



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7381 OF 2024

Kum. Pathan Javeriya Afroz Mohsin Khan
Age : 21 years, Occu : Education,
R/o. Gangakhed, Tq. Gangakhed,
Dist. Parbhani

.. Petitioner

Versus

1] The State of Maharashtra,
Tribal Development Department,
Through its Secretary,
Mantralaya, Mumbai – 400 001

2] Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad,
Office at Aurangabad,
Through its Member Secretary

.. Respondent

...
Advocate for petitioner : Mr. S.S. Phatale
Addl.GP for the respondent – State : Mr. P.S. Patil
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 01 AUGUST 2024
PRONOUNCED ON : 07 AUGUST 2024**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith.

2. By this petition under Article 226 of the Constitution of India read with section 7 (2) of the Maharashtra Act No. XXIII of 2001 ('Act'), the petitioner is taking exception to the judgment and order of the respondent – scheduled tribe certificate scrutiny committee ('Committee'), constituted under the provisions of that Act, refusing to

validate her Tadvi scheduled tribe certificate and directing its confiscation and cancellation.

3. The learned advocate for the petitioner would submit that this is a second round of litigation. The petitioner had tried to substantiate her claim by leading cogent and reliable evidence but it was discarded for no valid reason. She relied upon the genealogy and even filed affidavit of one Ahmedkhan Burhankhan Pathan. She was relying upon the school record of that Ahmedkhan's father Burhankhan Pathan of 1920, wherein he was described in the caste column as 'Tadvi'. However, during vigilance enquiry, Ahmedkhan Burhankhan Pathan stated before the vigilance officer not being related to the petitioner and his affidavit was obtained by coercion. He also gave a separate genealogy. However, during the course of enquiry, the petitioner had kept present Ahmedkhan Burhankhan Pathan. An application was submitted to the committee to record his statement which he had earlier resiled. However, the opportunity was not extended and the claim was decided against the petitioner. In writ petition no. 10693 of 2023, this Court remanded the matter precisely to verify correctness of either of the stands of Ahmedkhan Burhankhan Pathan. Additionally, a *Nikahnama* in Urdu of 1376 Fasli (1966 A.D.) was also produced in the writ petition. It was also stated that it was also produced before the committee but it had not undertaken any verification of that Urdu document and that claim was decided.

Considering such lack of opportunity to the petitioner and impropriety in the procedure adopted by the scrutiny committee, this Court had remanded the matter to the committee for decision afresh.

4. The learned advocate further submitted that after remand, pursuant to additional enquiry, the committee has again dismissed petitioner's claim ignoring to adopt the stand of Ahmedkhan Burhankhan Pathan. There was no reason for the committee to discard his direct version when he had expressly stated the genealogy and the fact that the then vigilance officer had recorded his submission under duress and the petitioner, in fact, is related to him by blood from the paternal side. No sufficient and cogent reasons have been assigned by the committee. The decision to discard his version is clearly perverse, arbitrary and capricious.

5. Mr. Phatale would submit that sofar as the Urdu document of 1376 *Fasli*, the vigilance officer had visited the office of the Maharashtra State Wakf Board at Gangakhed. The stand of the committee to discard this old document is also perverse and arbitrary. It has resorted to drawing some inference without any substance. It was clearly showing that his grandfather was Tadvī and the committee ought to have accepted this.

6. Mr. Phatale would submit that it is not necessary that there has to be pre-constitutional record without which no claim can be

validated. Even if the petitioner was unable to produce any pre-constitutional record, apart from the school record of Ahmedkhan Burhankhan Pathan and that of cousin great grandfather – Burhan Gulzar Tadvi, the claim could not have been discarded. He would submit that the impugned judgment and order being perverse and arbitrary, be reversed.

7. Per contra, the learned AGP would submit that the petitioner has miserably failed to substantiate her claim. She had failed to demonstrate by leading some positive evidence about Ahmedkhan Burhankhan Pathan being related to her by blood. No plausible explanation is coming forth why he had initially tried to resile from the affidavit. He had even prepared a genealogy wherein the branch of the petitioner's forefathers was not traceable. She has resorted to fraud and manipulation and even Ahmedkhan Burhankhan Pathan has now connived with her. He ought to have given some explanation as to why the branch of petitioner's forefathers was not revealed by him. No fault can be found in the impugned order whereby the committee has refused to give credence to his changed stand.

8. The learned AGP would submit that in fact the petitioner's family is resident of Gangakhed which is in Parbhani district whereas this Ahmedkhan Burhankhan Pathan hails from Amode, Taluka – Yawal, District – Jalgaon bordering Madhya Pradesh. There is nothing

to demonstrate as to how the two families started residing at such distant places which are more than 300 km apart. He would submit that even this had weighed with the committee in discarding the stand of the petitioner and that of Ahmedkhan Burhankhan Pathan.

9. The learned AGP would further submit that even attempt has been made by the petitioner to resort to fraud and manipulation in connivance with Ahmedkhan Burhankhan Pathan. Though they have been relying upon the extract of the school record showing that Ahmedkhan Burhankhan Pathan's grandfather – Gulzarkhan stated to be admitted in the school on 01-09-1920, mentioned in book no. 6, register no. 365 of Zilla Parishad Primary School, Amode, Taluka – Yawal, during vigilance enquiry when the vigilance officer visited the school, name of Burhan Gulzar Tadvī was not traceable at that serial number. Similar was the case in respect of the school record of Ahmedkhan Burhankhan Pathan stated to be admitted in school on 27-04-1950 at serial no. 1063 but even that was not traceable with the school.

10. The learned AGP would submit that even the Urdu document of 1376 *Fasli* is a *Nikahnama* of 01-04-1957 purportedly that of petitioner's grandfather – Babukhan Dadekhan Tadvī. However, caste of the petitioner's grandfather was stated as Tadvī whereas that of her grandmother (bridegroom) was described in the caste column as

Sayed. No fault can be found with the inference drawn by the committee that Tadvi and Sayed are distinct castes and no intercaste marriages take place. Even this was rightly discarded by the committee.

11. The learned AGP would thus submit that apart from the above, other documents produced by the petitioner and sought to be relied upon by her, were found to be manipulated showing that the petitioner and her family members have no regard to truth. By virtue of section 8 of the Act, the burden lies on the petitioner to substantiate her claim. The observations and the conclusions of the committee are based on plausible appreciation of the material and no exception can be taken. He prays to dismiss the petition.

12. We have considered the rival submissions and perused the papers.

13. It is a matter of record that when the petitioner had initially put up a proposal for validation of her 'Tadvi' scheduled tribe certificate, she had filed an affidavit of Ahmedkhan Burhankhan Pathan together with a genealogy, wherein, she was shown to be his niece. She also sought to rely upon the school record of Burhankhan Pathan of the year 1920, wherein, he was described as 'Tadvi'. However, during vigilance inquiry, Ahmedkhan Burhankhan Pathan stated before the vigilance officer that he had sworn that affidavit under duress and also

denied having any blood relationship with her and also submitted a separate genealogy. The committee refused to consider such school record of Burhankhan, based on such a changed stand of Ahmedkhan Burhankhan Pathan and overlooked his affidavit filed by the petitioner and discarded her claim. In writ petition No.10693 of 2023, the petitioner had submitted that an application of Ahmedkhan Burhankhan Pathan on 24-08-2022 resiling from what was reported by the vigilance officer and stating that whatever he had stated in the affidavit produced by her was the true state of affairs, the Committee had failed to consider it. This Court quashed and set aside the order of invalidation and the matter was remanded back to the scrutiny committee for taking a decision afresh in light of the stand that was being taken by Ahmedkhan Burhankhan Pathan and even for considering the worth of the *Nikahnama* in Urdu of 1376 *Fasli*.

14. Accordingly, the Committee once again resorted to the vigilance inquiry and by the impugned judgment and order refused to validate petitioner's tribe certificate disbelieving Ahmedkhan Burhankhan Pathan and discarding the *Nikahnama* of 1376 *Fasli*.

15. It is a matter of record that Ahmedkhan Burhankhan Pathan, for whatever reason, has not been consistent. Though he had filed initially an affidavit supporting the petitioner, before the vigilance officer he retracted it and again has resiled from the stand taken before

the vigilance officer and now supports the petitioner. Considering the fact that he is a resident of Amode, Taluka – Yawal, District Jalgaon, whereas, the petitioner's family hails from Gangakhed, District Parbhani which are the places more than 300 km apart, in the absence of any other corroborative material, one cannot find fault with the inference drawn by the Committee refusing to believe Ahmedkhan Burhankhan Pathan.

16. It is not the issue as to if he and his forefathers are 'Tadvi' by caste. The issue is, as to if there exist any blood relationship between the petitioner and him. It was, therefore, imperative for the petitioner to have led evidence corroborating her such stand, more so in light of the fact that the native of both these families is about 300 km apart. Even if it is trite that the burden to be discharged under Section 8 of the Act, to substantiate the claim of belonging to a particular scheduled tribe or scheduled caste, can be discharged by preponderance of probabilities and a strict proof is not necessary, the aforementioned circumstances of Ahmedkhan Burhankhan Pathan changing the stand from time to time coupled with the fact of distance between the natives of these two families, no fault can be found with the Committee in discarding the stand of the petitioner seeking to derive benefit from the pre-constitutional school record of ancestors of Ahmedkhan Burhankhan Pathan.

17. Again, as far as *Nikahnama* of 1376 Fasli is concerned, since it is of post-independence period, it would have an inherent limitation in substantiating the petitioner's caste claim, more so when her grandfather has been described therein as 'Tadvi' but the bridegroom is shown to be 'Sayad'. No argument has also been advanced on the observations of the Committee in the impugned judgment and order pointing out such discrepancy in the *Nikahnama* and more importantly when it is not the petitioner's case about her grandfather having solemnized inter caste marriage. We, therefore, are unable to appreciate the submission of the learned advocate for the petitioner that even this *Nikahnama* would be relevant and acceptable piece of evidence to substantiate the caste claim. The observation of the Committee, therefore, refusing to give credence to this piece of evidence, also cannot be faulted with.

18. Coupled with the aforementioned aspects, even the fact that as indicated by the Committee in the impugned judgment and order, even the petitioner's family seems to have indulged in rampant manipulation of the school record obviously for substantiating the caste claim puts everyone on guard. The Committee has reproduced such dubious school record in the impugned order, in a chart, which reads as under :

Sr. No.	Admission Sr. No.	Name of the Student	Relation with the applicant	Caste Recorded	Admission Date	Remark
1.	166	Pathan Khurshid Babu	Uncle	Musalman Tadvi	15/10/1969	Tadvi has been added in a different ink and handwriting
2	1181	Shahbas Khan Babukah	Uncle	Musalman Tadvi	29/06/1976	Tadvi has been added in a different ink and handwriting
3	799	Pathan Moinkha Babukha	Uncle	Islam Tadvi	23/07/1980	Tadvi has been added in a different ink and handwriting
4	798	Pathan Nayumkha Babukha	Uncle	Islam Tadvi	23/07/1980	Tadvi has been added in a different ink and handwriting
5	429	Khan Mohsinkha Babukha	Father	Tadvi Pathan	29/06/1982	Tadvi has been added in a different ink and handwriting

19. Even if it is a matter of record that initially, when the petitioner's claim was decided for the first time, such alleged manipulated school record was used by the Committee without extending an opportunity to the petitioner to explain the allegations and contrary to the decision in the matter of **Sayanna Vs. State of Maharashtra and Ors.; (2009) 10 SCC 268**. However, when admittedly, the matter was remanded, the petitioner is not entitled to again bank upon **Sayanna** (supra). It was, therefore, imperative for her to respond to such school record stated to have been manipulated. Failure of the petitioner to deal with and explain away such manipulated school record is demonstrative of the fact and sufficient to substantiate the inference of the Committee that the petitioner and her family have indulged in manipulation and attempted to practise fraud. This would be an additional circumstance which would lend support to the inference drawn by the Committee while discarding her 'Tadvi' scheduled tribe claim.

20. In light of above, in our considered view, the impugned judgment and order cannot be said to be perverse or arbitrary.

21. The writ petition is dismissed.

22. Rule is discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/