



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11681 OF 2023

Smt. Usha Chandrabhan Gunjal,
@ Smt. Usha Ramesh Dighe,
Age 41 years, Occ. Household and
Social Service, r/o. Talegaon Dighe,
Tq. Sangamner, Dist. Ahmednagar.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra
Through the Secretary
Social Justice Department,
Mantralaya Mumbai-32.
- 2) The District Caste Certificate
Validation Committee, Ahmednagar,
Through its President.
- 3) The District Collector, Ahmednagar.
- 4) The Gram Sevak, Grampanchayat
Talegaon Dighe, Tq. Sangamner,
Dist. Ahmednagar.
- 5) Shri. Ramdas Karbhari Dighe,
Age 41 years, Occ. Agriculture.
- 6) Shri. Dattatraya Dyaneshwar Dighe,
Age 44 years, Occ. Agriculture,
Respondent no. 5 and 6 r/o. Talegaon
Dighe, Tq. Sangamner, Dist. Ahmednagar
- 7) Rajshri Babasaheb Kandalkar
@ Rajubai Amruta Saidar,
Age 40 years, Occ. Household,
R/o. Kamdalkar Vasti, At Talegaon
Dighe, Post. Nannaj Dhumala,
Tq. Sangamner, Dist. Ahmednagar.

... **Respondents**

...

Advocate for Petitioner : Mr. Rahul A. Tambe
A.G.P for Respondent nos. 1to 3 : Ms. S.S. Joshi
Advocate for Respondent nos 5 and 6 : Mr. S.S. Thombre

CORAM : **MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR , JJ.**
RESERVED ON : **13.02.2025**
PRONOUNCED ON : **18.02.2025**

JUDGMENT : (MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By invoking powers of this Court under Article 226 of the Constitution of India, the petitioner is taking exception to the judgment and order dated 08.09.2023 passed by respondent no. 2-scrutiny committee, in a proceeding under Section 7 of the Maharashtra Act XXIII of 2001, whereby it has refused to validate his Kunbi (83-OBC) certificate.

3. The petitioner, was elected as a Sarpanch of Talegaon Dighe Grampanchayat, Tq. Sangamner. Her OBC certificate was forwarded to the scrutiny committee for validation. A vigilance enquiry was conducted. Her reply to the report was solicited. Respondent nos 5 and 6 intervened and tried to object her claim. After hearing, by the impugned order the committee refused to validate the OBC certificate.

4. The learned advocate for the petitioner submits that a pre-constitutional birth record of petitioner's great great grandfather of 24.02.1902 and one of 05.07.1904, which were in Modi script, which were got translated by the petitioner through one Mr. Milind Suresh Joshi, were discarded by the committee without assigning cogent and convincing reasons. It merely accepted the opinion of the vigilance officer without calling for the original record from the concerned Tahsil office. He would further point out that in fact even the vigilance officer had entertained doubt only in respect of one of these two entries, of the year 1904. No such doubt was expressed in respect of the other entry of 1902, wherein petitioner's great great grandfather was described in the caste column of the birth

record as 'Kunbi'. Without applying mind and without reading the vigilance report correctly, the committee has perfunctorily rejected such pre-constitutional record having greatest probative value. The approach and appreciation of the evidence by the committee is perverse, arbitrary and capricious.

5. Mr. Tambe would further submit that contradictory entries, wherein the petitioner was described in the school record as 'Hindu Maratha' in the year 1992 and another school record of petitioner's father of a similar kind of the year 1971 and similar entries of petitioner's paternal uncle and cousin of the year 1966 and 2012 respectively, being the entries of later period cannot dislodge the pre-constitutional record. If such contrary record of the subsequent period is to be considered, then simultaneously as the committee has noted in its judgment, there are favourable entries of the post independence period as well. He would submit that in light of the greater probative value of the pre-constitutional record, there was no escape from reaching a conclusion about the petitioner being 'Kunbi'

6. Mr. Tambe would further submit that even by filing additional affidavit in this petition, she has produced on record additional affidavit sworn before the Tahsildar, giving a genealogy and pointing out that her first degree cousin Mahesh Shivram Gunjal, and third degree cousins Nilesh Balasaheb Gunjal, Mahesh Suryabnah Gunjal, Rahul Dattatraya Gunjal and Datta Vikram Gunjal, possess certificates of validity. She has also annexed photo copy of certificates of validity along with the additional affidavit filed in this Court on 09.10.2023, and copies of which were served to all the respondents. He would submit that since there is no counter affidavit, even if such validities were not before the committee, the petitioner is entitled to rely upon these validities. He would, thus submit that the impugned judgment suffers from perversity, arbitrariness and is liable to be quashed and set aside.

7. The learned A.G.P Ms. Joshi would vehemently submit that the Modi script record of the pre-constitutional period in respect of petitioner's great great grandfather could not be verified as reported by the vigilance officer in his report, since the record was not available. Consequently, in the absence of verification of genuineness of such old record, no fault can be found with the committee in refusing to rely upon those entries.

8. Ms. Joshi, would further submit that even if it is accepted that the translator Mr. Milind Suresh Joshi had translated it in the year 2007 and had subsequently died, another translation submitted by the petitioner from another individual was apparently inconsistent with the translation done by Mr. Joshi. Even for this reason, no fault can be found with the committee in refusing to validate petitioner's caste certificate based on such unverified record. She would submit that the very fact that the petitioner, her father, her paternal uncle and her cousin in the post constitutional era could allow the school entries to be made by describing themselves as 'Hindu Maratha', demonstrates that the petitioner does not belong to 'Kunbi' caste. No fault can be found with the appreciation of the committee of the entire evidence that was available before it. The committee has taken a plausible view, which cannot be interfered with in exercise of the powers under Article 226 of the Constitution of India.

9. The learned advocate Mr. Thombre for the contesting respondents would toe the line of submissions addressed by the learned A.G.P Ms. Joshi. Additionally, Mr. Thombre, would submit that this school record of petitioner's ancestors of pre-constitutional era was not duly proved. The translator Milind Suresh Joshi was not alive and could not be examined. Even in the translated version, no specific year is mentioned. It could be read as of the year 2002 or 2004. The petitioner and her family members all are Marathas and simply to derive the benefit of contesting the elections from a reserved category, endeavour has been made by resorting to false and bogus record.

10. Lastly, Mr. Thombre would submit that by virtue of Section 8 of the Maharashtra Act XXIII of 2001, the burden is on the petitioner to prove her claim, which she has miserably failed and the petition be dismissed.

11. We have considered the rival submissions and perused the papers including the original file maintained by the scrutiny committee and made available to us by the learned A.G.P.

12. Obviously, the petitioner basically has been relying upon the birth record of her great great grandfather, which she states to be of the year 1902 and 1904, wherein he was described as 'Kunbi'.

13. The committee has refused to rely upon this record on the ground that though the birth record is stated to be of 1904 in Form 14 of village Kakdi, since the original register was not traceable, it could not be verified. However, conspicuously, though simultaneously, the birth record of 24.02.1902 was also referred to in the report of the vigilance officer, a mention of which can be found at Sr. No. 8 in the list of documents collated in the impugned judgment and order, without the vigilance officer in his report having raised any suspicion rather had expressly mentioned therein that he could not verify the entry of the year 1904, since the birth and death register was not traced in the office, conspicuously, he had not made a similar observation in respect of the 1902 entry in the birth register. Meaning thereby that the vigilance officer had not entertained any doubt about 1902 entry in the birth register and had merely pointed out that he could not verify the other entry of the year 1904, since the record was not available. The committee in its impugned judgment and order should have specifically dealt with the birth record of petitioner's great great grandfather of 1902. By making comments only in respect of inability of the vigilance officer to examine the birth and death register of 1904 and overlooking conspicuous absence of any doubt having been expressed by the vigilance officer in respect of 24.02.1902 entry, it is abundantly clear that the

conclusion drawn by the committee is perverse and arbitrary.

14. True it is, as is pointed out by the committee, there is contrary school record of the post independence period of the petitioner, her father, her paternal uncle and her cousin, wherein they were described as 'Hindu Maratha'. However, as has been held in the matter of ***Anand V. Committee for Scrutiny and Verification of Tribe Claims and others; (2012) 1 SCC 113***, the oldest entry that too of a pre-independence period would have a greater probative value and would outweigh the contrary record of later period. Therefore, the school record of petitioner's great great grandfather of 24.02.1902, is a clinching piece of evidence casually overlooked by the committee.

15. A precise query was put to the learned A.G.P as also to Mr. Thombre advertent their attention to this fact, to which they could not respond with any rational explanation.

16. It is equally true that there seems to be a slight variance in the translation, which was done by Milind Suresh Joshi, and the one by another translator. However, the committee has not made any observation in that regard in the impugned judgment and order and therefore we need not resort to it, more so when it is a petition under Article 226 of the Constitution of India.

17. Again, apart from the affidavit and the validities being pointed out, filed in the petition, which have gone uncontraverted in the absence of any reply by the respondents, even the original file of the petitioner with the scrutiny committee contains the original affidavit of one Mahesh Shivram Gunjal, stating himself to be the petitioner's first degree cousin expressly mentioning that he received 'Hindu Kunbi (83-OBC) certificate of validity. However for reasons not disclosed anywhere, has not been subjected by the respondent-scrutiny committee to scrutiny. The fact that such original affidavit is available in the petitioner's file maintained by the committee

coupled with the fact that even in the writ petition she has filed her affidavit and has annexed the certificate of validity issued to Mahesh, which has gone without demur, is an additional circumstance to demonstrate that the petitioner belongs to 'Kunbi OBC' category.

18. In light of above, the observations and conclusions of the scrutiny committee are clearly perverse, arbitrary and capricious and are liable to be quashed and set aside and reversed.

19. The writ petition is allowed.

20. The impugned order is quashed and set aside. The respondent-committee shall issue certificate of validity to the petitioner of 'Kunbi (83-OBC)' category immediately.

21. Rule made absolute accordingly.

(PRAFULLA S. KHUBALKAR J.)

(MANGESH S. PATIL, J.)

mkd/-