

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6849 OF 2016

Aishwarya Sudhakar Gaikwad

...Petitioner

*Versus*

State of Maharashtra & Ors.

...Respondents

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Mr. R. K. Mendadkar, for the Petitioner.

Mr. B. V. Samant, AGP for the Respondent Nos.1 to 5.

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CORAM : B.R. GAVAI AND  
RIYAZ I. CHAGLA, JJ.

DATE : 10 July 2017

**JUDGMANE (Per Riyaz I. Chagla, J.):**

1. Rule. Rule made returnable forthwith. Heard by consent of parties.

2. The Petitioner by the present Petition is challenging the judgment and order dated 30 January 2016 passed by

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Respondent No. 2 Scrutiny Committee which has invalidated the Caste Certificate, dated 30 May 2011 issued in favour of the Petitioner, certifying that the Petitioner belongs to “Thakar” Scheduled Tribe Community.

3. This is the second round of proceedings instituted by the Petitioner. The Petitioner had been granted admission in M.B.B.S. Degree course in the academic year 2013-14 by Respondent No. 4 in the College of Respondent No. 5. The Petitioner intended to go for higher education and had moved Respondent No. 2 Scrutiny Committee for validation of tribe claim as belonging to Thakar, Scheduled Tribe. Respondent No. 2 Scrutiny Committee had invalidated the Caste Certificate by its order. The Petitioner had filed Writ Petition No. 10935 of 2013 in this Court. The Division Bench of this Court (A.V. Mohta and A.A. Sayed, JJ) had by order dated 27th February, 2014 quashed and set aside the order dated 16 September 2013 passed by Respondent No. 2 Scrutiny Committee and remanded the matter back for fresh consideration.

4 . The Petitioner was granted hearing by Respondent No. 2 Scrutiny Committee. The Petitioner filed written submissions and relied on several Judgments wherein the Respondent No. 2 Scrutiny Committee had validated the Caste Certificate which were similar to that of the Petitioner. The Petitioner relied upon several Caste validity Certificates which had been issued in favour of the Petitioner's relatives from her paternal side. The Petitioner also relied upon the vigilance cell reports in relation to the blood relatives of the Petitioner from paternal side. Respondent No. 2 Scrutiny Committee in the impugned order dated 30 January 2016 relied on certain information derived from the internet and one isolated entry where “*Maratha*” had been mentioned in the Caste Certificate in relation to the Petitioner's blood relative from the paternal side. The other incidents relied upon by the Respondent No.2 Scrutiny Committee were not in relation to the Petitioner's blood relatives from the paternal side. Respondent No. 2 Scrutiny Committee has once again invalidated the Caste Certificate of the petitioner by the impugned order dated 30 January 2016.

5. Shri. R. K. Mendadkar, the learned Counsel for the Petitioner has submitted that Respondent No. 2 Scrutiny Committee had failed to consider the Caste Validity Certificates which had been granted to the father of the Petitioner, real brother of the Petitioner, three uncles of the Petitioner. All these were blood relatives of the Petitioner from the paternal side and there was no dispute regarding their relationship with the Petitioner. Shri. Mendadkar has submitted that the Respondent No. 2 Scrutiny Committee has relied on certain Caste Certificates of the relatives of the Petitioner which had been recorded as “Maratha” and “Maratha Thakar” and “Hindu Thakar”, these relatives were not blood relatives from the paternal side of the Petitioner.

6. Shri. Mendadkar has submitted that the Division Bench of this Court in the earlier Petition filed by the Petitioner, by order dated 27 February 2014, remanded the matter back to the Scrutiny Committee and had observed that the present matter was covered by the Judgment dated 26th February, 2014

in **Madhuri Nitin Jadhav Vs. State of Maharashtra & Ors.** in Writ Petition No. 7343 of 2013. Shri. Mendadkar has further submitted that the Hon'ble Supreme Court in an identical matter viz. **Anita Gaekwad Vs. State of Maharashtra & Anr.** Relying upon the Judgment of the Apex Court in **Raju Ramsingh Vasave Vs. Mahesh Deorao Bhivapurkar, 2008 vol 9 SCC 54**, held that where the near relatives had obtained Caste validity Certificates which were approved by the Scrutiny Committee, then it would be unfair to the person concerned to be told that he/she does not belong to that community. The Hon'ble Supreme Court in **Anita Gaekwad (Supra)** has held that "*the Caste Scrutiny Committee was in error in giving the importance to the two certificates, which stated that one of her relatives was "Marathi" and the other "Maratha". The High Court has taken in error in placing reliances on these certificates*". The Hon'ble Supreme Court granted Caste validity Certificate in respect of "Thakar, Scheduled Tribe" to the Appellant in that case, Shri. Mendadkar also submits that the present Petition is covered by the judgment of Division Bench of this Court in **Apoorva D/o**

**Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee** and that the Petitioner has been able to prove affinity to the Thakar, Scheduled Tribe based on the caste validity certificate having been granted to the blood relatives from the paternal side of the Petitioner.

7. Shri. Samant, the learned AGP, appearing for Respondents No. 1 to 5 has failed to show any infirmity with the impugned order. Respondents No. 1 to 5 have failed to file any Reply to the Petition justifying the validity of the impugned order passed by the Respondent No. 2 Scrutiny Committee.

8. We are of the considered view that the present Petition is covered by the Judgment of this Court in **Apoorva Nichale** (supra) and the order of the Hon'ble Supreme Court dated 16 April 2013 in **Anita Gaekwad** (supra). Further, we also concur with the order of the Division Bench dated 27 February 2014 in the prior Writ Petition No. 20935 of 2013 filed by the Petitioner, wherein the Division Bench has held that the

present matter is covered by the Judgment of this Court dated 26th February 2014 in Writ Petition No. 7343 of 2013 ***Madhuri Nitin Jadhav Vs. State of Maharashtra & Ors*** (supra). We are of the considered view that the Respondent No. 2 Scrutiny Committee in the impugned order has failed to consider the caste validity certificates which had been produced by the Petitioner and which were granted to the Petitioner's blood relatives from the paternal side. Respondent No. 2 Scrutiny Committee has erroneously taken into consideration the stray incidents of the caste certificates of relatives of the Petitioner which had been recorded as “*Maratha*”, “*Marathi Thakar*” and “*Hindu Thakar*”. These relatives were not blood relatives of the Petitioner from the paternal side. In any event, the Hon'ble Supreme Court by its order dated 16 April 2013 has recorded that the Caste Certificate cannot be invalidated by giving importance to such certificates where caste of the relatives were recorded as “*Marathi*” and “*Maratha*”.

9. We accordingly, allow the Petition by quashing and setting aside the impugned order dated 30 January 2016 passed

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by the Respondent No. 2 Scrutiny Committee. We order and direct Respondent No. 2 Scrutiny Committee to issue the certificate of validity in respect of the caste certificate dated 30 May 2011 in favour of the Petitioner within a period of four weeks. We hold and declare that the Petitioner belongs to the Thakar, Scheduled Tribe community.

10. Needless to state that the Petitioner is allowed to pursue her studies in M.B.B.S. Degree course on the basis of her Caste Certificate dated 30 May 2011.

11. There shall be no order as to costs.

**[RIYAZ I. CHAGLA J.]**

**[B.R. GAVAI, J.]**