

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10425 OF 2017

Shweta Sunil Kusare

...Petitioner

vs.

The Schedule Tribe Caste Certificate
Scrutiny Committee, Amravati

...Respondent

Mr. Ashwin Deshpande a/w. Mr. Piyush Pande, for the Petitioner.
Mr. A.A. Kumbhakoni, Advocate General a/w. Mr. Shardul Singh,
Special Counsel, for the Respondent.

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

DATE : SEPTEMBER 25, 2017

ORAL JUDGMENT: (Per G.S. Kulkarni, J.)

1. Rule returnable forthwith. Heard finally by consent of the learned Counsel for the parties.
2. This Petition under Article 226 of the Constitution of India challenges the order dated 2nd September, 2017 passed by the Schedule Tribe Caste Scrutiny Committee, Amravati (for short the “*Scrutiny Committee*”). By the impugned order the Scrutiny Committee has rejected the claim of the Petitioner for validity of the caste certificate belonging to the “Halbi”, Scheduled Tribe.
3. The petitioner in supporting the claim for grant of a validity to the caste certificate of the Petitioner supported his

application with about 33 documents which are listed in para 2 of the impugned order. The documents at Item Nos. 20 to 23 are the birth extract and death extract of the great great grandfather and sister of the great grandfather of the Petitioner. These documents are dated 18th June, 1912, 14th February, 1914, 21st November, 1919 and 4th November, 1918 respectively.

4. It is not in dispute that the Scrutiny Committee thought it appropriate to initiate a Vigilance Inquiry. The Report of the Vigilance Inquiry was placed on record of the Scrutiny Committee. A perusal of the report of the Vigilance Inquiry indicates that the Vigilance Officer considered seven pre-constitution documents as relied upon by the petitioner as under:

Sr. No.	Nature of Documents	Name	Caste Recorded as	Date of Admission/ birth/death	Relation with the applicant	Remarks
11	Birth extract	A female child is shown to have born to Sonba Nagoba Halbi	Halbi	02.12.1937	Great grandfather	
12	Birth extract	Sonaba Nagoba	Halbi	02.12.1937	Great grandfather	
20	Birth extract	A female child is shown to have born to Nago Halbi	Halbi	18.6.1912	Great great grandfather	
21	Birth extract	A female child is shown to have born to Nago Halbi	Halbi	14.2.1914	Great great grandfather	
22	Birth extract	A male child is shown to have born to Nago Halbi	Halbi	21.11.1919	Great great grandfather	

23	Death extract	Kondi Nago Halbi	Halbi	4.11.1918	Great grandfather's sister	
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The report states that on verification it is noticed that Nagoji is the father of Anusaya (grandfather's sister). Her name was recorded in the School register on 24th July, 1934 showing the caste as “Koshti”. It further records that when the inspection was taken in the Tahasildar office, Mahagaon from the record pertaining to village Dhanoda, it was revealed that between the period 17 October 1935 to 17 October 1940 there are entries showing that children were born to the petitioner's great grandfather Sonba Nagoji and the entry against this birth extract shows the caste as “Koshti”. It further records that children were born to the petitioner's great-great grandfather– Nago and to that effect birth extract dated 18 June 1912, 14 February 1914 and 21 November 1915 were available showing the caste as “Halbi”. It is however recorded that in the genealogy as presented by the petitioner, it is indicated that Nago had one son Sonaba. However, the record indicates that Nago had four to five children and therefore, the person Nago as referred by the petitioner may not be from the very petitioner's family.

5. In rejecting the claim of the Petitioner though the

Scrutiny Committee has taken into consideration different documents, however, the Scrutiny Committee accepting the observation in the Vigilance report has recorded that as there are inconsistencies in the documents and more particularly the reference to caste "Koshti" in the 1934 to 1940 documents of Anusaya and Nagoji, would dis-entitle the Petitioner of a validity to the caste certificate.

6. We have heard learned counsel for the parties. With their assistance, we have perused the impugned order as also various documents placed on record on behalf of the Respondent.

7. The grievance of the Petitioner is that the pre constitution documents which would have a probative value as referred and appearing at Serial Nos. 20 to 23 in para 2 of the impugned order, are totally discarded by the Scrutiny Committee. From a perusal of the impugned order, it may be observed that there is much substance in the contention as urged on behalf of the petitioner as the impugned order is silent about these documents. There is no discussion as to how these documents could be discarded or would lose their relevancy, even if the documents of the year 1934 and 1940 indicating that two issues are born to Sonba Nagoji and the caste of these two issues is

referred as “Koshti” in the record of the Tahsildar. It is not in dispute that the documents which are the birth and death extracts of the great-great grandfather of the petitioner of the year 1914 and 1919 respectively, which refer the caste of the great-great grandfather as “Halbi”, being pre constitution documents would have a high probative value. The Scrutiny Committee in para 1 of its order has recorded that though these documents which are pre constitution documents show the caste as “Halbi”, yet as there exists a caste of a similar nomenclature as “Halbi” and which is a sub caste of “Koshti”, and thus on the basis of these documents, it cannot be said that the Petitioner belongs to the “Halbi” - Schedule Tribe. This observation is made only on the ground that the said 1934 to 1940 documents as noted above indicate the caste as “Koshti” of the two issues born to Sonba.

8. In our opinion these reasons which are accorded in para 2 of the impugned order are insufficient to dis-entitle the Petitioner to reject the caste validity claim as made by the Petitioner. The Scrutiny Committee ought to have given appropriate reasons to discard these documents. Merely, because 1934 to 1940 documents reflect a different caste, this by itself would not mean that the Committee would disbelieve the said

documents of the year 1912, 1914 and 1919 at Sr. Nos. 20 to 23 as referred above, more particularly when there is no material to disbelieve these documents. We therefore find much substance in the contention as urged on behalf of the Petitioner that the impugned order which does not take into consideration the pre constitution documents, would vitiate the impugned order.

9. It is significant that on behalf of the Respondent, it is not disputed that apart from the fact that the impugned order records no finding in regard to the documents of the year 1914, 1918 and the 1919, as referred and relied by the petitioner, even the Vigilance inquiry does not disbelieve these documents.

10. In the circumstances, it would be in the interest of justice that the impugned order dated 2nd September, 2017 is quashed and set aside and the matter is remanded back to the Caste Scrutiny Committee to decide the validity claim of the Petitioner afresh by taking into consideration all the necessary documents after undertaking an appropriate inquiry as per law. Ordered accordingly.

11. The Petitioner shall appear before the Caste Scrutiny Committee along with a copy of this order initially on 29th September, 2017 at 11.00 am and thereafter the Caste Scrutiny

Committee shall endeavor to denovo consider the matter and decide the tribe claim of the petitioner in accordance with law, within a period of two weeks from the first hearing to be held on 29th September,2017.

12. The learned counsel for the Petitioner submits that as the Petitioner would approach the Committee for a *de novo* exercise to be undertaken, the Petitioner would not insist for a fresh show cause notice and or the compliance or any other requirement under Rule 12 (8) of the Maharashtra Scheduled Tribes (Regulation of Issuance and verification of) Certificate Rules, 2003.

13. All contentions of the parties on the merits of the matter are expressly kept open.

14. The Petition stands disposed of in the above terms.

(G.S.Kulkarni, J.)

(Shantanu Kemkar, J.)