

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10424 OF 2017

Ankita Arun Ingle.

...Petitioner

Versus

1. Chairman/Commissioner, Scheduled Tribe Caste
Certificate Scrutiny Committee, Amaravati Division,
Amravati.

2. Directorate of Medical Education and Research Cell.

3. Maharashtra University of Health Science, Nashik

4. Dean, Dr.Ulhas Patil Medical College & Hospital,
Jalgaon.

...Respondents

Mr A. P. Kamleg, for the Petitioner.

Mr A.A. Kumbhakoni, Advocate General a/w Mr.Shardul Singh, Special
Counsel and Mr.Sandeep Babar, AGP for the State-Respondents.

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

DATE : SEPTEMBER 26, 2017

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

1. Rule returnable forthwith. Heard finally by consent of the parties.

2. The challenge in this petition is to the order dated 2 September 2017 passed by the Scheduled Tribe Certificate Scrutiny Committee (for short 'the Scrutiny Committee') by which the caste certificate of the petitioner belonging to Thakur scheduled tribe in the State of Maharashtra has been invalidated.

3. The petitioner had obtained a caste certificate dated 30 May 2014 of the petitioner belonging to Thakur Scheduled Tribe, issued by the competent authority/Sub-Divisional Officer, Buldana. The petitioner through the educational institution in which she was pursuing her studies had made a proposal for verification of her tribe claim as forwarded to the scrutiny committee. Alongwith the said proposal, the petitioner had submitted number of documents which are referred in paragraph 2 of the impugned order numbering to about 61. The documents which were submitted, contained some pre-constitution documents being the birth extract of the great grandfather, extract of school admission register of the cousin grandfather etc. which are listed out at Sr.Nos.11, 12, 13 and 14. Apart from these documents, the petitioner also submitted for consideration of the scrutiny committee, the caste certificates and the caste validity certificates issued in favour of the near relatives of the petitioner namely petitioner's uncle, real sister and cousins of the

petitioner. The following are the details of the caste validity certificate issued to these relatives of the petitioner as also referred in paragraph 2 of the impugned order:-

Sr.no.	Nature of documents	Name	Caste recorded as	Date of admission/birth/death	Relation with the applicant
1	A order copy of Divisional Commissioner Amravati Division	Chatarsingh Narayan Ingle	Thakur	25.2.1989	Parental uncle
2	Certificate of validity, issued by Amravati Committee	Praful Anirudha Ingle	Thakur	21.11.2013	Cousin brother
3	Certificate of validity, issued by Amravati committee	Vaishali Chatarsing Ingle	Thakur	24.10.2013	Cousin sister
4	Certificate of validity, issued by Amravati Committee	Rupali Chatarsing Ingle	Thakur	16.5.2014	Cousin sister
5	A copy of Hon'ble High Court Writ Petition No.2505/2005	Rupali Chatarsing Ingle	Thakur	9.4.2014	Cousin sister

The Caste Scrutiny Committee considered the proposal of the petitioner as also the documents as placed on record and by the impugned order the Scrutiny Committee has come to a conclusion that the petitioner has failed in the affinity test, as also the caste validity certificate granted in favour of the petitioner's Uncle Chatarsing also cannot be considered as at the

relevant time, the vigilance and the affinity tests were not conducted, when the validity was granted to the caste certificate obtained by the petitioner's uncle Chatarsing. The Scrutiny committee observed that as the petitioner has interalia failed in the affinity test, and that some cousins of the petitioner as are denied a validity to their caste certificates by an order dated 31 January 2017 passed by the Caste Scrutiny Committee, it was thought it appropriate to reject the proposal to grant validity to the caste certificate of the petitioner.

4. Learned Counsel for the petitioner in assailing the impugned order has made the following submissions:-

(i) It is submitted that there was sufficient material on record, as placed on record before the Scrutiny committee, which was in the nature of pre-constitution documents as also the caste validity certificates issued in favour of the petitioner's near relations, which ought to have been considered by the Scrutiny Committee in the proper perspective.

(ii) It is submitted that validity certificates came to be granted to the cousin sisters of the petitioner namely Vaishali and Rupali, the petitioner's cousin brother Praful as also to uncle Gajanan in pursuance of the orders passed by this Court in Writ Petition No.2506 of 2005 (Nagpur), Writ Petition No.2505 of 2005 (Nagpur), Writ Petition No.1661 of 2009

(Nagpur), Writ Petition No.1822 of 2002 (Nagpur), these facts could not have been brushed aside by the Scrutiny Committee. It is submitted that thus there were four orders of the Division Bench of this Court which considered the documents which are also subject matter of the petitioner's proposal and thought it proper to set aside the orders passed by the caste scrutiny committee. That the Special Leave Petition filed by the respondent against the orders passed in case of petitioner's cousin sisters Vaishali and Rupali and cousin brother Praful have also been dismissed by the Supreme Court, and that the orders passed by this Court have attained finality.

(iii) It is submitted that the impugned order does not record any reasons as to why the validity certificates which have been granted under the orders passed by this Court, would not be relevant and cannot be the subject matter of consideration.

(iv) It is submitted that in the case of the cousins of the petitioner namely Rupali, Vaishali and Praful as also in the case of Gajanan - uncle of the petitioner, proper procedure was followed including inviting a report of the vigilance cell and conducting the affinity test and these issues were subject matter of consideration before the different benches of this Court in the writ petitions filed by these relatives, which ultimately have succeeded. It is submitted that the respondents are not in a position to

demonstrate in any manner that there was any fraud or misrepresentation or that the committee had no jurisdiction, when the caste validity certificate came to be granted to the cousins of the petitioner as also the uncle of the petitioner. Learned Counsel for the petitioner in support of his submission has placed reliance on the orders passed by the Division Bench of this Court in the said Writ Petitions filed by the near relations which in his submission takes into consideration the law as laid down in the decision of this Court in “*Apoorva Vinay Nichale Versus Divisional Caste Certificate Scrutiny Committee No.1 & others*”¹.

5. On the other hand, the learned Special Counsel for the respondent would support the impugned order. The following submissions are canvassed to contest this petition.

(i) It is submitted that the finding of the committee is correct to the effect that the caste validity certificate granted to Chattersing-uncle of the petitioner could not have been relied as at the relevant time there was no procedure of an affinity test or calling for the report of vigilance cell, and therefore, the caste certificate of Chattersing being the foundation for grant of caste validity certificates to the cousins of the petitioner namely Rupali, Vaishali, Praful and uncle – Gajanan would not be of any relevance.

¹ 2011(2) BCR 824

(ii) It is submitted that in the present case the petitioner has failed in the affinity test and therefore the orders passed by the Division Bench of this Court in respect of the cousins of the petitioner would not be relevant as the case is required to be considered on the facts as they appear before the committee.

(iii) It is then submitted that two other cousins of the petitioner as noted by the scrutiny committee in paragraph 7 of the order have been rejected validity to their caste certificates by the orders dated 31 January 2017, and therefore there is nothing inappropriate or erroneous on the part of the scrutiny committee to come to a conclusion to reject the claim of the petitioner for validity of the caste certificate.

It is on these grounds on behalf of the respondents, the impugned order is sought to be sustained.

6. We have heard learned Counsel for the parties and with their assistance we have perused the impugned order, the documents as placed on record as also the orders passed by the Division Bench of this Court in Writ Petition No.2506 of 2005, Writ Petition No.2505 of 2005, Writ Petition No.1661 of 2009 and Writ Petition No.1822 of 2002.

7. At the outset we may observe that this is a peculiar case

inasmuch as the very same material had fell for consideration of the caste scrutiny committee in the proceedings which were undertaken on behalf of the petitioner's three cousins and one uncle Gajanan. The genealogy as set out and placed on record of the scrutiny committee is not in dispute. It is also not the case of the respondents that these documents were not part of the proceedings before the earlier committee and all these persons belong to the same family. What is glaring is that the four Division Benches of this Court had an occasion to consider the decisions of the caste scrutiny committee refusing the validity to the caste certificates of the petitioner's near relatives and considering the documents which are placed on record before the Court, the Division Bench of this Court in all these four proceedings reached a conclusion that the decision of the caste scrutiny committee invalidating the caste certificate was not sustainable and that in each of these cases, the scrutiny committee was directed to issue caste validity certificate to the said relations of the petitioner belonging to the Thakur Scheduled Tribe. We may note the relevant observations of this Court in each of these orders, which read thus:-

In the order passed in Writ Petition No.2506 of 2005 “*Vaishali Chatarsing Ingale (Thakur) vs. The Committee for Scrutiny and Verification of Tribe Claims & Ors.*”² **of the cousin sister** of the petitioner, the Division Bench has observed thus:-

2 2014(1) All Mr 78

“4. We have considered the submissions of the parties. The Government Resolution dated 22.08.2007 lays down that if the validity certificate is issued by the Appropriate Authority in favour of any blood relation from father's side, then there is no need to demand any other document and the Scrutiny Committee should complete the enquiry within one month.

5. In the judgment reported in **2011(2) BCR 824 (Apoorva Vinay Nichale Versus Divisional Caste Certificate Scrutiny Committee No.1 & others)**, identical issue fell for consideration of this Court and the Division Bench has considered it in paragraph 9 as follows”

6. It is an admitted fact that the caste claim of Shri.Chatarsing Narayan Ingale, the father of the petitioner, as “Thakur” Scheduled Tribe is validated by the Additional Commissioner, Amravati Division, Amravati, by the order dated 25.02.1989, who was the Appellate Authority at that time. The above referred order of the Additional Commissioner validating the caste claim of the father of the petitioner has become final. It is not the case of the respondent no.1-The Scrutiny Committee that the caste certificate and the order validating the caste certificate have been obtained by the father of the petitioner by fraud or misrepresentation.

....

8. We are of the considered opinion that the impugned decision of the respondent no.1-The Scrutiny Committee is unsustainable in law and is contrary to the guidelines issued by the Government of Maharashtra in the Government Resolution dated 22.08.2007 and is contrary to the judgment of this Court, reported in 2011(2) BCR 824 (Apoorva Vinay Nichale Versus Divisional Caste Certificate Scrutiny Committee No.1 & Others). Therefore, the writ petition is allowed. The impugned decision of the respondent no.1-The Scrutiny Committee is quashed. The respondent no.1-The Scrutiny Committee is directed to take into consideration the Government Resolution dated 22.08.2007 and the law laid down by this Court in the judgment reported in 2011(2) BCR 824 (Apoorva Vinay Nichale Versus Divisional Caste Certificate Scrutiny Committee No.1 & Others). Therefore, the writ petition is allowed. The impugned decision of the respondent no.1-The Scrutiny Committee is quashed. The respondent no.1-The Scrutiny Committee is directed to take into

consideration the Government Resolution dated 22.08.2007 and the law laid down by this Court in the judgment reported in 2011(2) BCR 824 (Apoorva Vinay Nichale Versus Divisional Caste Certificate Scrutiny Committee No.1 & Others) and to furnish the Caste Validity Certificate to the petitioner.”

In the order passed in Writ Petition No.2505 of 2005 “*Ku.Rupali d/o.Chatarsing Ingale (Thakur) vs. The Committee for Scrutiny and Verification of Tribe Claims & Ors.*”³ **of the cousin sister** of the petitioner, the Division Bench has observed thus:-

“5. It is not in dispute that initially on 25th February 1989 the petitioner's father was granted validity of belonging to Thakur Scheduled Tribe. In proceedings initiated for verification of the petitioner's sister's claim, the matter was referred to the Vigilance Cell and thereafter order dated 21st March 2005 came to be passed by the Scrutiny Committee. This order dated 21st March 2005 has been set aside by this Court in Writ Petition No.2506 of 2005. It is to be noted that insofar as the claim of the petitioner's sister is concerned, there has been a report of the Vigilance Cell after which said sister has been held entitled to the grant of validity certificate. We find that in view of the law laid down by this Court in the case of Apoorva Vinay Nichale (supra) the petitioner is also entitled to grant of validity certificate of belonging to Scheduled Tribe. Moreover, the order dated 21st March 2005 impugned in the present Writ Petition is identical to the order that was passed in the case of the petitioner's sister and the same has been set aside.

6. Hence, considering the view taken by this Court in Writ Petition no.2506 of 2005 and the fact that on 24th October 2013 the Scrutiny Committee has issued a validity certificate to the petitioner's sister, we set aside the order dated 21st March 2005 passed by the respondent no.1-Scrutiny Committee. It is declared that the petitioner belongs to Thakur Scheduled Tribe. She is, therefore,

3 Writ Petition no.2505/05 decided on 9.4.2014 (Nagpur Bench)

entitled to be issued a validity certificate on the same terms on which it has been issued to her sister-Vaishali. Hence, the Writ Petition is allowed. Rule is made absolute in terms of prayer Clause (a). Respondent No.1 Scrutiny Committee is directed to issue validity certificate to the petitioner of belonging to Thakur Scheduled Tribe within a period of three weeks from today. No order as to costs.”

In the order passed in Writ Petition No.1661 of 2009 “*Praful s/o.Aniruddha Ingle vs. The State of Maharashtra & Ors.*”⁴ **of the cousin brother** of the petitioner, the Division Bench has observed thus:-

“6. We have heard the learned Counsel for the respective parties and have examined the record with their assistance. It is not the case of the Caste Scrutiny Committee that the documents of February,1929, 7th August,1941, 1st July,1929, 21st July,1937 and 2nd April,1956 are not genuine or are fabricated. The documents of 1923, 1929, 1941 and 1937 are pre-constitution documents and have more evidentiary value as laid down by the Hon'ble Supreme Court in case of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others reported in 2011(5) Mh.L.J. 919. The reason, as given by the Caste Scrutiny Committee in the impugned order for not relying on the above referred documents that though the documents show the caste as “Thakur”, none of the documents show the caste as “Thakur” Schedule Tribe is fallacious. The tribe “Thakur” was not recognized as Schedule Tribe in the pre-constitution era inasmuch as the The Constitution (Scheduled Tribes) Order, 1950 itself came into existence in 1951.

... ..

8. The petitioner has further submitted that the caste certificate of Shri.Chhatarsingh Narayan Ingle, the cousin uncle of the petitioner has been validated by the order dated 28th February,1989 by the Divisional Commissioner, the then Competent Appellate Authority. The Caste Scrutiny Committee has not disputed the validity certificate issued in favour of said Chhatarsingh. In case of Apoorva Vinay Nachale V/s. Divisional Caste Certificate Scrutiny Committee No.1 and others reported in 2011(2) BCR 824 the Division Bench of this Court in para 9 has laid down as

4 Writ Petition 1661/2009 decided on 10.10.2013

follows:-

9. Considering the pre-constitution documents on the record and the fact that the caste certificate of the cousin uncle of the petitioner is validated by the Competent Appellate Authority and the fact that the Caste Scrutiny Committee is not disputing this factual position, we are of the view that the caste certificate of the petitioner could not have been invalidated.

10. In view of the above, the impugned decision of the Caste Scrutiny Committee is unsustainable and has to be quashed.

11. The Writ Petition is allowed. The impugned order passed by the Caste Scrutiny Committee is quashed. The Caste Scrutiny Committee is directed to issue the caste validity certificate to the petitioner certifying that the petitioner belongs to "Thakur" Schedule Tribe within four weeks."

In the order passed in Writ Petition No.1822 of 2002
*"Gajanan Tukaram Ingle vs. The Committee of Scrutiny and Caste Verification of Tribe Claims, Amraoti & Ors."*⁵ of the petitioner's uncle, the Division Bench has observed thus:-

"5. Since the claim of 'Thakur' Scheduled Tribe in respect of blood relations i.e. petitioner's cousin, namely, Chatarsingh has been validated by the Divisional Commissioner, Amravati, as also the nieces of the petitioner, who are the daughter of Chatarsingh, namely Vaishali and Rupali, have been granted validity certificates in view of the order passed by Division Bench of this Court and in view of authoritative pronouncement in Apoorva Nichale's case (Supra), in our considered view, the petitioner is entitled for the reliefs claimed. Hence, the following order:-

ORDER

(i) The impugned order dated 19.11.2001 passed by the Scrutiny Committee is hereby quashed and set aside.

(ii) The respondent no.1-Scrutiny Committee is directed to furnish caste validity certificate in favour of the petitioner in view of the law laid down by this Court in Apoorva Nichale's case (supra), within a period of four

5 Writ Petition 1822/2002 decided on 21.07.2017

weeks.

(iii) Rule is made absolute in the aforesaid terms. No costs.”

8. It is thus significant that in each of the above judgments this Court not only considered the documents but also considered the well settled principles in law in regard to the procedure to be followed by the scrutiny committee, and in that view of the matter, directed the caste scrutiny committee to grant caste validity certificate, to the petitioner's relatives.

9. Learned Special Counsel for the respondents is not in a position to point out that the cases of the cousins of the petitioner and and the uncle of the petitioner, were such cases where affinity test or vigilance inquiry as necessary under the Rules, was not undertaken. We made a specific query in this regard as also called upon the learned counsel for the respondents to show that this procedure was not undertaken in these three cases. Learned Special Counsel for the respondents was unable to point out any material to make good the submission that these cases would stand differently from the case in hand.

10. We are also not impressed with the submissions as urged on behalf of the respondent that the case of the petitioner's uncle

Chattersingh, was not relevant inasmuch as when the validity came to be granted to the caste certificate of Chattersingh, the procedure of affinity test and vigilance cell inquiry was not undertaken and the same were not the part of the rule at that point of time. We have perused the observations of the caste scrutiny committee in the impugned order which refers only to the case of Chattersingh, to come to a conclusion that as affinity test and vigilance cell inquiry was not conducted in the case of Chattersingh, the orders granting validity to the caste certificate of Chattersingh, cannot sustain the claim of the petitioner. When these observations are made, it is clear that the committee has completely given a go-by to the procedure followed by the Scrutiny committee in the case of the three cousins and uncle Gajanan, of the petitioner, where all the necessary steps were undertaken and a proper and valid procedure was followed. The submission that the caste validity certificate issued to Chattersingh ought to be discarded would also not impress us for another reason namely Chattersingh had approached the authorities in the year 2012 for reverification of the orders passed by the scrutiny committee dated 19 December 1988. The said application of the Chattersingh was rejected by maintaining the order dated 19 December 1988 as passed by the Divisional Commissioner, Aurangabad Division where the appeal of Chattersingh was allowed granting him validity to the caste certificate

belonging to Thakur Scheduled Tribe. It is also not the case of the respondents that the decision dated 19 December 1988 of the caste scrutiny committee was at any time challenged by the respondent in appropriate proceedings so as to contend that they would not be relevant and that the said order is in any manner upset.

11. In the light of the above discussion, we are of the opinion that the observations which are made by the caste scrutiny committee in the impugned order are too general as also casual to overlook the overall material which had emerged on the record of the Scrutiny committee, including the orders passed by this Court in the Writ Petitions as referred above, filed by the near relatives of the petitioner. The caste scrutiny committee has also overlooked the law as laid down in the decision of this Court in “ *Apoorva Vinay Nichale Versus Divisional Caste Certificate Scrutiny Committee No.1 & others* (supra) wherein in paragraph 9 the Court has observed thus:-

“Para 9: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 (employment), 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 caste 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.”

12. It also cannot be overlooked that there were pre-constitution documents which were placed on record of the caste scrutiny committee as noted above. Those documents are not in any manner disputed. There is no discussion to disbelieve these documents, but still the caste scrutiny committee felt it appropriate to reject the validity to the caste certificate of the petitioner. This was certainly not appropriate and is not acceptable.

13. In view of the above deliberation, we are certain that this petition needs to be allowed. We accordingly set aside the impugned order dated 2nd September, 2017 passed by the Scrutiny Committee and direct the Scrutiny Committee to forthwith, issue to the Petitioner a caste validity certificate, of the Petitioner belonging to the “Thakur Scheduled Tribe”, on receipt of an authenticated copy of this order.

14. The petition is allowed in the above terms. No costs.

(G. S. KULKARNI, J.)

(SHANTANU KEMKAR, J.)