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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6614 OF 2016

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|----|--|---|-------------|
| 1. | Mohammad Munaf Mohammad Hanif Bedre |] | |
| 2. | Mujjafar Mohammad Hanif Bedre |] | |
| 3. | Mohasin Mohammad Hanif Bedre |] | |
| 4. | Sadaf Mohammad Hanif Bedre |] | Petitioners |
| | All aged adults, residing at Golden City |] | |
| | Apartment, Flat No.11, 4th Floor, 1038, |] | |
| | New Nana Peth, Pune-411 002 |] | |

Versus

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|----|--|---|-------------|
| 1. | State of Maharashtra |] | |
| | through Secretary, Tribal Development |] | |
| | Department, Mantralaya, |] | |
| | Mumbai - 400 032. |] | |
| 2. | Scheduled Tribe Certificate Scrutiny Committee |] | |
| | Pune Division, Pune through its Member |] | |
| | Secretary having its office at 28, Queen's |] | Respondents |
| | Garden, Pune-1. |] | |
| 3. | Competent Authority |] | |
| | Government of Maharashtra. |] | |
| | State of Common Entrance Examination Cell, |] | |
| | Mumbai. |] | |

Mr. R. K. Mendadkar for the Petitioners.
Ms. Sushma Bhende, AGP for the Respondents.

**CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

Judgment Reserved on : 13.07.2016

Judgment Pronounced on : 19.07.2016

JUDGMENT (Per Dr. Shalini Phansalkar-Joshi, J.)

1. Rule. Rule returnable forthwith. Heard finally by consent of learned counsel for both the parties.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek to challenge legality, validity and propriety of the Judgment and Order dated 3rd May, 2016 passed by respondent No.2-Scheduled Tribe Certificate Scrutiny Committee, Pune, invalidating the caste certificate of the petitioners as belonging to "Koya" a Scheduled Tribe, with further directions to respondent No.2 to issue the certificates of validity in respect of the caste certificates granted to them by the Competent Authority.

3. Relevant facts of the petition are to the effect that, petitioner Nos.1 to 3 are real brothers, *inter se*, and petitioner No.4 is their sister. According to them, they belong to the "Koya Tribe", which is notified as Scheduled Tribe under the Scheduled Castes/Scheduled Tribes (Amendment) Act, 1976 and they are professing Islam religion. They rely

on the tribe claim of their father Mohammad Hanif Abdul Aziz Bedre, which was subjected to elaborate and detailed scrutiny at the hands of respondent No.2, the Committee, which after following the law, was pleased to adjudicate and grant validity certificate to their father on 01.01.2004 as belonging to "Koya", a Scheduled Tribe.

4. The petitioners further rely upon the caste validity certificate issued to their real sister-Mahejabeen on 29.10.2007, by the same Scrutiny Committee.

5. According to the petitioners, they are also having the school record in relation to their father showing his caste as "Koya" as on 15.07.1968. Further, they are also having the school leaving certificate of their real paternal uncle Amir showing his caste as "Koya". They are then relying upon the school leaving certificate of their grandfather, Abdul Aziz Amir Bedre, reflecting his caste as "Mu. Koya".

6. On the basis of this strong documentary evidence, the petitioners claimed for issuance of caste validity certificate as belonging to "Koya" a Scheduled Tribe. However, respondent No.2 - Scheduled Tribe Certificate Scrutiny Committee, ignoring and discarding this evidence and relying simplicitor on the report of the Vigilance Cell and affinity test,

rejected the petitioners' claim for validity of their caste certificates.

7. Grievance of learned counsel for the petitioners is that the Caste Scrutiny Committee has thus acted high-handedly, in gross violation and utter disregard to the well settled principles of law, as laid down by this Court and the Apex Court in various of its decisions. The Caste Scrutiny Committee has also not considered the evidence of the petitioners' father and the genealogy tree of their family. The Caste Scrutiny Committee has also not given due significance to the caste validity certificates issued to the father and real sister of the petitioners. The Caste Scrutiny Committee, according to learned counsel for the petitioners, has therefore, by giving undue importance to the Vigilance Cell Report and to the affinity test, passed the impugned order, invalidating the caste claim of the petitioners, which is against the well settled position of law and the principles of equity and fair-play. Therefore, the petitioners are constrained to approach this Court for issuing necessary directions to respondent No.2 - Caste Scrutiny Committee for issuing the validity certificates in their favour.

8. Ms. Bhende, learned AGP appearing on behalf of the respondents, has, on the direction of this Court, produced the original record of the Caste Scrutiny Committee in respect of validity certificates issued in favour of the petitioners' father Mohammed Hanif and real sister-

Mehajabeen and relied upon the affidavit filed by one Mrs. Shobha Madhukar Nemade, Research Officer, Scheduled Tribe Certificate Scrutiny Committee, Pune Division, Pune confirming that the caste validity certificates were issued to the petitioners' father and sister after following due procedure of law and after making necessary and requisite inquiry, and they are not set aside or invalidated.

9. We have thus perused not only the Writ Petition and the annexures thereto, including the impugned order, but also the entire record and proceedings of the inquiry conducted in respect of the caste validity certificates issued to the petitioners' father-Mohd. Hanif and real sister-Mahejabeen.

10. On the basis of the same, we find much substance in the submission advanced by learned counsel for the petitioners before us that once close relatives, like the petitioners' father and real sister have received the caste validity certificates, which are produced in this petition at Exhibits "B" & "C", which have gone unchallenged, and there is no contention or finding, recorded in any proceeding, that they are vitiated by any fraud or misrepresentation, the Committee could not have brushed them aside. At least, for brushing them aside, the Committee ought to have assigned cogent and satisfactory reasons. The Committee has not done that.

11. The only ground, on which the Committee has invalidated the caste claim of the petitioners, is the Vigilance Cell Report, according to which in the school record of the petitioners' uncle-Amir, the word "Koya" has been written afterwards. However, in the first place, that overwriting is not proved by examining concerned authority from school. Secondly, that document needs to be ignored considering that the caste validity certificates, after due inquiry, had already been issued in the name of the petitioners' father-Mohd. Hanif and also in the name of the petitioners' real sister-Mahejabeen. The petitioners have also produced on record various documentary evidence, including the birth certificate of their paternal grand-father, proving that the tribe "Muslim-Koya" is mentioned in birth certificates and school record of their paternal aunt and uncles. In the face of such voluminous documentary evidence, needless to state that, the test of affinity cannot be determinative so as to reject the petitioners' claim.

12. The law is well settled, as laid down by this Court in the case of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny, 2010(6) Mh.L.J. 401** and **Mahesh Pralhadrao Lad Vs. State of Maharashtra, 2009(2) Mh.L.J. 90** that the Committee can be entitled to refuse to follow the caste validity certificate granted to a blood relative, only if it appears to the Committee that the earlier caste certificate has

been issued without jurisdiction or by practicing fraud. In the decision of **Apoorva** (supra) this Court has laid down the legal position as follows:

"We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it."

13. In the said decision, it was further observed that, *"the matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many respects 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 fact would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt that if a committee is of the view that 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."*

14. In the instant case, the affidavit filed on behalf of respondent No.2 makes it clear that the caste validity certificates were issued to the petitioners' father-Mohd. Hanif and real sister-Mahejabeen after requisite scrutiny. There is no allegation of fraud in obtaining the same, nor any action, so far, is initiated for cancellation of the same. No material to the contrary is yet found or produced on record. In such circumstances, it has to be held that the Committee has committed a grave error in completely brushing aside these certificates of validity, though they were produced for perusal of the Committee. It was open for the Committee to go behind the certificates and prove whether they were genuine and whether the claim made therein is supported by contemporaneous, reliable and satisfactory record. The Committee did not render any finding or conclusion of fraud, deception or misrepresentation by the petitioners and their predecessors or members of their family. The Committee has also not referred to any independent material, save and except stray observations made in the Vigilance Cell Report. The Committee ignored the fact that even subsequent to the alleged school record, in which overwriting was found, the certificates of caste validity were issued to the petitioners' father, uncle, aunt and even the real sister, by the Competent Authority.

15. In such circumstances, simplicitor relying on such stray

observations made in the Vigilance Cell Report relating to overwriting in the school record, the Committee has rejected the caste validity claim of the petitioners and, therefore, such order cannot be sustained.

16. As to the affinity test, upon which the committee has relied, the law thereto is well settled that the recourse to affinity test can be taken if the other documentary evidence, which was conclusive in nature, as in the instant case, was not available. In the present case, having regard to the conclusive documentary evidence produced on record by the petitioners, the conduct of the Committee of relying simplicitor on the affinity test for rejecting the petitioners' claim for caste validity cannot be upheld in the law.

17. As to the finding of the Committee that the petitioners are migrants in the State of Maharashtra after 6th May, 1950, as they were natives of village Indi, District Bijapur, it has to be held that the Committee has again committed a grave error in failing to consider that on 6th May, 1950 there was no State of Maharashtra in existence but there was a old Bombay State, which was comprised of Bijapur District, which is presently in Karnataka State.

18. To sum up, therefore, we have no hesitation in concluding that

the finding of the Committee, while rejecting the petitioners' claim for caste validity certificate, being totally perverse and against the material produced on record, it cannot be sustained and needs to be set aside.

19. Accordingly, we allow the Writ Petition by quashing and setting aside the impugned order of the respondent No.2-Scheduled Tribes Certificate Scrutiny Committee and directing that the said Committee shall forthwith issue caste validity certificates in favour of the petitioners, as prayed.

20. The Writ Petition is disposed of accordingly. Rule made absolute in above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]