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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8736 OF 2013**

Shailesh Baban Shewale

...Petitioner

Vs.

State of Maharashtra & Ors.

...Respondents

Mr. Chintamani Bhangoji a/w. Mr. Tanaji Jadhav
i/b. Mr. R.K. Mendadkar, Advocates for the Petitioner
Mr. P. Kakade, AGP for the State

CORAM : SHANTANU S. KEMKAR &

M.S. KARNIK, JJ.

DATED : 20TH SEPTEMBER, 2016

P.C. :

Feeling aggrieved by the order dated 31st August, 2013 passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Pune Respondent No.2 in Case No.TCSC/SER/Pune-835/2003 the Petitioner has filed this Petition.

2. According to the Petitioner his real brother has been granted caste validity certificate after passing of the judgment by this Court in Writ Petition No. 4053 of 1986 in the case of Suhas Babaorao Shewale Vs. The Chairman Scheduled Tribes

Certificate Scrutiny Committee decided on 17th June, 1997. However, this fact, when brought to the notice of the Committee the Committee by impugned order has negated the contention of the Petitioner by observing thus:

*“4. Whether the ratio of the validity certificate of the applicant's brother, which issued as per the Hon'ble High Court's directives, can be applied in the instant case ? **No.***

It is true that the validity certificate as belonging to Halba, Scheduled Tribe has been issued to the applicant's real brother. While going through the same, it is revealed that the same has been issued as per the directives of the Hon'ble High Court dated 17/06/1997 in W.PNo.4053 of 1986 filed by Suhas Babanrao Shewale (applicant's real brother).

While going through the Hon'ble High Court's decision dated 17/06/1997, it is revealed that the

pinching documentary evidence showing caste of the applicant's father, uncle and aunt as Hindu-Koshti may not have been brought to the notice of the Hon'ble High Court at that time.

This Committee honors and respects the decision of the Hon'ble High Court, but this Committee is constrained to take another view in the instant case, in the light of the pinching documentary evidence came before this Committee through the latest enquiry report. It is pertinent to note that there was no vigilance cell to assist the then Committee when the tribe claim of the applicant's brother was decided in the year 1986.

Secondly each and every case is to be dealt on it's own merits. This issue has been discussed before the Hon'ble Apex Court in Madhuri Patil's case.

The issue of relative's validity has also been discussed before the Hon'ble Supreme Court in SLP Civil No. 755 of 2008, Raju Ramsing Vasave Vs. Mahesh Devrao Bhivapurkar & Ors., decision dated 29/08/2008.

The same issue is also discussed before the Hon'ble High Court in W.P.No.1256 of 2003 filed by Pradeep Ramchandra Patil Vs. State of Maharashtra & Ors., and while deciding the same on 23/07/2010, the Hon'ble High Court have

pleased to observe as follows:

“7. ...much water has flown under the bridge since the time when the Division Bench of this Court decided the said Writ Petition No.3030 of 1980...”

Considering the above said facts and latest legal positions the conclusive answer of the Committee to this issue is negative”.

3. Learned Counsel for the Petitioner submits that similar issue was considered by this Court in **Writ Petition No. 7569 of 2008 in the case of Ms. Pratibha Gorakhnath Nikumbh Vs. The State of Maharashtra and in other** connected writ petitions vide judgment dated 12th April, 2013 had set aside the order of the Caste Scrutiny Committee by observing as follows:

“2 Although the committee was aware that the petitioners' real brother Deepak Gorakhnath Nikumbh was earlier granted validity certificate by the Scrutiny Committee, Nashik, the Committee held that each and every case regarding the caste claim is to be decided separately and relied on the

observations of the Supreme Court in the case of Madhuri Patil Vs. Additional Commissioner, Thane and Ors. (AIR 1995 SC 94) and rejected the claim.

3. This decision of the Caste Scrutiny Committee is not tenable in law. If previous validity certificate issued by the Caste Scrutiny Committee is found to be issued on no legal evidence, then in the subsequent proceedings in which earlier validity certificate is relied upon, the committee is not bound by the earlier validity certificate and may invalidate the caste claim of the sibling as every case is to be considered on its own facts. However, this proposition of law cannot be applied to a decision of the High Court. If High Court on considering the order passed by the Caste Scrutiny Committee has itself arrived at a conclusion about the caste of a petitioner and has ordered the Committee to issue validity certificate accordingly, then that order holds the field and binds the scrutiny committee in the matter of blood relative. In the present case, the Division Bench of this Court in Writ Petition No.7995 of 2004 decided the caste claim of Deepak, the real brother of the petitioner holding that he belongs to scheduled tribe-Mahadeo Koli and the reasons given by the then Caste Scrutiny Committee while invalidating the claim of

Deepak were held as erroneous and the decision was over turned. Pursuant to the said decision of the High Court, the Caste Scrutiny Committee has issued the caste validity certificate of Mahadev Koli caste in favour of Deepak, the real brother of the petitioners. The said decision was not challenged by the respondents by filing proceedings before the Supreme Court. Hence, it is naturally binding on the Caste Scrutiny Committee in the claims of the siblings of Deepak- the real brother of the petitioners. It is not legally permissible to the Committee to take a view contrary to the binding decision of this Court.

4. Hence, the petitions are allowed. The decision of the Caste Scrutiny Committee is quashed and set aside. The Caste Scrutiny Committee is directed to issue caste validity certificate to the petitioners as prayed for within 30 days from the receipt of this order. Rule is made absolute accordingly.

4. Learned Counsel for the Petitioner submits that in view of the aforesaid judgment passed by the Division Bench of this Court on 12th April, 2013 and in view of the law laid down in the case of **Apoorva d/0 Vinay Nichale Vs. Divisional Caste**

Certificate Scrutiny Committee 2010(6) Mh. L.J. 401

impugned order passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Pune is liable to be quashed.

5. Learned AGP has supported the impugned order passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Pune and argued that the order being legal and proper needs no interference.

6. Having considered the rival submissions and having regard to the fact that the Petitioner's real brother has been granted Caste Validating Certificate on the basis of order by this Court and keeping in view the observations of this Court in Writ Petition No. 7569 of 2008 as extracted above and the law laid down by the Division Bench in **Apoorva's** case we are of the view that after the decision is taken by this Court in the case of Petitioner's real brother holding that he belongs to "Halba Scheduled Tribe" it was not open for the Committee to make observations as extracted above.

7. In the result we quash the impugned order passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Pune and direct the Caste Certificate Scrutiny Committee to issue Caste Validity Certificate to the Petitioner within 4 weeks from the date of receipt of the copy of this order.

8. The Petition stands allowed with no orders as to costs.

(M.S. KARNIK, J.)

(SHANTANU S. KEMKAR, J.)