



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9304 OF 2016

Nijam Jainoddin Shaikh

VERSUS

The State Of Maharashtra And Others

...

Advocate for the Petitioner : Mr. Shrinivas Trimbakrao
Solanke

AGP for Respondents/State : Mr. D.R. Korade.

...

CORAM : S.G. MEHARE &
SHAILESH P. BRAHME, JJ.

DATED : JANUARY 16, 2025

PER COURT :

1. The petitioner is challenging the judgment and order dated 02.06.2016 passed by the respondent No.2/Scrutiny Committee invalidating cast certificate of the petitioner for cast 'Pinjari' which is Other Backward Class. Petitioner is relying on his school entries, as well as the school entries of his real brothers, revenue records, his service book, and census records.. The petitioner is the first generation claimant and therefore, he does not have any validity issued in the family. A vigilance inquiry was conducted and report was submitted. The affinity test is recorded in his favour.

2. During the course of vigilance inquiry, it was transpired that the school entry recorded in case of petitioner was reported to be bogus, considering the endorsement of vigilance officer. The committee discarded entries as those are of recent origin. It is further observed that the petitioner was unable to produce the record of the period prior to 13.10.1967.

3. Learned counsel for the petitioner submits that the oldest record is of 1977 i.e. his school entry and thereafter there is school record of his brothers. In the school records the caste was shown to be 'Pinjari'. As the petitioner is the only literate person in the family, it was not possible to adduce any other evidence like validity certificate or the school record. He would further submit that an in-depth verification of the school entry was not conducted. It is submitted that affinity test in given situation, carries significance. He would further submit that the finding recorded by the Committee discarding the school entries is perverse. There was no proper vigilance conducted by the Committee. Neither any statement of the Headmaster or the recordkeeper were recorded nor the concerned entries were referred to the handwriting experts. Therefore, he would pray to allow his petition.

4. Per contra, learned AGP tenders on record the original papers. He supports impugned judgment and order. According to him reasonable and possible view has been taken by the Committee. There was neither any old school record nor revenue record to support the petitioner's claim. The school record was duly verified and after considering the endorsement, the entry was found to be unreliable. The vigilance report is against the petitioner. It is submitted that no case is made out to cause any interference in the impugned judgment and order.

5. We have considered the rival submissions of the parties and we have gone through the original papers.

6. Petitioner is not relying on the any validity issued in the family. He is the only educated person who is in service. He is relying on following documentary evidence :

- (i) Caste Certificate of petitioner
- (ii) School Admission Extract of 15.07.1977
- (iii) School Admission Extract of 23.06.1981
- (iv) Original Servicebook
- (v) School Admission Extract of Usman Gani dated 05.10.1975
- (vi) Validity issued to Ebrahim
- (vii) Holding Certificate issued to brother
- (viii) Form 8A of brother
- (ix) Extract of Census Register.

7. The vigilance inquiry was conducted and the school record was verified from the concerned headmaster. The record produced before us reveals that on the photocopies, there was endorsement of the vigilance officer. We do not notice that any statement of concerned headmaster or the record keepers were recorded during the vigilance. We do not notice that any colour photocopies were secured by the Vigilance Officer. Mere endorsement on the school entries casting doubt of tampering of the record is not adequate to draw any adverse inference against the petitioner.

8. Another school entry of the petitioner of the school at Karadkhel and school entry of his brother were found to be genuine during vigilance. The school record consistently indicate caste as 'Pinjari'.

9. In the present case, oldest record is that of the petitioner of 1977 as there is no illiterate person in his family. The possibility of having old record prior to 1967 is ruled out. Under these circumstances, the affinity test carries significance. To fortify this proposition, we can make useful reference to the observations of the Hon'ble Supreme Court of paragraph Nos. 25 and 36 in the matter of *Maharashtra Adiwasi Thakur Jamat*

Swarakshan Samiti Vs. State of Maharashtra and Ors. reported

in **2023 SCC Online SC 326** as follows:

“25. Now, we come to the controversy regarding the affinity test. In clause (5) of Paragraph 13 of the decision in the case of Kumari Madhuri Patil it is held that in the case of Scheduled Tribes, the Vigilance Cell will submit a report as regards peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, methods of burial of dead bodies etc. in respect of the particular caste or tribe. Such particulars ascertained by the Vigilance Cell in respect of a particular Scheduled Tribe are very relevant for the conduct of the affinity test. The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the applicant. But in a given case, even the parents may be unaware for the reason that for several years they have been staying in bigger urban areas. On the other hand, a person may not belong to the particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, Shri Shekhar Naphade, the learned senior counsel, is right when he submitted that the affinity test cannot be applied as a litmus test. We may again note here that question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with the material produced by the applicant.

36. The conclusions of the Full Bench have been recorded in paragraph 40. In clause (i) of

paragraph 40, the Full Bench of the High Court records that under Rule 12(2), the Scrutiny Committee, if it is not satisfied with the documentary evidence produced, has to forward the application to Vigilance Cell for holding a school, home and other enquiry. The Full Bench does not lay down that in every case where the Scrutiny Committee is dealing with a Scheduled Tribe claim, a reference must be made to the Vigilance Cell. In clause (ii)(a) of paragraph 40, the Full Bench records that the Scrutiny Committee must have regard to the entire body of evidence, including on the question as to whether the applicant has satisfied the affinity test. As held earlier, the question of taking recourse to the affinity test will arise only if the case is referred to Vigilance Cell. In fact, in clause (b) of paragraph 40, the Full Bench holds that even if an applicant does not have any documentary evidence it will not ipso facto result into invalidation of the caste claim. The reason is that in such a case, sub-rule (2) of Rule 12 will apply and the Vigilance Cell will have to hold an enquiry inquiry affinity test. Even in such a case, affinity test will not be conclusive either way as held in clause (2) of paragraph 20 in Anand's case. In clause (c) of the same paragraph, the Full Bench of the High Court also holds that even if the applicant partially satisfies the affinity test, depending upon the nature of the evidence on record, the Scrutiny Committee has power to validate the claim. Thus, even clause (c) proceeds on the footing that the affinity test is not conclusive."

10. We have gone through the vigilance report. The petitioner withstood the affinity test and there is specific conclusion by the vigilance officer that petitioner's family was found to be belonging to 'Pinjari'. The committee totally overlooked this aspect of the matter which is perverse.

11. Our attention is invited to letter dated 19.10.1995 addressed to all divisional commissioners and its annexures. The annexure provides information of caste in the muslim religion. At Sr. No. 4 caste Pinjari, Pinjar, etc. are mentioned and it is further mentioned that their occupation is cotton carding and preparing mattress. We find that same occupation was reported in the vigilance report. This aspect of the matter has also been overlooked by the Scrutiny Committee. We therefore find that impugned judgment is unsustainable. Petitioner deserves validity certificate. We, therefore, pass following order.

ORDER

- (i) Writ petition is allowed.
- (ii) Impugned judgment and order is quashed and set aside.
- (iii) Respondent No.3/Scrutiny Committee shall issue cast validity certificate to the petitioner for Other Backward Class forthwith.
- (iv) There shall be no order as to costs.

(SHAILESH P. BRAHME, J.)

(S.G. MEHARE, J.)

ksk/