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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5032 OF 2016

Aarif Budan Shaikh,
Age 46 years, residing at House
No.A-503, Ghansham Bhavan,
Ghansoli, Sector-3, Plan No.10,
Navi Mumbai, District Thane.

..Petitioner.

V/s.

1. State of Maharashtra through its
Secretary, Tribal Development,
Department, Mantralaya,
Mumbai – 400 032.
2. Scheduled Tribe Caste Certificate
Scrutiny Committee, Pune Division.
Pune, through its Deputy Director
and Member Secretary having its
Office at 28, Queen's Garden,
Pune – 411 001.
3. Chief Secretary,
Revenue and Forest Department,
32nd floor, Sector-1 Building,
World Trade Centre, Cuffee
Parade, Mumbai – 400 005.

..Respondents.

Mr.S.G.Kudle for the petitioner.

Mr.V.S.Gokhale, AGP for the respondent-State.

CORAM: SHANTANU KEMKAR AND NITIN W.SAMBRE, JJ.

RESERVED ON : JULY 7, 2018

PRONOUNCED ON : JULY 10, 2018

JUDGMENT (PER NITIN W. SAMBRE,M J.)

Impugned in this petition, is an order dated November 6, 2015 passed by respondent No.2 Scheduled Tribe Caste Certificate Scrutiny Committee ('Scrutiny Committee' for short), whereby the claim of the petitioner as belonging to '*Koya Schedule Tribe*' came to be rejected and the caste certificate of the petitioner dated June 24, 2011 came to be cancelled and confiscated.

2. The facts necessary for deciding the petition are as under :-

The Department of Revenue and Forest, the employer of the petitioner, *vide* communication dated July 25, 2013 referred the caste claim of the petitioner for validation to respondent No.2 Scrutiny Committee as it claims that the petitioner was selected on

September 6, 1996 and joined his duties on the very day.

3. It is the claim of the petitioner that originally his family belongs to Village Khed, Taluka Karjat, District Ahmednagar and his family members were agriculturist and also used to have livestock.

4. According to the petitioner, the petitioner's father has three brothers of which two brothers Kasam and Nizam were born in a village at Akkalkot, District Solapur. It is claimed that his grandfather migrated from Akkalkot to Khed, Taluka Karjat, District Ahmednagar where father Budan and paternal aunt Nazirabi were born. According to him, the petitioner could speak Gondi language.

5. In support of the claim put forth by the petitioner, the petitioner submitted the following documents :-

“(1) Copy of the School leaving certificate of Shaikh Budan Shaikh Fakruddin (applicant's father) which was obtained on 17/01/2012 is produced in which his caste is mentioned as 'Musalman Koya'.

- (2) *Copy of the School leaving certificate of Shaikh Hamid Nizam (applicant's cousin brother) which was obtained on 04/09/2008 and extract of the school admission and school leaving register obtained on 05/10/2012 are produced in which his caste is mentioned as 'Musalman Koya'.*
- (3) *Copy of the birth certificate of Fakruddin Hussain Bapu Bhai Shaikh (applicant's grand-father) which was obtained on 29/02/2012 is produced in which his caste is mentioned as 'Musalman Koya' and date of birth is mentioned as 30/12/1906.*
- (4) *Copy of the birth certificate of Kasim Fakruddin Hussain Shaikh (applicant's uncle) which was obtained on 16/03/2010 is produced in which his caste is mentioned as 'Musalman Koya'.*
- (5) *Copy of the birth certificate of Nizam Fakruddin Hussain Shaikh (applicant's uncle) which was obtained on 16/03/2010 is produced in which his caste is mentioned as 'Musalman Koya' and date of birth is mentioned as 20/05/1926.*
- (6) *Copy of the extracts of school admission and school leaving register of Nazrabi Fakruddin Bhai (applicant's paternal aunt) which was obtained on 05/10/2012 is produced in which her caste is mentioned as 'Musalman Koya'."*

6. In addition, the petitioner has also relied upon the extracts of school record, wherein the tribe referred to could be inferred as '*Musalman Koya*' from June 1, 1938 to June 1, 1943. In addition, the petitioner has also relied upon the customs and traditions of '*Koya Musalman*' so as to establish his case.

7. Since the Scrutiny Committee was not in agreement with the claim put forth by the petitioner, the same was referred to the Vigilance Cell for carrying out home inquiry. In home inquiry, statement of the petitioner's real brother Altaf was recorded on February 11, 2015 and he has narrated about the tradition followed by his family.

8. In the home inquiry since the entries of school record from 1974 in regard to the blood relations of the petitioner, his real cousin brother and real cousin sister were noticed to be '*Musalman*' and not '*Koya*', an in-depth inquiry was conducted, wherein it was noticed that the school record entries which were drawn from the Zilla Parishad were tampered with and the word

'Koya' noted to have been inserted in separate handwriting and ink.

9. As aforesaid material along with the Vigilance Cell report was made available to the petitioner, the petitioner was called upon to submit his explanation. The petitioner initially raised an objection that there needs to be fresh home inquiry by the Vigilance Cell pursuant to Rule 13(1)d of the Rules of 2012. Since respondent No.2 Committee has not acceded to the request of the petitioner, the petitioner submitted his explanation to the Vigilance Cell *vide* his explanation dated September 21, 2015.

10. The petitioner in his explanation to the Vigilance Cell conceded that variance in the handwriting made in word 'Koya' in the school record is natural. According to him, he belongs to 'Koya Schedule Tribe'.

11. Considering the explanation tendered by the petitioner, the Scrutiny Committee upon appreciation of the claim put forth by the petitioner, Vigilance Cell report and documentary evidence placed on record by the petitioner and the Vigilance Cell, has

rejected the claim on the ground that the petitioner is unable to satisfy and establish that he belongs to '*Koya Scheduled Tribe*'.

12. Mr.Kudle, learned counsel for the petitioner would urge that respondent Scrutiny Committee failed to conduct itself in accordance with the statutory provisions and procedure as according to him, by placing on record documentary evidence which is of pre-independence era, the petitioner has discharged his burden of proving and establishing his tribal claim. According to him, if the respondent Scrutiny Committee was not in agreement with the entries in the school record and was of the opinion that the said entries are subsequently inserted, they were required to conduct themselves in accordance with the law laid down by the Apex Court in the matter of *Sayanna V/s. State of Maharashtra and others*¹.

13. According to Mr.Kudle, there is no basis for the Scrutiny Committee to conclude that the word '*Koya*' was interpolated in the register of the school when fact remains that the said record is not within reach of the petitioner. According to

¹ (2009) 10 Supreme Court Cases 268

him, the matter should have been referred to the Handwriting Expert for comparison of the admitted handwriting of the person concerned, with the disputed one. According to him, since the Scrutiny Committee has failed to do so, the matter needs to be remanded to the Scrutiny Committee, so that the petitioner will be in a position to meet the case that the petitioner has inserted the word 'Koya'. Mr.Kudle would then urge that by not following the ratio laid down in the aforesaid judgment of the Apex Court, there is denial of opportunity and as such, according to him, the petition needs to be allowed.

14. *Per contra*, the learned Assistant Government Pleader, Mr.Gokhale would support the impugned order as according to him, the petitioner has failed to discharge the burden. He contends that it is not the stand of the petitioner that the entry as noticed from the school record was denied to have been carried out by the petitioner. He would then urge that the petitioner also owes an explanation as to the subsequent entries in the school record which does not reflect 'Koya' but only 'Musalman'. According to him, the Scrutiny Committee has rightly rejected the claim of the

petitioner.

15. Considered rival submissions.

16. In view of the order dated November 6, 2015 passed by respondent No.2 Scrutiny Committee is based on the Vigilance Cell report, the petitioner was issued notice calling upon him to explain the observations in the Vigilance Cell report.

17. No doubt, the petitioner in support of his claim of '*Musalman Koya*' has relied upon aforesaid six documents.

18. The Scrutiny Committee, in the backdrop of this entry, recorded statement of Altaf, real brother of the petitioner. In the school record, so far as the father of the petitioner is concerned, on the school admission record dated June 1, 1938, the caste is recorded as '*Musalman Koya*'. As regards his cousin brother Shaikh Hamid, his paternal aunt Nazarbi Fakruddin, also demonstrates two independent entries as '*Musalman Koya*'.

So far as Tribe entries of cousin brothers, sisters and nephews are concerned, same reflects only '*Musalman*' and not '*Koya*' which are for the period from 1974 to 1995. So far as the

others entries are concerned, including the two independent entries demonstrates '*Musalman Koya*', same were dealt with by the Scrutiny Committee. So far as the first three entries of 1938 about father, cousin brother Shaikh Hamid Nizam wherein no date is mentioned and of paternal aunt on June 1, 1943 are concerned the Scrutiny Committee noted overwriting in different ink and handwriting. The Head Master of the Primary School from where the documents were collected has also endorsed difference in handwriting and ink, by inserting word '*Koya*' in the said documents.

19. So as to verify the authenticity of the said entries, the Vigilance Cell visited the office of Tahasildar, Akkalkot on August 10, 2015 and perused the date of birth entries and obtained the extracts thereof in Form No.14. The entries maintained in the office of Tahsildar are in '*Modi*' form (language) and those entries are noticed to be in different handwriting. If the entries brought by the petitioner in the above referred documents are compared, an inference was drawn that the entries in the documents produced by the petitioner are not genuine.

20. So far as the above referred opinion of the Vigilance Cell is concerned, the Scrutiny Committee has analysed the same in the light of the explanation tendered by the petitioner with the Vigilance Cell. In the said report, without offering any explanation to the change in handwriting and ink in the school record, the petitioner has explained the same as to be natural act. The petitioner has neither disputed the same nor requested the Scrutiny Committee to refer the matter to the Handwriting Expert. Rather the petitioner has come out with a case that the entry in these record about his tribe is correct and cannot be doubted.

21. So far as the entry '*Musalman Koya*' and '*Musalman*' having been brought on record in number of documents is concerned, there is no explanation is offered for same which are adverse to the interest of the petitioner. It was expected of the petitioner to explain as to how the entry '*Musalman*' is taken in school record of the cousin brothers, sisters, nephews when initial pre-independence era entries are relied upon are that of '*Musalman Koya*', sanctity of which is already under cloud. However, in absence of any explanation to that effect, the only inference that can be drawn is that the petitioner is not belonging

to '*Koya Scheduled Tribe*'.

22. This Court so as to verify the doubtful entry and the documents which are produced on record by the petitioner, that of by the Vigilance Cell has directed respondent-Scrutiny Committee to produce original record. Upon perusal of the original record, it is noticed that the petitioner has produced Family Tree. Along with the application, other documents which are produced by him, viz. caste certificate and school leaving certificate of Shaikh Budan i.e. his father. There is a specific entry made in the said document that part of the original record is destroyed in fire. The other entries of 1906 in regard to his grandfather, the entry of 1920 is in regard to his another grandfather, entry of Shaikh Hamid Nizam in the school admission **register and school leaving and extract from the admission register of Nizam Fakruddin with a specific entry indicating that these are drawn from the information received.** If considered in the backdrop of over all evidence brought on record by the petitioner to establish the tribe claim, a serious doubt is created as to whether the said relatives of petitioner were resident of Ahmednagar or Solapur. The record as reflected herein above, particularly about Ahmednagar school,

wherein the name of the student and only caste is noticed and rest of the part of the same record is claimed to have been destroyed in fire, creates a serious doubt about existence of such genuine entries.

23. This Court has already analysed the entire evidence brought on record both by the petitioner as well as the Vigilance Cell and the findings by the Caste Scrutiny Committee. The contentions of the petitioner that the claim be remanded for reconsideration does not hold any substance and the same is liable to be rejected for the following reasons.

24. This Court has also appreciated the extracts submitted by the Vigilance Cell in regard to the birth register drawn from the office of Tahsildar. The petitioner is unable to substantiate the claim, viz. the entry in the said document in different handwriting. Apart from above, neither the petitioner has filed a certificate of true translation of the entry which are in *Modi* language nor an affidavit of the Translator. As such, it is very difficult to believe that there was no tampering or insertion or the translation given is correct. The statute caste burden on the petitioner to prove his

tribe claim.

25. The Committee, which is presided over by subject Experts, upon appreciation of the material provided by the petitioner, his brother, so as to establish the customs, traditions which are followed by the petitioner, has inferred that the petitioner has failed to establish affinity with 'Koya Scheduled Tribes'. The Committee has observed that the petitioner claiming to be belonging to 'Koya Scheduled Tribe' is unable to establish nexus of primitive traits, distinctive culture, geographical isolation etc and has reached to a conclusion that the petitioner is not belonging to 'Koya Scheduled Tribe' which appears to be correct in law.

26. So far as the reliance placed by the petitioner on the judgment in the case of *Sayanna V/s. State of Maharashtra* (cited supra) is concerned, paragraphs 13 and 14 of the said judgment read thus :-

“13. What is relevant to notice is that in the report dated 1-12-2003 the Police Inspector has merely stated as a matter of fact that the word "lu" was subsequently added

while recording the caste of the appellant as Mannerwarlu in the school register. The Police Inspector has not stated that the word "lu" was interpolated by the appellant. There is every possibility that the word "lu" was not mentioned at the time of recording of the caste of the appellant and on being pointed out the correct spelling of caste, the word "lu" was added. Addition of word "lu" subsequently would not lead to an irresistible conclusion that the said word was added by the appellant or at his behest.

14. It is difficult for this Court to understand as to on which basis the Scrutiny Committee came to the conclusion that the word "lu" was interpolated in the register of the school more particularly when it was not so opined by the Police Inspector who had conducted the enquiry. Whether interpolation by addition has taken place can be stated by a handwriting expert or by comparison of admitted letters of a person with this disputed one. It is an admitted position that the Scrutiny Committee had never attempted to get an expert's opinion nor itself had compared the disputed letters with admitted one of the appellant. “

27. In the light of the above referred legal position, if the claim of the petitioner, in the backdrop of insertion in the document about the caste in different ink and handwriting is analysed in detail, claim of the petitioner that by order of remand,

the Scrutiny Committee should be directed to refer the said document for the opinion of Handwriting Expert, in our opinion, does not appear to be of any substance and is liable to be rejected for the following reasons:

28. The fact remains that the Vigilance Cell report was served on the petitioner and he was required to submit explanation on the aforesaid fact of insertion of tribe entry in different ink and handwriting but the petitioner instead of requesting for opinion of the Handwriting Expert has justified such entry as natural and authentic. If the said entry is compared with the handwriting preceding such entry, it can be easily inferred that in the open space insertion is carried out so as to gain undesired benefit *qua* and the claim of the petitioner '*Koya Scheduled Tribe*'. Pursuant to provisions of section 8 of the Act, burden is upon the petitioner to establish his case that he belongs to '*Koya Scheduled Tribe*'. The conduct of the petitioner in the present case *prima facie* demonstrates that he has not established such claim, as there is sufficient material on record to seriously doubt the claim of the petitioner as belonging to '*Koya Scheduled Tribe*'.

29. If the case of the petitioner is appreciated, the disputed entry whereby insertion in different ink and handwriting is noticed are not required to be investigated into afresh when fact remains that petitioner has justified the same before the respondent Committee and having suffered rejection of claim for verification, changed his stance before this Court. Once the petitioner has accepted this entry in his explanation to the Vigilance Cell, reliance placed on the judgment of *Sayanna V/s. State of Maharashtra* (cited supra) could hardly be of any assistance.

30. Upon perusal of the original record, the entry made in it and its comparison by the Scrutiny Committee and by this Court, prompts this Court to draw a conclusion that the Scrutiny Committee on appreciation of the entire evidence has reached to a conclusion of rejection of the claim of the petitioner. The petitioner has also failed to satisfy the contradictory entries viz. '*Musalman Koya*' or '*Musalman*'.

31. In the aforesaid backdrop, there is no doubt that the petitioner does not belong to '*Koya Scheduled Tribe*' and rightly

holding so, in our opinion, the Scrutiny Committee was right in rejecting the claim of the petitioner.

32. No interference is warranted in the extra-ordinary jurisdiction, the petition lacks merits and is dismissed as such.

(NITIN W.SAMBRE, J.)

(SHANTANU KEMKAR, J.)

33. The learned counsel for the petitioner submits that the operation of the judgment may kindly be stayed enabling the petitioner to approach the Supreme Court against this judgment. Prayer is accepted. The operation of the judgment is stayed for a period of six weeks.

(NITIN W.SAMBRE, J.)

(SHANTANU KEMKAR, J.)