

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10303 OF 2017

Krishna Balaji Kolewad

...Petitioner

vs.

State of Maharashtra and Others

...Respondents

Mr. R.K. Mendadkar a/w. Mr. C.K. Bhangoji and Mr. Tanaji Jadhav,
for the Petitioner.

Mr. A.A. Kumbhakoni, Advocate General a/w. Mr. Ashutosh
Gavnekar, Special Counsel and Mr. Sandeep Babar, AGP for the
Respondents.

**CORAM : SHANTANU KEMKAR &
G.S. KULKARNI, JJ.**

DATE : OCTOBER 05, 2017

P.C.

. Rule, made returnable forthwith. By consent of the
parties heard finally.

2. By this Petition filed under Article 226 of the
Constitution of India, the Petitioner challenges the order dated 1st
September, 2017 passed by the Respondent No. 2 - Scheduled Tribe
Certificate Scrutiny Committee, Aurangabad (in short "*the Scrutiny
Committee*") by which the Petitioner's claim for validation of his
caste certificate belonging to the "*Mannervarlu (S.T.)*" has been
rejected and the caste certificate has been confiscated.

3. The Petitioner had approached the Scrutiny Committee supporting his application seeking validity to the caste certificate on 21 documents, which according to the Petitioner entitled him for a validity certificate. These documents pertain to various relatives of the Petitioner of the year 1954-1955 up to the year 2017. Amongst these documents, Petitioner had also relied on two “caste validity certificates” issued in favour of the cousin cousin uncle dated 12th July, 2007 and caste validity certificate of his real sister dated 12th April, 2010. The case of the Petitioner is that these two validity certificates were granted to the said relations by the Scrutiny Committee after following a due procedure, that is after a due Vigilance Inquiry and an affinity test having been undertaken. Our attention is drawn to the vigilance report in the validity proceedings pertaining to the petitioner's sister Aparna Balaji Kolewad, where the Committee has considered the documents of the year 1952 pertaining to the cousin grandfather of the said applicant, as also the document dated 24th May, 1971 of the father of the said applicant. These documents are of a period prior to “*Mannervarlu*” tribe being notified as “*Scheduled Tribe*” under the act of the Parliament being Act 108 of 1976.

4. The Scrutiny Committee by the impugned order has rejected the validity to the petitioner's caste certificate only on the ground that in the school admission extract (dated 14th May, 1971) of the petitioner's father Balaji Ganpatrao Kolewad though the caste referred is "*Hindu-Mannervarlu*" however the register was in a torn condition.

5. Having heard the learned counsel for the parties and having perused the impugned order, we are of the opinion that Scrutiny Committee has misdirected itself while passing the impugned order. There was no material on record to discard the entire material as placed on record by the petitioner including the material on the basis of which two validity certificates were granted to the said to relatives. The documents in that regard have remained undisputed. Further the fact that the Petitioner's cousin cousin uncle as also the Petitioner's real sister has been granted caste validity certificate was material and could not have also been overlooked when there was no finding of any fraud, misrepresentation in issuing the said validity certificate. It is also not the case that these validity certificates were issued by the Committee having no jurisdiction. Thus, only on a stray ground that the original school register had become old in respect of one

document pertaining to the Petitioner's father as noted above, the Scrutiny Committee could not have discarded the other undisputed material which was placed on record.

6. In these facts and circumstances, in our opinion, the present case is clearly covered by the law laid down by the Division Bench of this Court in the case of Apoorva Vinay Nichale v/s Divisional Caste Certificate Scrutiny Committee No.1 and others, reported in 2010(6) Mh.L.J. 401 wherein the Division Bench has in paragraphs 7 and 9 observed thus :

“7. 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.

9. In the present case, we find that the committee has disbelieved the petitioner's case that she belongs to Kanjar Bhat after calling the school leaving certificate of Petitioner's father and noticing that the original caste written on it was 'Thakur' and that was subsequently changed to Kanjar Bhat. The committee observed that the caste has been changed without complying with the procedure prescribed by section 48(e) and 132(3) of Mumbai Primary Education Act. In fact, the caste has been changed on the basis of the affidavit. From the findings of the committee it appears that the committee has observed that the change of caste has been one illegally. Obviously, the committee which decided the caste claim of the

petitioner's sister did not hold the same view, otherwise it would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. 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 cast 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. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the Petitioner.”

7. Thus in our considered view, the reason assigned by the Scrutiny Committee for rejection of the Petitioner's claim for validation of his caste certificate belonging to “*Mannervarlu (S.T.)*” cannot be sustained as it runs contrary to the view taken by the Division Bench of this Court in the case of **Apoorva Nichale** (supra).

8. In the circumstances, we allow the Petition and set aside the impugned order. As a result, the Respondent No. 2 – Scrutiny Committee is directed to issue the caste validity certificate to the

Petitioner forthwith on receipt of authenticated copy of this order.

9. The Petition stands disposed of as such.

10. No order as to costs.

(G.S. KULKARNI, J.)

(SHANTANU KEMKAR, J.)