

Amk

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

WRIT PETITION NO. 6336 OF 2015

Gajanan Vasudevrao Lade	]	
Age ____ years,	]	
R/o. Flat No.12, Shri Samarth Avenue,	]	
Near Raje Shambhaji Gymnasium,	]	
Karmayogi Nagar, Untwadi,	]	
Nashik-8	]	.. Petitioner

Versus

- | | | | |
|----|---------------------------------------|---|----------------|
| 1. | State of Maharashtra |] | |
| | through its Secretary, |] | |
| | Tribal Development Department, |] | |
| | Mantralaya, Mumbai - 400 032. |] | |
| 2. | Scheduled Tribe Certificate |] | |
| | Scrutiny Committee, Nashik |] | |
| | through its Member Secretary, |] | |
| | having its office at Adivashi Bhavan, |] | |
| | Old Agra Road, Nashik, |] | |
| | Dist. - Nashik |] | |
| 3. | Deputy Collector, Nashik, |] | |
| | Dist. - Nashik. |] | |
| 4. | Collector, Nashik, |] | |
| | Dist. - Nashik |] | .. Respondents |

Mr. R. K. Mendadkar a/w. C. K. Bangoji & Ms. Priyanka Shaw for the Petitioner.

Ms. Kirti Kulkarni, AGP for the Respondent Nos.1 to 4.

CORAM : A. A. SAYED AND K. K. SONAWANE, JJ.

Judgment reserved on : 26.09.2018

Judgment pronounced on : 10.10.2018

JUDGMENT (*Per K. K. Sonawane, J.*)

1. Rule. Rule made returnable forthwith and heard finally with the consent of both the sides.
2. The Petitioner by taking recourse to the remedy under Article 226 of the Constitution of India for exercise of extraordinary jurisdiction of this Court, has preferred the present Writ Petition agitating the validity and propriety of the impugned order passed by the Scheduled Tribe Certificate Scrutiny Committee, Nashik Division, Nashik dated 06.06.2015 thereby cancelling and confiscating the Caste Certificate issued in favour of Petitioner by Special Land Acquisition Officer, Scarcity No.1, Nashik bearing Sr. No. MAG/WS/341/2004 dated 04.12.2004.
3. According to Petitioner, he is belonging to the “Thakur Tribe” which is recognized as Scheduled Tribe under the Constitution (Scheduled Tribe) Order, 1950. The concerned Revenue Authority issued the Caste Certificate to that effect in favour of Petitioner on 04.12.2004. It has been contended that the Petitioner was intending to contest the election of local authority from the ward kept reserved for candidate belonging to Scheduled Tribe. Therefore, Petitioner referred his Caste Certificate issued by the Revenue Authority for verification to the Scheduled Tribe Certificate

Scrutiny Committee, Nashik. He has also forwarded relevant documents to the Caste Scrutiny Committee in support of his claim. The concerned Scrutiny Committee examined the claim of the Petitioner in the light of documents appended with the Caste Claim. After due verification, the concerned Caste Scrutiny Committee arrived at the conclusion that the claim of Petitioner towards “Thakur Scheduled Tribe” is not sustainable and approvable one. Therefore, the Scrutiny Committee given the directions to cancel and confiscate the Caste Certificate issued in favour of Petitioner. In sequel, the Caste Scrutiny Committee, Nashik passed the impugned order dated 06.06.2015 which is the subject matter of present Writ Petition.

4. Learned Counsel Mr. Mendadkar for the Petitioner vehemently submitted that the impugned order is erroneous, illegal and not within the ambit of law. The Scrutiny Committee did not appreciate the factual aspects of the matter in its proper perspective and committed error in invalidating the claim of the Petitioner. According to learned Counsel, the Committee did not consider the documents of his school record as well as documents relating to his father, grand-father, uncle etc. These documents were since the year 1929 comprising Birth Certificate, Caste Certificate of the relatives, Validity Certificate of his nephew and others. It is fallacious to draw inference that there were no documents to show that the Petitioner

belongs to “Thakur Scheduled Tribe”. He submits that the Thakur Caste is also found amongst the other categories of the communities like Kshatriya, Rajput, Sindhi, Maratha, Bhat etc. but it does not mean that the Petitioner did not produce any document to show that he is from Thakur Schedule Tribe. The learned Counsel also harped on the circumstances that the Scrutiny Committee erroneously discarded the Caste Validity Certificate of nephew Shri Pankaj Prakash Lade on the flimsy and irrelevant grounds without any reasonable cause. It is preposterous to hold that in one genetically related family, there would be two tribes on the similar set of facts and circumstances. He explained the factual aspects of the matter in detail and submits that the Scrutiny Committee passed the impugned order mechanically without application of mind in proper manner. Therefore, he requested to allow the Writ Petition and upset the impugned order with directions to issue Tribe Validity Certificate in favour of Petitioner.

5. The learned AGP appeared for Respondents submitted that the Caste Scrutiny Committee has considered the entire material as well as Verification Report and Affinity Test as per rule. There were valid reasons for discarding the Tribe Validity Certificate in favour of Petitioner. The learned AGP requested to dismiss the Writ Petition.

6. Admittedly, the Petitioner produced voluminous documents to fortify

his Caste claim. There were documents of caste relating to himself, his father, grand-father, real brother, nephew and others. But the Respondent-Caste Scrutiny Committee discarded all these documents being not a conclusive proof to show that the Petitioner belongs to “Thakur Scheduled Tribe”. It has also been observed by the Scrutiny Committee that there were no entries about the particular caste of the Petitioner in these documents. Moreover, the Petitioner failed to prove Affinity Test as well as the Vigilance Cell Report was not in his favour. Therefore, Scrutiny Committee refused to validate Tribe Validity Certificate in favour of Petitioner.

7. It is worth to mention that, the Petitioner along with other documents produced Validity Certificate of his nephew Shri Pankaj Prakash Lade i.e. son of real brother to buttress his claim. But, the Respondent-Caste Scrutiny Committee was reluctant to rely on the Caste Validity Certificate of nephew Shri Pankaj Prakash Lade who is a blood relative of Petitioner. The Respondent-Caste Scrutiny Committee refused to take into consideration the Validity Certificate of nephew Pankaj Prakash Lade in favour of Petitioner for the reasons mentioned below:

“[D] Validity Certificates -

The applicant in his reply has relied on the Validity Certificate issued in favour of his Real Brother – Shri Pankaj Prakash Lade and he has further requested that, on the basis of the

same he should having Validity Certificate of Thakur, Scheduled Tribe. But the applicant is liable to get validity certificate because of following discussion-

As per the above discussion, the documentary evidences are not proved that the applicant belongs to Thakur Scheduled Tribe.

2. The Applicant is failed to prove his affinity with Thakur, Scheduled Tribe.

Thus the grounds on which basis the Validity Certificates were issued is disputed one. Hence, in view of above legal observation, it can not be said that, these Validity Certificates are issued on merits, hence the ratio of these Validity Certificates and above mentioned Hon'ble High Court's orders cannot be given to the Applicant. Secondly, it is the basic principal that "Each claimant has to stand on his/her own legs and merely because one of the family members caste claim has been verified would not by itself be the foundation for validation of candidate's claim."

8. At this juncture, the learned Counsel Mr. Mendadkar scathingly assailed the aforesaid findings of the Committee being totally erroneous, illegal and arbitrary in nature. He submits that there were no allegations of fraud or misrepresentation for obtaining Validity Certificate issued long back in the year 2005 in favour of Pankaj by the Caste Scrutiny Committee. The learned Counsel Shri Mendadkar has drawn our attention to the order passed by the Division Bench of this Court in Writ Petition 5602 of 2015 filed by Shri Prakash Vasudev Lade i.e. real brother of the Petitioner herein. The Division Bench of this Court dealt with the Validity Certificate of

Pankaj son of Prakash Lade and upheld its genuineness and veracity. Pursuant to the Validity Certificate of Shri Pankaj Prakash Lade, the Caste Scrutiny Committee was directed to issue Caste Validity Certificate in favour of his father Prakash i.e. real brother of the Petitioner herein. The learned Counsel Shri Mendadkar also relied upon the order passed by the Division Bench of this Court in another Writ Petition No. 6337 of 2015 wherein the Caste Scrutiny Committee was directed to issue Validity Certificate in favour of Ms. Sujata, the paternal niece of present Petitioner. Learned Counsel Shri Mendadkar submits that the orders passed by the Division Bench of this Court were not challenged or agitated anywhere by the Respondent-Caste Scrutiny Committee. Therefore, these orders of the Division Bench hold the field and binds the Respondent-Caste Scrutiny Committee in the matter of blood relations. The present Petitioner is the real brother of Prakash Vasudev Lade and paternal uncle of Kum. Sujata Prakash Lade, who had filed Writ Petition No. 5602 of 2015 and Writ Petition No. 6229 of 2015 respectively. In these circumstances, it was obligatory on the part of Respondent-Caste Scrutiny Committee to issue Caste Validity Certificate in favour of present Petitioner without any further inquiry. He has also relied upon the order passed by the Division Bench of this Court in another Writ Petition No. 8731 of 2013 and requested to issue directions to the Respondent-Caste Scrutiny Committee for Validity Certificate in favour of Petitioner.

9. We find force in the contentions put forth on behalf of learned Counsel Shri Mendadkar. The Division Bench of this Court in Writ Petition No. 5602 of 2015 dealt with the document of Caste Validity Certificate issued by the Respondent-Scrutiny Committee in favour of Pankaj Prakash Lade-nephew of the present Petitioner. The Writ Petition came to be filed by Shri Prakash Vasudev Lade, father of Pankaj and real brother of the present Petitioner. It has been contended that on 26.07.2013 Mr. Prakash Vasudev Lade-real brother of the Petitioner applied for verification of his Tribe-claim as Thakur Scheduled Tribe. He was employed as a Driver under reserved category for Scheduled Tribe. His caste claim was based upon the documents of Validity Certificate issued to his son Pankaj. But, the Scrutiny Committee rebuffed the relief claimed by the father Prakash Lade and proceeded to invalidate his tribe claim. While dealing with the present issue in regard to the genuineness and veracity of the Validity Certificate of son Pankaj, the Division Bench of this Court in Writ Petition No. 5602 of 2015 disapproved and deprecated the procedure adopted by the Scrutiny Committee. In para 10, the Division Bench of this Court expressed its anguish as below :

“10. It is strange that the Scrutiny Committee and its members are oblivious that a caste or tribe is derived from the parents or the father. In the present case, if the son is a tribal and Thakur Scheduled Tribe that means he had derived it from his father who is none other than the

Petitioner before us. If Pankaj has played any fraud or misrepresented any fact, then, it is evident that it is the Petitioner, as the father, who must be responsible for such an act. The Committee neither holds the father or son responsible for any fraud or misrepresentation. It is pertinent to note that it is a competent scrutiny committee functional under the Act XXIII of 2001 which issued a Tribe Validity Certificate way back on 17th June 2005. This certificate cannot be faulted for want of competence and jurisdiction. Its validity and legality can be ignored not on technical or procedural grounds but on proven case of fraud or misrepresentation. The judgment of this Court relied upon by the Committee in the present case is distinguishable on facts. There were cases even after Madhuri Patil (supra) where certificates of validity were issued liberally and lenient view was taken. There was no proper scrutiny, no verification, no scrutiny committee and complete lack of requisite mechanism. Now, after the Act XXIII of 2001 everything is in place. A Research and Vigilance team involving Revenue and Police officials is set up. The Petitioner's son Pankaj was issued the validity certificate by such a scrutiny committee. To label Pankaj's certificate as a disputed one or issued without adjudication on merits that too after nearly ten (10) years of its issuance is the height of irresponsibility. It is a total non-application of mind. Respondent No.2 forgot that it is acting highhandedly and arbitrarily as it not only blames Pankaj and the Petitioner but its own brother and sister members of the erstwhile committee/s. At least they ought to be spared. As for Pankaj and his father (Petitioner) we feel very sorry because by one stroke of the pen Respondent No.2 has uprooted not only the Petitioner, his son Pankaj but their progeny as well. Respondent No.2's reasoning is that this Court's order mandates that any person and placed even in a situation like the present Petitioner must stand on his/her own legs and not just rely on any document like a validity certificate issued to any relatives from the paternal side. We do not think that any judgment of this Court

laid down such an absolute principle. It only says that it is open for the Committee to scrutinize and verify the claim of the candidate / Applicant before it independent of a caste / tribe validity certificates of the near relatives from the paternal side relied upon by the Applicant before it and the Committee is free to discard them provided it is of the firm opinion in a given case that the material produced evidences a fraud or misrepresentation on the part of those who obtained them or facilitated in obtaining them. These are, therefore, acts attributable to those beneficiaries who have obtained validity certificates and therefore not only they but their family and progeny must be visited with all adverse consequences. Such is not a case emerging from the record of the present proceedings. Hence, a sweeping conclusion like the above and which has no legal basis or foundation cannot be sustained. The order of the Scrutiny Committee deserves to be quashed and set aside on the ground that it discards and omits from consideration a valid piece of evidence in the form of a tribe validity certificate issued to the Petitioner's son. The Writ Petition succeeds in these terms."

10. Ultimately, the Division Bench of this Court upheld the legality of the Caste Validity Certificate issued in favour of Pankaj and directed the Caste Scrutiny Committee to issue the Tribe Validity Certificate in favour of Petitioner Shri Prakash Vasudev Lade within stipulated period. It is not denied that the present Petitioner is the real brother of Shri Prakash Vasudev Lade - the Petitioner in Writ Petition No. 5602 of 2015. Similarly, Tribe-claim of Kum. Sujata, daughter of Shri Prakash Lade, the paternal niece of the Petitioner herein was also turned down by the Respondent-Caste Scrutiny Committee vide order dated 06.06.2015. The Petitioner

Kum. Sujata Prakash Lade rushed to this Court and agitated the legality and propriety of the impugned order passed by the Caste Scrutiny Committee in Writ Petition No. 6337 of 2015. The Division Bench of this Court once again considered the Caste Validity Certificate of Shri Pankaj Lade-brother of the Petitioner-Kum. Sujata and directed to issue Caste Validity Certificate in favour of the Petitioner-Sujata i.e. the niece of the present Petitioner.

11. At this juncture, it would apposite to make a reference of the exposition of legal guidelines delineated by the Division Bench of this Court in the case of **Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1, 2010 (6) Mh.L.J. 401**, wherein it has been observed in paragraph 9 that,

“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, 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.....”

12. In addition to the aforesaid legal guidelines in another Writ Petition No. 8736 of 2013 the Division Bench of this Court adverted the legal proposition held in Writ Petition No. 7569 of 2008 - **Ms. Pratibha Gorakhnath Nikumbh Vs. The State of Maharashtra** which is reproduced as under:

“2. Although the committee was aware that the petitioners' real brother Deepak Gorakhnath Nikumbh was earlier granted validity certificate by the Scrutiny Committee, Nashik, the Committee held that each and every case regarding the caste claim is to be decided separately and relied on the observations of the Supreme Court in the case of Madhuri Patil Vs. Additional Commissioner, Thane and Ors. (AIR 1995 SC 94) and rejected the claim.

3. This decision of the Caste Scrutiny Committee is not tenable in law. If previous validity certificate issued by the Caste Scrutiny Committee is found to be issued on no legal evidence, then in the subsequent proceedings in which earlier validity certificate is relied upon, the committee is not bound by the earlier validity certificate and may invalidate the caste claim of the sibling as every case is to be considered on its own facts. However, this proposition of law cannot be applied to a decision of the High Court. If High Court on considering the order passed by the Caste Scrutiny Committee has itself arrived at a conclusion about the caste of a petitioner and has ordered the Committee to issue validity certificate accordingly, then that order holds the field and binds the scrutiny committee in the matter of blood relative. In the present case, the Division Bench of this Court in Writ Petition No.7995 of 2004 decided the caste claim of

Deepak, the real brother of the petitioner holding that he belongs to scheduled tribe-Mahadeo Koli and the reasons given by the then Caste Scrutiny Committee while invalidating the claim of Deepak were held as erroneous and the decision was over turned. Pursuant to the said decision of the High Court, the Caste Scrutiny Committee has issued the caste validity certificate of Mahadev Koli caste in favour of Deepak, the real brother of the petitioners. The said decision was not challenged by the respondents by filing proceedings before the Supreme Court. Hence, it is naturally binding on the Caste Scrutiny Committee in the claims of the siblings of Deepak- the real brother of the petitioners. It is not legally permissible to the Committee to take a view contrary to the binding decision of this Court.

(emphasis supplied)

13. In the matter in hand, it needs to be reiterated that the present Petitioner seeks Tribe Validity Certificate following Validity Certificate issued long back in the year 2005 to his paternal nephew Shri Pankaj Lade. There are no allegations of fraud or misrepresentation played while obtaining the Validity Certificate of Shri Pankaj Lade. Pursuant to the Validity Certificate of Shri Pankaj Lade, the Division Bench of this Court in Writ Petition No. 5602 of 2015 and Writ Petition No. 6337 of 2015 directed the Caste Scrutiny Committee to issue Tribe Validity Certificate in favour of Shri Prakash Vasudev Lade and Kum. Sujata Prakash Lade, who are the father and sister respectively of Shri Pankaj Lade. It is not denied that the present Petitioner is real brother of Shri Prakash Vasudev Lade and

real paternal uncle of Shri Pankaj and Kum. Sujata.

14. As referred to above, the Tribe Validity Certificates were issued in favour of brother Prakash, nephew Pankaj and niece Kum. Sujata. Undisputedly, the caste or tribe is derived from the parents or the father and if real brother Prakash is from the Thakur Scheduled Tribe Community, no expert opinion is required to conceive that he derived it from his father Vasudev. The Petitioner before us being a real brother of Prakash would belong to the Thakur Scheduled Tribe Community as he has also derived the same from his father Vasudev. There cannot be two castes or tribes in one genetically related family. Pursuant to the order passed by the Division Bench of this Court, the Caste Scrutiny Committee has issued the Caste Validity Certificates of Thakur Scheduled Tribe in favour of Prakash and Kum. Sujata, real brother and paternal niece of the present Petitioner. The decisions of the High Court were not challenged or agitated by the Respondent-Scrutiny Committee before any appropriate forum. Obviously, both the orders passed by the Division Bench of this Court hold the field and binds the Scrutiny Committee for consideration in the matter of blood relations.

15. In the above premise, it is not permissible for the Respondent-Scrutiny Committee to take contrary view to preclude the present

Petitioner to get Tribe Validity Certificate issued in his favour. The impugned order under challenge is erroneous, illegal and deserves to be upset. Accordingly, the impugned order is quashed and set aside. The Petitioner is entitled to get the Validity Certificate of Thakur Scheduled Tribe. The Respondent-Scrutiny Committee is hereby directed to issue Caste/Tribe Validity Certificate in favour of the Petitioner within a month from the date of receipt of this order. We hope and trust that henceforth the Respondent-Caste Scrutiny Committee shall take care while dealing with the matters of blood relations and adjudicate the same in the light of aforesaid legal guidelines delineated, time and again by the Division Bench of this Court.

16. With these observations, the Petition stands allowed in above terms.
Rule made absolute. No order as to costs.

[K. K. SONAWANE, J.]

Arjun
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Kadam

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[A. A. SAYED, J.]