

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 7417 OF 2021

Juned Ahmed Khan Maqdum Khan,
Age 51 years, Occu. Service,
R/o. Block No.B-2, Sikandar Park,
Maqsud Colony, Roshan Gate,
Aurangabad, District Aurangabad.

...Petitioner.

Versus

1. The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
through its Member Secretary.
3. The Principal,
Shri Babanrao Dhakne Junior
College, Chikalthana,
Aurangabad.
4. Bhagwan Pratishthan,
Aurangabad
through its Secretary

....Respondents.

...

Advocate for Petitioner : Mr. S.R. Barlinge
AGP for Respondents 1 & 2 : Mr. S.G. Karlekar
Advocate for Respondent 4 : Mr. S.G. Rudrawar

...

**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.**

DATED : 18/08/2021.

ORAL JUDGMENT : [PER S.V. GANGAPURWALA, J.]

. Rule. Rule made returnable forthwith. Taken up for final disposal at the stage of admission.

2. The tribe claim of the petitioner is invalidated. Aggrieved thereby present writ petition.

3. Mr. Barlinge, the learned counsel for the petitioner submits that, the Committee failed to consider the old record of the pre-independence period. The certificate issued by the Controller of Examination to Akbarkhan Tadavi, the great grandfather of the petitioner shows the name as Tadavi. The document is of 1349 Fasli equivalent to 1939. The school record of the petitioner records caste as Tadavi. The father of the petitioner has been issued with the validity certificate of Tadavi (Scheduled Tribe) in the year 2001 by the competent Committee. The paternal aunt of the petitioner is also issued with tribe validity certificate of Tadavi (S.T.) on 25.08.2005. The service book of the petitioner's father records caste as Tadavi (S.T.).

4. In the school record of the father, caste is recorded as Muslim. Muslim is a religion. The learned counsel submits that, there is not a single contra evidence on record. The old document has not been considered. The same document was relied by the

Committee while granting validity certificate in favour of the father of the petitioner. The Committee has failed to consider these aspects in its proper perspective.

5. The learned A.G.P. states that the committee has intended to review the order passed by this Court in Writ Petition No.13356/2017 dated 3rd May 2018 filed by Sabahat Sartaj Khan, niece of the present petitioner.

6. The learned A.G.P. further submits that, the petitioner's ancestors are residing at Aurangabad. In Aurangabad persons of Tadavi community never resided. The petitioner's father's surname is Khan, as such they are Pathans and not Tadavies. The affinity has not been proved. The old document relied by the petitioner of Akbarkhan Tadavi is not considered by the vigilance. The translation is not proved. The learned counsel submits that in the father's record only Musalman is recorded. Tadavi (S.T.) in Muslims can only be of those who are converted, otherwise basically in Muslims Tadavi (S.T.) cannot be found. The Committee has considered all the relevant aspects of the matter. The petitioner has also failed in the affinity test.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. It is a matter of record that, the father of the

petitioner has been issued with the validity certificate of Tadavi (S.T.). The same is issued after conducting vigilance. The old document in favour of great grandfather of the petitioner of 1349 Fasli (1939) was also subject matter of consideration in the proceedings granting validity to the father of the petitioner. The same document is placed on record in the present matter also. The Committee has not disputed the relationship as claimed by the petitioner with Akbarkhan Tadavi. The Committee has also not raised any doubt in respect of said document. It was for the Committee to verify the said document.

9. The school record of the petitioner consistently records caste as Tadavi. The school record of the father of the petitioner records caste as Muslim. Muslim is a religion and cannot be construed as a contra evidence. There is not a single contra evidence on record.

10. The Division Bench of this Court at it's principal seat at Bombay in Writ Petition No. 10367 of 2017 under judgment dated 27th September, 2017 has held that, the Director of Social Welfare, Maharashtra State, Pune has issued letter dated 04th March, 1978. It is stated by the Director of Social Welfare that the Government of Maharashtra by letter dated 18th February, 1977 addressed to the Collector, Jalgaon and other Collectors of different districts in the State of Maharashtra communicated that, Tadavi caste is included in the Scheduled Tribe. It has also been

stated that, Tadavi caste may be of any religion are eligible to get certificate of the scheduled tribe. It was further held in the said judgment that, if a candidate is not aware of traditional social customs of Tadavi Bhil, it cannot be merely a ground for holding that he does not belong to Tadavi tribe at all. The Division Bench further observed that, if the petitioner is unable to tell what the traditional social customs of Tadavi tribe are, it cannot be said that, he ceases to belong to Tadavi tribe.

11. In the present matter, there are no contra evidences. Father of the petitioner is issued with validity certificate. The paternal aunt of the petitioner is also issued with the validity certificate of Tadavi (S.T.). The old document of 1939 of the great grandfather of the petitioner records name as Akbarkhan Tadavi. The same document was also part of the proceedings in which father of the petitioner was given validity certificate of Tadavi (S.T.). Relationship of the present petitioner with Sabahat Sartaj Khan, who is niece of the petitioner does not appear to be disputed. This Court under it's judgment and order dated 3rd May 2018 in Writ Petition No. 13356/2017 filed by Sabahat Sartaj Khan had directed the committee to issue the validity certificate of Tadvi (Scheduled Tribe) to her.

12. In view of all these facts, the judgment of the committee is quashed and set aside. The Committee shall issue the validity certificate to the petitioner of Tadavi (Scheduled Tribe).

13. In case, the judgment of this Court in Writ Petition No. 13356/2017 dated 3rd May 2018 is reviewed, then the Committee may take further steps in respect of the present matter also.

14. The writ petition is accordingly allowed. No costs. Rule is made absolute.

[R.N. LADDHA, J.]

[S.V. GANGAPURWALA, J.]

ssc/