ARUNA SANDEEP TALWALKAR
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9195 OF 2024

Swanubhuti Jeevraj Jain.
Survey No. 580/581, Flat No. 3,
Raisoni Park, Marketyard,
Gultekdi, Pune City, Pune
Maharashtra 411037. … Petitioner.

Versus

1. The State of Maharashtra
through the Office of the
Assistant Government Pleader.
Bombay High Court.
2. The Secretary,
Social Justice Department,
Government of Maharashtra,
Mantralaya, Mumbai- 400032.
3. District Collector
Srvy No. 488, Ambad
Chowk, Aurangabad-Nagpur
Road, Old Jalna,
Jalna – 431213.
4. Sub Divisional Magistrate,
SDM Office Bhokardan
Markaj Masjid Road,
Bhokardan, Jalna – 431114.
5. The Secretary,
Social Justice Department,
Government of Maharashtra,
Mantralaya, Mumbai 400032.
6. Chief Commissioner
Aaple Sarkar Portal,
Maharashtra State Commission foregoing
Right to Services, 7th floor,
New Administration Building,
Hutatma Rajguru Chowk,
Madam Cama Road,
Opp. Mantralaya 400032. … Respondents.

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Mr. Aditya Pratap, a/w. Ms. Abha Singh i/b. Aditya Pratap Law Offices, for the Petitioner.
Mr. V.M. Mali , AGP for Respondent/State.

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CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.

DATE : 10th FEBRUARY, 2025

JUDGMENT (Per RAVINDRA V. GHUGE,J)

1. Leave to correct the description of Respondent No. 5, in order to mention the Department of Social Justice and Special Assistance, through its Secretary. Correction to be carried out forthwith.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. The Petitioner has put forth prayer clauses 5.1, 5.2, 5.3, 5.4, 5.5 & 5.6, as under :

> "*5.1 The Hon'ble Court may be pleased to issue writ of mandamus/guidelines in favor of the petitioner and grant her caste certificate on the basis of her mother's caste.*
>
> *5.2 The Hon'ble Court may be pleased to issue writ of mandamus to Respondent No. 1 directing them to amend Form -1 of the said rules allowing the citizen to enter the details of their mother's caste for availing the caste certificate.*

5.3 The Hon'ble Court may be pleased to issue writ of mandamus Respondent No.6 directing them to amend the Aaple Sarkar Portal allowing the users to enter the details of their mother's caste for availing the caste certificate.

5.4 That this Hon'ble Court be pleased to hold that the Application that was rejected by the Maharashtra state is violative of Article 14 and Article 15 of the Constitution of India.

5.5 The Hon'ble Court be pleased to declare that under Article 25 of the Constitution of India every Indian citizen has a right to practice and propagate a religion of his own choice and a citizen cannot be forced to follow any particular religion.

5.6. That this Hon'ble court be pleased to pass appropriate writ to the Res no. 2 and 5 to bring necessary changes in the Said Act and Said rules so as to remove the present anomalies."

4. The Petitioner is a 30 years old lady. Her father belongs to the Jain community which falls in the open category. Her mother is Mrs. Lata Jeevraj Jain, claims to be belonging to Shimpi Community (from her paternal side) falling in the OBC category. The Petitioner applied for seeking a caste certificate on the basis of her mother's caste. The said application has been rejected by the Authorities.

5. The Petitioner tried to upload an online application on the

Web portal of the State Government, known as “Aaple Sarkar”. However, she could not complete the application and upload it since she prayed for a caste certificate on the basis of her mother's caste. “Aaple Sarkar” Web Portal accepts only the details of the father. Hence, it is prayed that a direction be issued not only to grant a caste certificate to the Petitioner based on her mother’s caste, but the Government be directed to modify “Aaple Sarkar” Web Portal and give a choice to the candidates for tendering details of the caste/social status even by relying upon the mother’s status.

6. We are summarizing the averments made by the Petitioner in this Petition, as under :

(a) The Petitioner’s father does not believe in any caste system.

(b) The Petitioner’s father is a follower of Baba Amte and he is highly influenced by the thoughts of the Late Baba Amte.

(c) The Petitioner has been staying with her mother in her mother’s village ever-since she was born.

(d) Because of the father’s belief that there is no caste system, he participated in a march from Kanyakumari to Kashmir, in 1985-1986 and Arunachal Pradesh to Okha, Gujarat, in 1988-1989.

(e) He married the Petitioner’s mother in early 1990.

(f) The Petitioner was born on 31.05.1994 at Taluka Jafrabad, District Jalna.

(g) Her father's permanent address is Flat No. 21, Building No. 3, Raisoni Park, Gultekadi, Opposite Market Yard, Pune.

(h) The Petitioner's mother is a home maker and has no source of income.

(i) She studied in Class 4 to Class-9, at CBO Mary School, at Nashik, when her father was posted due to his service in Bank of Maharashtra. She took her education in the 10th Standard at NMV School in Pune, 11th and 12th in the N.S. Wadia Junior College, Pune and Graduation from the Savitribai Phule Pune University. All along, her father was at the place where she took education.

7. In catena of Judgements, the Hon'ble Supreme Court has cautioned that such certificate can be granted after a proper scrutiny and due verification of the records. In our view, while dealing with such matters, we have to be conscious of the fact as regards the purpose and object of seeking such a caste certificate on the basis of the mother's social status, since the mother belongs to the reserved category. More so, if we notice that the facts are being distorted by the Petitioner for self-serving purpose.

8. In ***Rameshbhai Dabhai Naika v/s. State of Gujarat & Ors***.[1], the Hon'ble Supreme Court has concluded that if there are sufficient circumstances indicating that the child was completely away from the father and was neither influenced nor nurtured by him and, constantly lived with the mother, who was the only person who has brought her up, she can claim the certificate on the basis of her mother's caste/tribe, if the mother belongs to a backward community.

9. In ***Valsamma Paul v/s Cochin University;***[2] the Hon'ble Supreme Court held that when a member is transplanted in the Dalits, Tribes or OBCs, he\she must of necessity also have had undergone the same handicaps and must have been subjected to the same disabilities, disadvantages, indignities or reservation. A candidate who had an advantageous start in life on being born in the forward caste and had a march in life, but, is transplanted in the Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation under Article 15(4) or 16(4), as the case may be. Acquisition of the status of SC/ST, etc. by voluntary mobility into these categories would be a fraud on the Constitution and would frustrate the benign Constitutional policy u/A 15(4) and 16(4).

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1 (2012) 3 SCC 400
2 (1996) 3 SCC 545

10. We have stumbled across such factors in this case, that we are convinced to draw a conclusion that the Petitioner has tried to mislead us. We, have, therefore, analysed her pleadings and averments in the face of her contentions recorded above and we realise the motivated attempt made by her to draw the benefit of reservation, despite having been brought up by her father who belongs to an upper caste.

11. It is nowhere pleaded in the Writ Petition memo, which runs in to 30 pages, that her father has separated from her mother long ago or that her mother is a destitute or that it was the mother who singularly raised the child and it was she who has influenced and nurtured her. In the entire Petition, neither the Petitioner states that her mother was living separately along with her parents and the Petitioner was in her custody or that there are any proceedings pertaining to any marital discord between the couple or that the father had turned his back on the family and had left the company of the wife and the daughter and had virtually deserted them.

12. After summarizing the pleadings, on the basis of the record, we noticed as under :

a) There is no contention that the father and the mother of the

Petitioner are not living together and have parted ways for several years.

(b) There is no contention that the father lives in a different premises or has a separate dwelling and the mother is compelled to reside separately in a different dwelling.

(c) In fact, the father of the Petitioner is an officer in the Bank of Maharashtra and the Petitioner was staying with him along with her mother.

(d) The education of the Petitioner has been in Pune ever since her 4th Standard, right up to her graduation.

(e) The Petitioner resides in Flat No. 3, Survey No. 580/581, Raisoni Park, Market Yard, Gul Tekadi, Pune City, which is the address of the present Petitioner. Same is the address of her father.

(f) Her mother is a home maker and has no source of income.

(g) The Petition is bereft of necessary details as regards the funding of the Petitioner's education, initially at Nashik and then in Pune. Her mother has not spent on her education, being unemployed and there being no such contention made in the pleadings. Her address and her father's address is just the same.

13. The Petitioner has relied upon the following Judgments :

1. Ravi Kumar Atheist v. State of Haryana, CWP No. 15658 of 2019

2. Ramesh Dabhai Naika v. State of Gujrat and Ors. Civil Appeal No. 654 of 2012.
3. Kasturi Sushma Khandekar v. State of Maharashtra W.P. No. 3254 of 2021.
4. Anchal v. District Caste Scrutiny Committee Writ Petition No. 4905 of 2018.
5. Sri. Sujith vs. Commissioner and Ors. W.P. No. 32526 of 2016.

14. We have perused the said judgments and we find that in each of these judgments, the crystalised position of law is that the facts of the case must be carefully perused to assess as to whether the Son/Daughter, was actually in the custody of the mother and both were away from the father. The entire nurturing and up-bringing must have been done by the mother without any participation of the father. Each case has to be decided on the basis of the facts emerging from the records. The presumption that the child has the caste of the father, cannot be rebutted and such presumption may be stronger in the case where the marriage is inter-caste. But, by no means can such presumption be conclusive or irrebuttable and it is open to the child of such marriage to establish that he/she is brought up only by the mother who belongs to the scheduled caste or the scheduled tribe.

15. It is also concluded in the above referred judgments that

such a child of a forward caste father, should not have received any advantageous start in life. To the contrary, such child must have suffered deprivation, indignities, handicaps, etc. since the mother is a member of the backward community.

16. In the present case, the learned Advocate for the Petitioner, submits on instructions that all throughout during her education, her father's community was mentioned in her school records. Even her Adhar Card carries the address of the father. The learned AGP submits that the mother applied for the OBC caste certificate of Shimpi on 6.4.2022. Apparently, prior thereto, she did not have the caste certificate of a Shimpi. She received the caste certificate on 26.04.2022. Promptly thereafter, the Petitioner applied for the caste certificate on 15.07.2022. In fact, it is pleaded in paragraph 2.7 of the Petition that the father was serving in the Bank of Maharashtra and had a transferrable job. It is then contended that the mother used to take care of the Petitioner. If these submissions are to be analysed in the light of the record available before us, it is apparent that the father and the mother, as well as the Petitioner, were living together on the same address in Pune, since the Petitioner (daughter) carries the same address as that of her father and it is contended that the mother was always with the Petitioner.

17. We put a specific query to the learned Advocate for the Petitioner, when this matter was heard extensively on 7th February, 2025 as to what was the purpose for which the Petitioner now desires a caste certificate on the basis of her mother's caste certificate, which her mother has very recently obtained. He submits on instructions that the Petitioner desires to make use of the mother's OBC category due to which she will be getting reservation in the competitive exams. It is common knowledge that on the basis of such reservation, there would be age relaxation for the Petitioner for appearing for the competitive exams, since she is already 30 years and 9 months of age and would become 31 years of age on 31.05.2025. She had mentioned her father's open category status, in all of her examination forms for the competitive exams she appeared in, here before.

18. In the light of the peculiar facts as above and taking into account the documents before us, it is clearly established that the Petitioner is residing with her parents together, on her father's address and the mother has no source of income, which would indicate that the father has been funding the education of the Petitioner. There is no marital discord between the couple. This clearly indicates that after completing her graduation at the age of 21-22 years, she made various

attempts in the competitive exams, and failed. As per the contention of the Petitioner that, she has been appearing for several competitive exams on the basis of her father's social status of being a Jain falling in the open category and having failed in securing a job in any of the competitive exams, the mother applied for a Shimpi Caste Certificate for the first time on 04.04.2022. After she received it on 26.04.2022, the Petitioner made an application in July, 2022. Obviously, after leading a life in an upper caste father's house, having had taken education in reputed schools and colleges, she had an advantageous start in life and now she desires to take advantage of her mother's reservation.

19. We find that the several judgments on this point categorically strike a caution that the Court dealing with such matters must be careful and should assess as to whether such a claim is made by indulging in misrepresentation before the Court. The factors emerging from the records before us and analyzed in the foregoing paragraphs, indicate to us that the father married the Petitioner's mother in early 1990, had a family of his own, has a good job in the Bank of Maharashtra and the address of the family members is the same even today. This Petition has been filed for self serving purposes. We also sense that an attempt to misrepresent has been made. However, we wish

to give a *'quietus'* to this issue.

20. In so far as prayer clause 5.3 reproduced above, we call upon the State Government to consider the said aspect and since it involves a decision to be taken by the Government, it would be appropriate for the Government to constitute a proper committee which is assisted with data/information, so as to consider, whether a clause in exceptional circumstances, can be entered in the 'Aaple Sarkar' portal to enable an applicant to tender the details of the mother's social status.

21. With the above observation, **this Petition being devoid of merits, is dismissed.** Rule is discharged.

(ASHWIN D. BHOBE, J.) **(RAVINDRA V. GHUGE, J.)**