

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3758 OF 2013

Dipali Kailass Deore
Aged adult, residing at Yamuna
Niwas, Ramdas Swami Nagar,
Gandhi Nagar, Nashik-6
V/s.

... Petitioner

1. State of Maharashtra
Through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai – 32.

2. Scheduled Tribe Certificate
Scrutiny Committee Nashik,
through its Member Secretary
having its office at Adiwasi Vikas
Bhavan, Old Mumbai Agra Road,
Nashik.

3. Sub Divisional Officer,
Kalwan Sub Division, Kalwan,
Dist. Nashik.

... Respondents

Mr.R.K.Mendadkar with Ms. Komal Gaikwad, Advocate for the
Petitioner.

Mr.N.C.Walimbe, AGP for Respondent Nos.1 to 3.

**CORAM : ANOOP V. MOHTA AND
RAVINDRA V. GHUGE, JJ.**

DATE : 24 APRIL 2017.

ORAL JUDGMENT (PER ANOOP V. MOHTA,J.) :

1. Rule made returnable forthwith. Heard finally by consent.

2. The Petitioner's caste claim that she belongs to Thakur-Scheduled Tribes is rejected by impugned order dated 9th January, 2013, by Respondent No.2-Caste Scrutiny (The Committee), therefore, this Petition.

3. This Court in Writ Petition No. 3802 of 2013 after considering the record and the documents so placed alongwith the reasons given by the Caste Scrutiny Committee in the matter of her brother (Virendra Kailash Deore) by Judgment dated 29th July, 2013 by setting aside the similar order passed by the Scrutiny Committee validated the caste claim of the Petitioner. The Petition was accordingly allowed in favour of her brother. The submission is, therefore, made by the learned counsel appearing for the Petitioner that in view of this judgment and for the same reasons, present Petition is required to be allowed. The learned AGP after verifying the facts, documents placed on record impleading the judgment so referred above conceded to the situation that the Petitioner's brother has been considered and therefore, the Petitioner's case be allowed accordingly.

The Caste and the importance of paternal side caste validity certificate's claim :

4. It is recorded by the Supreme Court in **Amruta Vijay More Vs. State of Maharashtra and ors.**¹ as under :-

1 IA No. 3 of 2011 in Civil appeal No.7230 of 2011

“The difference is that in the case of the appellant in the writ petition filed by him before the High Court, he has categorically indicated in paragraph 6 that his father had been recognised as a member of the Thakur Scheduled Tribe and was granted a validity certificate by the Screening Committee, Nashik. Similarly, her real brother had also been granted such a certificate by the said Screening Committee. Another certificate was issued by the Screening Committee, Nashik, dated 15th November, 2000, in favour of her paternal uncle, Shri Rajendra Bajirao. Validity certificates had also been issued in favour of three of her paternal cousins and copies of said certificates had been annexed to the writ petition. The decision of the Screening Committee in the case of the appellant appears to be a decision in appeal over the earlier decision of the Screening Committee, which had granted the earlier certificates.”

5. It is observed by the Apex Court in **Anita Atmaram Gaikwad Vs. State of Maharashtra and ors.**² as under :-

“We must note that all these cases are decided in the facts of each case. In the present case, in as much as the appellant is having two pre-

² Order dated 16th April, 2013 in Civil Appeal No.3881 of 2013

Constitution documents and also when her brother and sister have been given the Community certificate, which have been validated, we are of the view 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 fallen in error in placing reliance on these two certificates.”

6. The Apex Court in **Jaywant Dilip Pawar Vs. State of Maharashtra and ors.**³ has concluded that -

“The Scrutiny Committee has negated the claim of the appellants on the ground that the relatives of the appellants were not residents of the areas mentioned in the Presidential Order, 1956 and further they were not able to give any details of customs and traditions being observed by the said community.

In our considered opinion, that is wholly irrelevant. The appellants have only to establish that they belong to the community mentioned at Serial No. 44 of Part IX of Second Schedule of Act No. 108 of 1976.”

7. The law with regard to the importance of Paternal side relative's caste certificate has been reiterated by the Supreme Court

³ Order dated 8th March, 2017 in Civil Appeal No. 2336 of 2011

and by the High Court in many judgments. This Court in **Madhuri Nitin Jadhav and ors. Vs. State of Maharashtra and ors.**⁴ has recorded that -

“The Scrutiny Committee is required to consider the relation certificates issued, on which reliance is placed by the applicant/claimant for the same caste certificate/benefits. It cannot be overlooked and/or denied merely because those were obtained prior to the Act and/or without due inquiry and/or passing the affinity test, unless a case of fraud and/or misrepresentation is made out.

There is no scope and power given unless appropriate proceedings initiated to invoke and/or revoke the certificates and/or validation orders passed in favour of the relations, based upon the then provisions available.”

8. This Court in **Rajashri Prakash Ahire Vs. State of Maharashtra**⁵ noted as under -

“We have found from a perusal of the original record specifically produced before us that the committee's order is vitiated by total non application of mind. It is vitiated by an error of law apparent on the face of the record and as pointed out above. The committee's order can be safely termed as perverse for it ignores and

4 2014(4) Bom.C.R.753

5 Order dated 3rd March, 2017 in Writ Petition No.9481 of 2015

brushes aside legal and valid evidence. The documents, which have great evidenciary value, have not been taken into consideration.”

9. This Court in **Mohan Babli Ransing Vs. State of Maharashtra and ors.**⁶ has recorded the role of State and the authorities in such paternal side relatives' caste certificates and its importance as under -

“We have also observed by referring to various judgments on similar issue in earlier decision **Sanjay Bajirao More and anr. Vs. State of Maharashtra and ors. 2015(6) Mh.L.J. 822** as follows :

The State Government, in our view, required to take steps against such Scrutiny Committee and/or officers, who are passing such orders by overlooking the judgments passed by the Supreme Court and this courts directly on the issues after taking into consideration the relatives' caste validity certificates. Appropriate circular and /or direction is required to be issued in this regard so that it will save time and energy of every one including of Courts.” (emphasis added)

10. This Court considering the important aspects of paternal sides certificates based upon the above various judgments of the Supreme Court and this Court has also passed similar order. Therefore, as there is no case of any fraud and misrepresentation and facts and circumstances of the Petitioner's case are similar with her brother's case Virendra Kailas Deore (cited supra) and in view of the judgment passed by this Court as recored above, we are inclined to allow this petition. Hence, the following order:-

ORDER

- (a) The Petition is allowed in terms of prayer clause (a) i.e. “Issue Writ of Certiorari and/or any other Writ Order or Direction in the nature of Certiorari thereby quashing and setting aside the impugned judgment and order dated 9-1-2013 passed by the Respondent No.2 Committee with further direction to Respondent No.2 Committee to issue certificate of validity in respect of caste certificate dated 7-10-2002 issued by the competent authority of jurisdiction.”
- (b) The certificate be issued within four weeks.
- (c) Rule is made absolute accordingly. No costs.

(RAVINDRA V. GHUGE,J.)

(ANOOP V.MOHTA,J.)

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