

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10144 OF 2014

Nilkanth s/o Jagannath Ghatе
Age: 22 Yrs., occu. Education
R/o Aurad, Tq. Omerga,
District Osmanabad.

- PETITIONER

VERSUS

- 1) The State of Maharashtra
Through Secretary,
Tribal Development
Department, Mantralaya,
Mumbai-32.
- 2) The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad.

- RESPONDENTS

Mr. Suresh M.Kulkarni, Advocate for Petitioner;
Mr. US Mote, AGP for State.
Mr.KD Bade-Patil, Adv. For Resp.No.2.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 22nd September, 2015.

ORAL JUDGMENT (PER:-R.M.BORDE, J.)

1) Heard. Rule. Rule made returnable
forthwith. With the consent of learned Counsel for
the parties, the petition is taken up for final
disposal at admission stage.

2) The petitioner claims to belong to "Koli

Mahadev", Scheduled Tribe. Since the petitioner was pursuing his education and was desirous to appear for the competitive examinations, he forwarded a proposal for validation of the caste certificate issued to him to the Respondent No.2-committee. According to the petitioner, his elder brother by name Vyankat Jagannath Ghate has been issued a validation certificate by the competent scrutiny committee and as such, in view of the judgment of the Supreme Court in the matter of Amruta Vijay More Vs. State of Maharashtra (Civil Appeal No. 7230 of 2011 decided on 23.8.2011), the claim of the petitioner for issuance of validation certificate ought to be considered. Apart from the validation certificate issued in favor of real elder brother of the petitioner, he has placed reliance on several other documents. The Scrutiny Committee, however, overlooking the validation certificate earlier issued by the Committee to elder brother of the petitioner, invalidated the caste certificate issued in his favour.

3) In pursuance of our directions, Respondent No.2 -Scrutiny Committee has made available the

record maintained by it in respect of grant of validation certificate to the brother of the petitioner. It is noticed on perusal of the record that the Committee, while issuing the validation certificate in favour of brother of the petitioner, has placed reliance on the documents, viz. an entry in the Birth Register in respect of grand-father of the petitioner, by name - Abaji Babarao in the year 1934. In the register maintained by the Police Patil of village Aurad, Tq. Omerga, District Naldurg and below the caste column, there is mention of "Koli Mahadev" tribe. Tahsildar, Omerga has certified the authenticity of the entry recorded in the Birth Register in respect of grand-father of the petitioner. In the instant matter, the Scrutiny Committee has failed to consider the old entry of 1934, indicating the caste of the grand-father of the petitioner as "Koli Mahadev". It is not a case of the respondents that the validation certificate has been obtained by elder brother of the petitioner by name Vyankat by practicing fraud or that there is any manipulation of the documents relied upon for securing such caste certificate. On the face of evidence produced by the petitioner, it was

impermissible for the Scrutiny Committee to take a different view.

4) This Court, while dealing with the case in the matter of Apoorva d/o Vinay Nichale Ve. Divisional Caste Certificate Scrutiny Committee No.1. and Ors - 2010 (6) Mh.L.J. 401, has observed in para 9 of the judgment, as under, -

"9.... The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore, where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order."

5) The view adopted in the case of Apoorva (cited supra) has been followed in the matter of Siddheshwar s/o Ramkisan @ Ramkrushna More Vs. Divisional Caste Certificate Scrutiny Committee No.2, Akola Division, Amravati and Anr. - 2015 (5) Mh.L.J. 100; as well as in the matter of Sahadev Nagnath Yelgulwar Vs. State of Maharashtra - 2015 (5) Mh.L.J. 120. In the case of Amruta Vijay More (cited supra), it has been observed by the Supreme Court that when the father and mother of the petitioner have been granted tribe validity certificate, it would be unfair to say that the petitioner does not belong to the same caste.

6) In the matter of Siddheshwar More (cited supra), the Division Bench of this Court has observed that, the view taken by the Scrutiny Committee in not observing the ratio laid down in the matter of Apoorva (cited supra) apart from being unsustainable is in contempt of the view taken by the court in the aforesaid matter.

7) We hope and trust that the Scrutiny

Committee will take into consideration the observations made by the Division Bench of this Court (cited supra) in all its seriousness. In the instant matter, as has been recorded earlier, it has not been demonstrated that the brother of the petitioner has secured the validation certificate by practicing fraud. As such, the claim of the petitioner for issuance of validation certificate deserves to be considered positively.

8) For the reasons recorded above, the writ petition deserves to be allowed and the same is accordingly allowed. The impugned order dated 10.9.2014 passed by the Respondent No.2 – Scrutiny Committee, invalidating the tribe claim of the petitioner, is quashed and set a side and it is directed to the Committee to issue validation certificate to the petitioner within a period of four weeks from today.

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/