value. Thus, there is absolutely no material placed by the petitioner to substantiate her claim that she belongs to the caste Kumbhar, therefore, the Caste Scrutiny Committee invalidated her claim.

15. In the light of the aforesaid discussions, we do not find any illegality in the order passed by the Caste Scrutiny Committee, therefore, the petition deserves to be **dismissed**. No orders as to costs.

16. Rule is discharged.

(URMILA JOSHI-PHALKE, J)

(AVINASH G. GHAROTE, J.)