

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

WRIT PETITION NO. 889 OF 2017

1. Prakash Motising Bassi,
Age: 27 years, Occ.: Student,
R/o: At Ravala, Post. Jamthi,
Tq. Soygaon, Dist. Aurangabad.

2. Vikas Motisingh Bassi,
Age: 25 years, Occ.: Student,
R/o: At Ravala, Post. Jamthi,
Tq. Soygaon, Dist. Aurangabad.

... **Petitioners**

Versus

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.

2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division, Aurangabad.

... **Respondents**

Mr. Anandsingh Bayas, Advocate for the petitioner.
Mr. S.G. Karlekar, AGP for respondent-state.

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 26.07.2017
DATE OF PRONOUNCING THE JUDGMENT : 04.08.2017**

...

JUDGMENT: (*Per Mangesh S. Patil, J.*)

. Rule. The rule is made returnable forthwith with the consent of the parties. Heard the learned Advocates for both the sides.

2. By this petition under Article 226 of the Constitution of India, the petitioners who are full/real brothers *inter se* are challenging the decision of the Caste Scrutiny Committee, Aurangabad constituted under the provisions of Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short "the Maharashtra Act No. XXIII of 2001"), (hereinafter referred to as the 'Act'), thereby, invalidating their caste certificates issued by the Sub Divisional Magistrate, Sillod, District Aurangabad certifying them to be belonging to Naikda Scheduled Tribe (sr. no. 35).

3. According to the petitioners, the Sub Divisional Officer, Sillod had issued caste certificates to the petitioner no.1 on 02.07.2005, whereas, he issued a similar caste certificate to the petitioner no.2 on 11.03.2011, certifying them to be belonging to Naikda Scheduled Tribe (sr.no.35). The educational institute in which they are studying made reference to the Scrutiny Committee on 13.09.2013 and 03.09.2011,

respectively. After holding usual scrutiny, by the impugned order, the committee invalidated their claim as belonging to Naikda Scheduled Tribe.

4. The petitioners have averred that they had placed several documents including pre-constitutional to establish their claim. Their real brother by name Kartarsing Motising Naikda has also been duly certified to be belonging to Naikda Scheduled Tribe and even the same Scrutiny Committee, on the basis of the same documents accepted his claim. Three of his real cousin uncles from paternal side have also been certified similarly and the Scrutiny Committee has validated their caste certificates as belonging to Naikda Scheduled Tribe. His grandfather and great grandfather from the paternal side, also had their caste/tribe shown in the official records as belonging to Naikda Tribe. In spite of such voluminous documents and the circumstances in support of their claim, the Scrutiny Committee was not prompt in conducting necessary inquiry. They had to file Writ Petition No. 11564 of 2015 seeking direction to the Scrutiny Committee for early disposal of their claims. The Division Bench was pleased to direct the committee to complete the inquiry in stipulated time, by its order on 02.12.2015. In spite of such direction the Scrutiny Committee did not conduct the inquiry promptly.

The petitioners, therefore, had to file a Contempt Petition bearing No. 562 of 2016. By the order dated 24.08.2016, this Court was pleased to issue notice to the Members of the Scrutiny Committee. Annoyed by such contempt proceedings, the Members of the Scrutiny Committee sought and obtained a fresh vigilance report, albeit there were earlier two vigilance reports in favour of their claim. The petitioners allege that by relying on wholly irrelevant and unconnected material gathered by the vigilance committee and with a view to teach the petitioners a lesson, the Scrutiny Committee has invalidated their claim and the impugned order suffers from perversity and arbitrariness. Hence this petition.

5. The impugned order apparently shows that primarily the circumstances which weighed with the Scrutiny committee in invalidating the claim is as follows:

- A) There is over writing in the admission entry no. 421 pertaining to the cousin grandfather of the petitioner by name Basandas Gotiram.
- B) The school record of the cousin aunt of the petitioner namely Vaishali Nikesh Bassi, indicates that she belonged to tribe Mathura Vanjari.
- C) The school record of the maternal uncle of the petitioner by name

Sable Bharmalsing Kashiram, indicates that he belonged to Mathura Laman Vanjari caste/tribe.

- D) The school record of the petitioner Prakash, indicates his caste as Mathura Vanjari.
- E) The statement of villagers of Jawala Village Panchayat which is a nearby village show that the petitioners belong to Vanjari Caste.
- F) Tahsildar Bhokardan by his letter dated 12.09.2016 informed that there was a change in the original record in respect of land survey no.92 and Namuna No.3 of Pahani Patrak.
- G) In Namuna F there is a difference in version in the affidavit of petitioner Prakash and the petitioners' brother Kartarsing, in as much as their common ancestors Gotiram Deba is shown to have four sons in the information furnished by the petitioner Prakash, whereas, only three in the information furnished by the petitioners' brother Kartarsing.

6. In order to scrutinize the conclusion of the Scrutiny Committee, we have called the original record and proceedings of the Caste Scrutiny Committee, Aurangabad. Let us consider above grounds which found favour with the Scrutiny Committee in seriatim.

7. At the outset, it is necessary to bear in mind that the

petitioners had provided their genealogy to the Scrutiny Committee. There was no material before it to dispute it. There has been no dispute that Sakru Gotiram was the grandfather and Basandas Gotiram and Dhansing Gotiram were the cousin grandfathers of the petitioners. There is also no dispute about the fact that Kartarsing who is the real brother of the petitioners as well as petitioners cousin uncles' Ganesh Basandas Bassi, Dinesh Dhansing Bassi and Nikesh Dhansing Bassi have all been issued validity certificate. It is on the backdrop of such admitted facts, let us scrutinize the material that was available before the Scrutiny Committee.

8. It is necessary to first of all emphasize the fact that as many as three times the matter of the petitioners was referred to the vigilance inquiry. The first report was received on 26.05.2015, the second was received on 27.05.2016 and in spite of such two reports, for the reasons unknown and which cannot be discerned from the record and proceedings before the committee, the matter was once again referred for vigilance inquiry. In para 5 of the impugned order the Scrutiny Committee has vaguely mentioned that the finding recorded in the vigilance inquiry report were unsatisfactory. There is no reason mentioned for recording such dissatisfaction. It is simply mentioned that

the Scrutiny Committee decided to collect factual information and to find out ground realities. Conspicuously, the material before all the three scrutiny committees was almost the same except the fact that at the time of third inquiry some circumstances were brought on record, apparently which go contrary to the petitioners' claim. We shall come to those circumstances a little later. Suffice for the time being to observe that there was no apparent reason which could have required the committee to refer the matter for vigilance inquiry third time around. The reason obviously is not far to seek. In the first two vigilance reports, no material was available to dispute the petitioners' claim and those concurred in all the material particulars. No one could have, therefore, been able to refute the claim going by these two vigilance reports. It is for this primary reason that we find some substance in the allegations by the petitioners that the Scrutiny Committee while passing the impugned order was probably sitting with a prejudiced mind. It was annoyed by the repeated directions by the High Court to conduct the inquiry and finally after receiving a notice in contempt proceedings. The impugned order in the beginning itself makes observations about such backdrop and tries to justify its inaction in not deciding the inquiry earlier. Whatever may be the reason, ex facie this vital circumstance creates doubt about the manner in which the Scrutiny Committee probed the

claim of the petitioners.

9. Now we shall turn to the primary grounds on which the Scrutiny Committee thought it fit to reject the claim of the petitioners. According to the Scrutiny Committee, the admission entry no. 421 pertaining to the cousin grandfather of the petitioners by name Basandas Gotiram contains some over writing. The committee squarely relied upon a noting in the vigilance report, wherein, it was mentioned that there was some kind of over writing / scratching found in the column of caste where 'Naikda' was written against entry no. 421 but the Headmaster refused to endorse such over writing. The impugned order clearly shows that, it had not gone into or thought it proper to go into this circumstance by checking the original record by itself. Apparently, the note in the vigilance report does not specifically mention that some other caste was written and by scratching it the word 'Naikda' has been written. The Scrutiny Committee has blindly relied upon this noting in the vigilance report which does not lead a man of ordinary prudence to conclude that such scratching or over writing was with an intention to replace any word written earlier. For want of such concrete material, it ought not to have reached the conclusion or should have treated it as an adverse circumstance. In fact, as was pointed by the learned Advocate

Mr. Bayas, a written request was made to the Scrutiny Committee during the course of hearing to call for the original record by issuing witness summons to the Headmaster to cross check as to if there was really any over writing or scratching that too by replacing the earlier word by a new word 'Naikda'. But the request was not accepted. We, therefore, conclude that this could not have been a ground to discredit the material.

10. As regards the next grounds 'B' and 'C', the third vigilance report would reveal that, it has collected material in respect of castes of the persons who are, though, near relatives of the petitioners are not blood relations from paternal side. It is trite that the caste descends from blood relations and that is why only the relations from the paternal side are relevant and taken into consideration. Admittedly, Vaishali Nikesh Bassi is the wife of paternal uncle of the petitioner and obviously she was not directly a blood relation. Similarly, the record of maternal uncle Sable Bharmalsing Kashiram was absolutely irrelevant and inadmissible while scrutinizing the caste of the petitioners, for the caste does not descend from a maternal relation. Therefore even these circumstances fail.

11. Coming to the ground 'D', the school record of petitioner Prakash is stated to indicated that he belongs to 'Mathura Vanjari' caste.

However, the original record nowhere shows that any such school record of the petitioner Prakash indicates that he belongs to that caste. It is apparently a factual error committed by the Scrutiny committee in appreciating the documentary evidence. Even in their reply submitted to the Scrutiny Committee, the petitioners have specifically made it clear that the observation that the school record of petitioner Prakash mentions his caste to be 'Mathura Vanjari' is factually incorrect. Consequently this could not have been a ground to belie the petitioners' claim.

12. In the next ground, the committee has relied upon the statements of some villagers of village Jawla who apparently have stated during the vigilance inquiry that the petitioners and their forefathers belonged to Vanjari caste. Needless to state that apart from the fact that this is only an oral account of the persons of a different village, there is no reason why statements recorded by earlier two vigilance inquiries of persons who hail from the petitioners' village stating that the petitioner belonged to 'Naikda' caste could not be believed. Such ocular version of persons from a different village recorded after recording statements of the villagers where the petitioners reside is nothing but pick and choose. The Scrutiny Committee apparently has only accepted the statements

which would favour their conclusion and has ignored the ones running contrary.

13. As regards the ground, wherein, Tahsildar Bhokardan by his letter dated 12.09.2016 has informed that there was change in the original record in respect of land survey no. 92 and Namuna no.3 of Pahani Patrak in respect of the entry of great grandfather of the petitioners by name Gotiram Debha Bassi, a careful perusal of the revenue record as well as the letter of Tahsildar would reveal that he has nowhere stated that the entry itself is incorrect. On the contrary, as has been reported by the third vigilance inquiry officer, the entries in the revenue record are quite according to the original record, albeit there is some difference in the ink. Conspicuously, neither the inquiry officer has specifically stated nor has Tahsildar informed that revenue record being relied upon by the petitioners' is not according to the original entries in the record of his office. Apparently, this record is of the year 1398 Fasli i.e. the year 1948-49. According to the English calendar. It clearly reads the name of the great grandfather of the petitioner as Gotiram Debha Naikda. Therefore, simply because there is a difference of ink in the extract of the revenue record, in the absence of any material to show that the entries in the extract do not tally with the original record, one

cannot discard it and neither the committee could have done so.

14. Coming to the last ground regarding furnishing of different genealogies by the petitioners on one hand and their brother Kartarsingh on the other. It is stated that Gotiram was shown to have only three sons Sakhru, Dhansing and Basandas in the genealogy furnished by the petitioners. Whereas, in the genealogy furnished by their brother Kartarsingh one more son of Gotiram is shown. Obviously it is a matter of record that there is such a discrepancy. However, we do not think that it could be deliberate or was done with an ulterior motive to derive any benefit. It is not that the petitioners are relying upon validity of any descendant from that fourth branch. They have been relying upon the validity certificate issued to the two sons of their paternal uncle Dhansingh and one son of their another paternal uncle Basandas, apart from the validity issued to their real brother Kartarsingh. Therefore, at the most it can be stated that there is this apparent discrepancy but one cannot apparently attribute any mischief or *mala fides*.

15. Thus, all these grounds relied upon by the Scrutiny Committee in disbelieving the petitioners claim are not sufficient enough to discard it.

16. Apart from these circumstances relied upon by the Scrutiny Committee while passing the impugned order, the committee has also endeavored to apply the affinity test and in doing so has relied upon inability of petitioners' father to answer the question put to him during the inquiry, particularly in respect of mother tongue etc. The committee has also relied upon the entries in respect of persons from Village Taroda, Taluka Motala, District Buldhana, where the petitioners and their relatives reside. It has referred to the caste of some villagers collected during the course of vigilance inquiry showing that they belonged to caste either Vanjari or Mathura Vanjari. The committee cross checked it with the petitioners version that some of the surnames from their community are Manza, Sable, Ghoti, Rabade, Naik, Baradwad, Dangare. According to the Scrutiny committee, the persons having these surnames are either Vanjari or Mathura Vanjari. Thus, according to it, the version of the petitioners that they belonged to Naikda caste is belied by their own version. Though, this course adopted by the Scrutiny Committee was ingenious, it cannot be treated as foolproof. Even in this list, as far as Buldhana District is concerned, a person at serial no. 15 whose surname is Rabde, is shown to be Naikda. Similarly, in respect of a person at serial no. 33 whose surname is Dhoti, the caste is mentioned as Naikda. Therefore, this circumstance cannot be completely relied upon either in

isolation or in conjunction with the other material to disbelieve the petitioners claim. Thus, by referring to some answers during the course of inquiry in which the petitioners' and their father were unable to answer some of the questions to the liking of the Scrutiny Committee, it has reached the conclusion about the petitioners having failed to pass the affinity test.

17. The Scrutiny Committee has then proceeded to refer to the decision of the Supreme Court in the case of **State of Maharashtra v/s. Milind and Ors.; (2001)1 SCC 4**. There can be no dispute that pseudo tribals cannot be allowed to snatch the rightful claim of the genuine tribals. It has also then proceeded to show as to how the petitioners cousin Ganesh Basandas Bassi was able to convince the Tahsildar, Aurangabad to show him to be a resident of Aurangabad when in the proforma submitted by him before the committee, he had shown his residence to be Geru Matargaon, Taluka Khamgaon, District Buldhana, whereas, during the vigilance inquiry he and his father had stated that they were residents of Taroda, Taluka Motala, District Buldhana. However, during the inquiry in the present matter Ganesh has stated that he was a resident of Sawla Dabra, Taluka Soygaon, District Aurangabad. This exercise was apparently done by the Scrutiny Committee to show

that the petitioners' could not rely upon the circumstance of issuing validity certificate to Ganesh Basandas Bassi. For the sake of arguments, keeping aside this circumstance, no such similar exercise was done by the committee to discard the validity certificates of the other two cousin paternal uncles Dinesh Bassi and Nikesh Bassi. It is true as has been laid down in the case of **Manjari Manikrao Kolikar v/s. State of Maharashtra**, Writ Petition no. 3571/2005, referred to by the Scrutiny Committee that merely because the tribe claim of a relative has been validated, a candidate cannot claim that even he should be given a similar certification automatically. However, it has also been observed therein, that this circumstance would have a persuasive value. However, the Scrutiny Committee seems to have conveniently relied on the initial observation ignoring the latter part, observing that such circumstance of issuance of validity certificate to the near relations has a great persuasive value.

18. In this regard one can also refer to the subsequent decision cited by the learned Advocate for the petitioners in the case of **Apoorva Nichale v/s. Divisional Caste Certificate Scrutiny Committee No.1 and Others** reported in **2010 (6) Mh.LJ 401** and particularly the following observations:

“The Government of Maharashtra by its resolution dated 22-8-2007 directed that where during the course of enquiry or scrutiny of a caste claim it is seen that the caste claim of a blood relative such as father, son, daughter, brother and sister has been scrutinized and accepted, the caste claim of the applicant should be allowed without insisting on any other proof. The guidelines provided by the said Government Resolution are sound and based on sound principles. If the relationship by blood is established or not doubted, and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent in the committee testing the same evidence and making the same conclusion unless of course the Committee finds on the evidence that the validity of the certificate of such relation has been obtained by fraud.”

19. Relying on this principle, the Scrutiny Committee in the instant matter ought to have noted that the validity certificates issued to Dinesh and Nikesh who are cousin paternal uncles of the petitioners could not have been disbelieved, much less there was any material to discard them as having been obtained fraudulently. In fact the impugned order does not contain any statement as to why this circumstance of issuance of validity certificates to these two cousin paternal uncles of the petitioners should be ignored or over looked.

20. It is to be noted that the Scrutiny Committee is quasi judicial authority and is expected to scan all the circumstance placed before it during inquiry. It is only after weighing all the facts and circumstances

that it is expected to reach a conclusion going by the reasoning assigned by it in the impugned order, we have very little doubt that it has certainly entertaining a grudge against the petitioners' for having filed a Contempt Petition, else there was no reason as to why it only considered the circumstances which go against the petitioners' and ignored/overlooked those in their favour. It has miserably failed to decide the claim in a judicious manner.

21. In the circumstances, the material on record apparently supports the claim of the petitioners as belonging to Naikda Scheduled Tribe. The impugned order of the Scrutiny Committee, for the reasons mentioned above is clearly perverse, arbitrary and suffers from caprice and is liable to be quashed and set aside.

22. In the result the Writ Petition succeeds and is allowed. The rule is made absolute in terms of prayer clauses 'A' and 'B'.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]

mub