



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

WRIT PETITION NO. 7213 OF 2017

Mohammed Owais s/o Mohammed Abrar Siddiqui,
Aged 23 Years, Occ. Student, R/o. Near
Nutan School, Ramnagar Chowk, Gondiya. **PETITIONER**

// VERSUS //

- 1) District Caste Certificate Scrutiny Committee,
Through its Secretary, Gondiya, Dr. Babasaheb
Ambedkar, Samajik Neyay Bhawan, Behind
Collector Office, Gondiya.
- 2) The Principal, N. K. P. Salve, Institute Of
Medical Science And Research Center,
Digdoh Hills, Hingna Road, Nagpur 440019.
- 3) Maharashtra University of Health Science,
Vani Road, Mhasrul, Nasik.
- 4) State of Maharashtra, Through Social Welfare
Department, Mantralaya, Mumbai 32. **RESPONDENTS**

Shri S. P Bhandarkar, Advocate for petitioner.
Mrs. Kalyani Deshpande, AGP for respondent Nos.1 and 4.
Shri Abhijit Deshpande, Advocate for respondent No.3.

**CORAM : PRITHVIRAJ K. CHAVAN AND
URMILA JOSHI-PHALKE, JJ.**

RESERVED ON : 04.10.2023

PRONOUNCED ON : 11.10.2023

JUDGMENT : [PER: URMILA JOSHI-PHALKE, J.]

1. **RULE.** Rule is made returnable forthwith. Heard finally
with the consent of the parties.

2. The petitioner is a student pursuing his further education. He claimed to be 'Chapparband' (De-notified tribe) under V. J. Category at serial No.14 of State list which is recognized and declared by Government Resolution dated 20.03.1976. He got admission under the reserved category for MBBS course. His caste claim was referred for validation through Dhote Bandu Science College, Gondia on 23.05.2023. As the caste claim of the petitioner was not decided by the Caste Scrutiny, he had filed Writ Petition No.5269/2014, which was decided on 01.06.2015 and Committee was directed to decide the same within eight months. The Caste Scrutiny Committee referred the same to the Vigilance Committee for necessary inquiry. The Vigilance Committee submitted its report on 26.10.2016.

3. As per the contention of the petitioner, the Vigilance Committee report is in his favour, however, after receipt of the report, the Caste Scrutiny Committee invalidated the claim without assigning any cogent reason. It is further contention of the petitioner that he relied on the various entries regarding the school admission of his forefather, which shows that there are consistent entries that his forefathers belonging to 'Chapparband Community'. The entry of dated 31.03.1949 shows that his grandfather Mohammed Kuddus was admitted in school on 24.03.1946 who was recorded as 'Chapparband'.

His birth entry is of pre-independence era dated 23.01.1935. His another ancestor Mohammed Yaqub who is great-grandfather was also recorded as a 'Chapparband', as per the school entry. Thus, the old entry records his father as a 'Chapparband'. The validity certificates were issued to his cousins namely Hina Qureshi, Sayyad Mohsin, Sayam Qureshi and Aman Qureshi on the basis of above said documents. On the basis of the validity certificate, the caste validity certificates were issued to his cousins by the Sub-Divisional Officer but without considering the same, the Committee had rejected the caste claim of the petitioner by assigning the reason that the petitioner could not prove that he belongs to the 'Chapparband Community'. It is further observed by the Committee that the validity issued to the persons whose surnames are Qureshi and petitioner could not establish any affinity with those persons.

4. Being aggrieved with the said order passed by the Caste Scrutiny Committee, the petitioner had filed this petition on the ground that the Caste Scrutiny Committee had not considered that the petitioner has established his relationship with the persons to whom the validity certificate is issued. The family tree shows that Mohammed Hanif who was the original family head had two sons Mohammed Abbas and Mohammed Yaqub. As per the school record, Mohammed Yaqub is

recorded as a 'Chapparband' who had two sons Mohammed Shafi Qureshi and Mohammed Quddus. The school record of Mohammed Quddus shows that he was recorded as a 'Chapparband' and he is the grandfather of the petitioner. Mohammed Abbas is the cousin great great-grandfather of the petitioner who had a son namely Abdul Khaliq. Abdul Khaliq had two sons Naim Ahmed Qureshi and Sayyad Aslam Pervez. The daughter of Naim Ahmed Qureshi got the validity certificate on the basis of similar documents. Another cousin of the petitioner Sayyad Mohsin has also received the validity certificate on the basis of similar documents. His real cousins Sayyam Qureshi and Aman Qureshi also received the validity certificate on the basis of the similar documents. The family tree is not disputed. The caste Scrutiny Committee assigned the reason that the names of a persons whom the validity certificate was issued are known by surname Qureshi. The petitioner could not establish his affinity with the said persons and invalidated the claim. Thus, the order passed by the Caste Scrutiny Committee is arbitrary, illegal and liable to be set aside.

5. In response to the notice, respondents opposed the petition on the ground that petitioner could not establish his affinity with the persons whom validity certificates are issued. There is no other evidence to show that the petitioner belongs to 'Chapparband' (De-notified tribe),

therefore, the order passed by the Caste Scrutiny Committee is justified one.

6. Heard learned Counsel Shri S. P. Bhandarkar for the petitioner. He submitted that the Caste Scrutiny Committee had not considered the previous validity issued to the cousins of the petitioner. Moreover, there is no evidence to show that they had received the validity on different documents. The validity issued to his cousins is on the basis of same documents on which the petitioner placed reliance on. The vigilance report is also in favour of the present petitioner, which shows that during vigilance the Vigilance Committee has recorded the statements of the villagers who disclosed that the forefathers of the petitioner belongs to 'Chapparband'. The School Leaving Certificate of the grandfather of the petitioner namely, Mohammed Quddus and great-grandfather Mohammed Yaqub shows that they are recorded in the school record as a 'Chapparband', at the time of their admission in the school. The Vigilance Committee has not brought any contrary evidence during the vigilance to show that the present petitioner belongs to the different caste.

7. The learned Counsel placed reliance on catena of decision as follows:

Sadeek Shaha Ramjan Shaha Vs. State of Maharashtra and others, reported in 2008 SCC OnLine Bom 879, Altaf Vs. State of Maharashtra through the Principal Secretary and others, reported in 2017 SCC OnLine Bom 6767, Asad Javed Shah Vs. State of Maharashtra and others reported in 2019 SCC OnLine Bom 5874, Ms. Iftesam D/o Rajjak Shaha Vs. The State of Maharashtra Through it's Secretary, Department of Social Welfare, Mantralaya, Mumbai – 32 and another in Writ Petition No.5163/2018 decided on 16.10.2019, Asra Fatema d/o Zakir Ali Ahmed Vs. State of Maharashtra through Secretary Tribal Development Department, Mantralaya, Mumbai and another in Writ Petition No.920/2021 decided on 13/10/2022, Mustak Ahemad S/o Mohammad Waris Sayyad Vs. The State of Maharashtra, Through its Secretary, Social Welfare and Tribal Department, Mantralaya, Mumbai and others in Writ Petition No.2434/2017.

8. On the basis of the above decisions, he submitted that this Court in various decisions held that the validity granted to the nearest relatives is to be taken into consideration.

9. Per contra, learned AGP submitted that as the petitioner could not establish the affinity with the persons to whom validity is

granted, the Committee rightly rejected the application for validity certificate.

10. After hearing both the parties at length and after perusal of the record maintained by the Scrutiny Committee apparently shows that the petitioner mainly relied upon the documents i.e. the School Leaving Certificate issued by the Primary School, Sukali, District Gondia, which shows that grandfather of the petitioner was admitted in the school on 24.03.1946 and was recorded as 'Chapparband'. The great-grandfather of the petitioner was also admitted in the school and the School Admission Register shows that he was also recorded as a 'Chapparband'. Thus, the petitioner's grandfather as well as the great-grandfather were recorded as a 'Chapparband'. The genealogical tree submitted by the petitioner was not in dispute. The Sub-Divisional Officer had issued caste validity certificates to the real cousins of the petitioner as well as to the distant cousins of the petitioner showing that they belong to 'Chapparband' (De-notified tribe). The petitioner had also produced the family tree which shows that the validity certificate issued to one Sayyam Qureshi and Aman Qureshi who are cousin brothers of the petitioners. The validity certificate are also issued to Hina Qureshi, Sayyad Mohsin who are the distant cousins of the petitioners. The only reason assigned by the Caste Scrutiny Committee that the petitioner

could not establish the affinity with these persons as their surnames are different. The Caste Scrutiny Committee came to the conclusion that the petitioner could not prove his affinity as well as his caste.

11. The findings recorded by the Caste Scrutiny Committee only on the ground that the surname of the persons to whom the caste validity certificate issued is Qureshi, whereas the surname of the petitioner is Siddiqui. Admittedly, the genealogical tree is not disputed either by the Vigilance Committee or by the Caste Scrutiny Committee. The Vigilance Committee also recorded the statements of the villagers which shows that the forefathers of the petitioner were residing in the village Sukali, District Gondia and they belongs to 'Chapparband'. Thus, the Vigilance Committee report also supports the contention of the petitioner.

12. The Division Bench of this Court in 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** wherein it is held by this Court that in paragraph No.7 :

"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 by the Division Bench 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 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.

13. Here in the present case, the validity certificate was issued to the cousin brothers and sister of the petitioner. It is nowhere the contention of the Committee that the earlier caste certificate is obtained by fraud or is granted without jurisdiction. As there is no observation that the earlier caste validity certificate is vitiated by fraud or without jurisdiction, the Committee cannot refuse to grant certificate to the petitioner. As observed above, in the present case, the Committee nowhere observed that the cousin brothers and sister of the petitioner had obtained caste validity certificate by playing fraud or that grant of certificate was without jurisdiction. On the contrary, it is evident that

the validity certificate granted to the cousin and distant cousin was on the basis of the School Leaving Certificate of grandfather of the petitioner of which the petitioner is also 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**, on which petitioner is relied upon by referring the judgment of **Apoorva d/o Vinay Nichale** (supra). In **Asad Javed Shah** (supra) relied upon by the petitioner, wherein also on the basis of the decision and law laid down by this Court in **Apoorva d/o Vinay Nichale** (supra) was considered and Committee was directed to issue caste validity certificate.

14. Admittedly, the school record of grandfather and great-grandfather of the petitioner, the vigilance report shows that the petitioner and his forefathers belongs to 'Chapparband'. Thus, the documents on which the petitioner had relied upon and the validity issued to the family members is sufficient to held that the petitioner belongs to 'Chapparband'. The sum and substance of the entire material on record shows that the entry in the name of the grandfather has great probative value and is sufficient to show that the petitioner belongs to 'Chapparband' tribe. Therefore, the order passed by the Caste Scrutiny Committee, is illegal, illogical and liable to be set aside. Hence, writ

petition deserves to be allowed. In the result, we proceed to pass the following order:

- (i) The Writ Petition is allowed.
- (ii) The order dated 30.01.2017 passed by the District Caste Certificate Scrutiny Committee, Gondia, is hereby quashed and set aside.
- (iii) It is declared that the petitioner namely, Mohammed Owais s/o Mohammed Abrar Siddiqui belongs to 'Chapparband' (De-notified tribe).
- (iv) The Caste Scrutiny Committee shall issue the validity certificate to the petitioner within a period of six weeks from the receipt of copy of this judgment.
- (v) Pending application(s), if any, stand(s) disposed of.

15. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(PRITHVIRAJ K. CHAVAN, J.)