



Judgment

130 wp7472.22

1

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

WRIT PETITION NO.7472 OF 2022

Ajiyan Tauhid s/o Vahid Shaha, aged
about 19 years, occupation : student,
r/o Naya Dayra, near Kabristan,
ward No.13, at post-Warud, district
Amravati. **Petitioner.**

:: V E R S U S ::

1. State of Maharashtra, through its
Secretary Social Welfare Department,
Mantralaya, Mumbai-32.

2. District Caste Verification and
Scrutiny Committee, Amravati,
through its Chairman/Member.

3. Sub Divisional Officer, Morshi, taluka
Morshi, district Amravati. **Respondents.**

=====

Shri S.S.Dhengale, Counsel for the Petitioner.
Shri M.K.Pathan, Assistant Government Pleader for
Respondents.

=====

CORAM : PRITHVIRAJ K.CHAVAN & URMILA JOSHI-PHALKE, JJ.
CLOSED ON : 31/10/2023
PRONOUNCED ON : 03/11/2023

JUDGMENT : (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel Shri S.S.Dhengale for the
petitioner and learned Assistant Government Pleader Shri
M.K.Pathan for respondents.

.....2/-

2

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel for parties.

3. The petitioner claims to be "Chapparband" (Denotified Tribe) under "Vimukta Jatis Category at Sr.No.14" of the State Government list which is recognized and declared by the Government Resolution dated 20.3.1976. The caste claim of the petitioner was referred for its validation to respondent No.2 – District Caste Verification and Scrutiny Committee, Amravati (the Committee) on 19.10.2020. The Committee invalidated the caste claim of the petitioner by passing order on 27.4.2022 which is under challenge in the present petition. The petitioner is pursuing his further education. He passed out from "Urdu Secondary and Higher Secondary School, Warud". He had submitted his caste claim in the prescribed format along with the relevant documents which are not considered by the Committee and invalidated his caste claim.

4. As per contentions of the petitioner, he has annexed various documents which demonstrate that he

3

belongs to caste "Chapparband". The pre-constitution document dated 9.12.1916 which is an extract of birth register obtained from Kotwal Book showing entry of a son of Gulab Shaha who was great-great-grandfather of the petitioner. The words "Shaha" and "Fakir" also appear in the said register which are sufficient to show that he belongs to caste "Chapparband". On the basis of the said document, an uncle of the petitioner obtained Caste Validity Certificate on 26.5.2009. The petitioner's cousin brothers Mohd.Fahim Suleman Shaha, Mohd.Wasim Raja Suleman Shaha and uncles Suleman Shaha Dildar Shaha and Rajjak Shaha Dildar Shaha were granted the Caste Validity Certificates. Thus, four Caste Validity Certificates were issued to the blood relatives of the petitioner. However, without considering the same, the Committee had rejected the caste claim of the petitioner by assigning reason that the petitioner could not prove that he belongs to caste "Chapparband" and there are entries showing that the petitioner's forefathers belong to the Muslim Community. The Vigilance Report is also not supporting the petitioner's case.

4

5. Being aggrieved with the said order passed by the Committee, the petitioner filed this petition on the ground that the Committee had not considered that he has established that he belongs to caste "Chapparband". The family tree shows that his great-great-grandfather was recorded as "Chapparband" during pre-independence era which has a probative value. On the basis of the same documents, his uncles and cousin brothers are declared to be of caste "Chapparband". The family tree is not disputed. Thus, the order passed by the Committee is arbitrary and illegal and liable to be set aside.

6. In response to the Notice, the Committee submitted that the petitioner could not prove that he belongs to caste "Chapparband". There are adverse entries. The Vigilance Enquiry Report reveals that the caste of the petitioner is "Fakir". The caste "Fakir" is included in the list of the State of Maharashtra as Other Backward Class (OBC). Three conditions, which are given in the Government letter dated 29.6.2006, are sufficient to show that the petitioner

5

could not claim the Caste Validity Certificate and, therefore, the Committee has rightly rejected the claim of the petitioner.

7. Learned counsel Shri S.S.Dhengale for the petitioner, submitted that the Committee had not considered various Caste Validity Certificates issued to the blood relatives of the petitioner. The blood relatives of the petitioner were granted the Caste Validity Certificates on the basis of the said documents. The Vigilance Report is also based on the same documents. The birth entry, regarding the son of the great-great-grandfather of the petitioner, shows that during pre-independence era, the forefathers of the petitioner were recorded as "Chapparband". The Committee has not brought any documents to disprove the fact. As such, the order passed by the Committee deserves to be quashed and set aside.

8. *Per contra*, learned Assistant Government Pleader Shri M.K.Pathan for the respondent, submitted that there are adverse entries showing that the petitioner belongs to the Muslim Community. The old entries show that the forefathers

6

of the petitioner were recorded as "Fakir" which is included in OBC. The petitioner could not claim the Caste Validity Certificate on the basis of the Government Circular dated 23.3.2011 and supported the order passed by the Committee.

9. After hearing both the parties at length and perusing the record maintained by the Committee, it apparently shows that the petitioner mainly relied upon the birth extract by which the birth entry of the son of the great-great-grandfather of the petitioner was recorded in the year 1916 i.e. on 9.12.1916 which is a Kotwal Book entry which is not denied by the Committee. It is also not denied that on the basis of the said entry, wherein the great-great-grandfather of the petitioner was recorded as "Fakir", the uncles and cousin brothers of the petitioner were granted the Caste Validity Certificates. If the family tree of the petitioner filed by the petitioner before the Committee is considered, it shows that one Gulab Shah was his great-great-grandfather, who had one son namely Mastan Shaha Gulab Shaha, who is the great-grandfather of the petitioner. Dildar Shaha Mastan

7

Shaha is grandfather of the petitioner. Suleman Shaha and Rajjak Shaha are his uncles to whom the Caste Validity Certificates are granted on the basis of the same documents. The petitioner's cousin brothers Mohd.Fahim Suleman Shaha and Mohd.Wasim Raja Suleman Shaha also obtained the Caste Validity Certificates on the basis of the similar documents. The Kotwal Book Entry shows the great-great-grandfather of the petitioner as "Fakir Community" on the basis of which the said validity is granted.

10. As far as the contention of learned Assistant Government Pleader for the respondents, that the petitioner is not entitled to receive the Caste Validity Certificate on the basis of Government Circular dated 23.3.2011, is concerned, the said Circular is withdrawn by the Government by issuing Circular dated 16.2.2015. The arguments of learned Assistant Government Pleader cannot be accepted as the Circular is already withdrawn by the Government. The only reason assigned by the Committee is, that the petitioner could not establish that he belongs to the caste

8

“Chapparband”, which deserves to be rejected in the light that on the basis of the similar documents four Caste Validity Certificates are granted in the family.

11. The Division Bench of this Court in the case of **Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and ors**, reported in **2010 (6) Mh.L.J. 401** has held in paragraph No.7, thus :

“7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the Committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.”

It is further held that the Committee by expressing a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to the validity of caste have a great impact on the candidate as

9

well as on the future generations in many matters varying from marriage to education and enjoyment. A merely different view on the same facts could not entitle the committee dealing with the subsequent caste claim to reject it.

12. In the present case, the Caste Validity Certificates were issued to the petitioner's uncles and the cousin brothers. It is nowhere contention of the Committee that the earlier Caste Validity Certificates were obtained by fraud without jurisdiction. As there is no observation that the earlier Caste Validity Certificates are vitiated by fraud or without jurisdiction, the Committee cannot refuse to grant the Caste Validity Certificate in favour of the petitioner. It is evident that the Caste Validity Certificates granted to the petitioner's uncles and cousin brothers are on the basis of the similar documents on which the petitioner relied upon. The same ratio is laid down by this Court in the case of **Ku.Shah Nida Afrin Nawab Nizamuddin vs. State of Maharashtra and others**, reported in **2021 SCC OnLine Bom 11821**, wherein the

10

judgment in the case of **Apoorva d/o Vinay Nichale** cited *supra* is referred.

13. The sum and substance of the entire material on record shows that the entry in the name of the petitioner's great-grandfather has a probative value and the Government Circular dated 23.3.2011 is already withdrawn by the Government and, therefore, the petitioner is entitled to be declared as belonging to caste "Chapparband". Therefore, the order passed by the Committee is illegal, illogical, and liable to be set aside. Hence, the writ petition deserves to be allowed as per order below:

ORDER

(1) The writ petition is **allowed**.

(2) The order dated 27.4.2022 passed by respondent No.2 – District Caste Verification and Scrutiny Committee, Amravati, is hereby quashed and set aside.

(3) It is declared that the petitioner belongs to caste "Chapparband" (De-notified Tribe).

11

(4) The Committee shall issue the Caste Validity Certificate to the petitioner within a period of six weeks from the date of receipt of writ of this order.

Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.) (PRITHVIRAJ K.CHAVAN, J.)

!! BrWankhede !!