

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 7587 OF 2018**

Prathamesh Sudhakale Sapkale

.....Petitioner

V/s.

The State of Maharashtra and others

.....Respondents

Mr. S. M. Kulkarni a/w Mr. O. B. Boinwad for the petitioner
Mr. A. A. Kumbhakoni AG a/w Mr. M. M. Pabale AGP for the
respondent State

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

DATE : JULY 31, 2018.

P.C.

In view of the common impugned order passed by the Respondent Committee, the learned counsel for the petitioner seeks leave to amend the petition and add his sister as petitioner no. 2. Let the amendment to be carried out forthwith. Re-verification is dispensed with.

Iresh
Siddharam
Mashal

Digitally signed
by Iresh
Siddharam
Mashal
Date:
2018.07.31
16:25:58
+0530

2 Impugned in the present petition is the order dated 30/06/2018 passed by respondent Caste Scrutiny Committee whereby the claim of the petitioners belonging to Tokare Koli Scheduled Tribe came to be negated.

3 Shri. Talekar, the learned counsel for the petitioner would strenuously urge that the validity issued to other blood relations was brought on record before the Committee which the Committee has failed to appreciate. He would rely upon the validity certificate of **Kishor Dattatray Sapkale**, cousin uncle of the petitioners. Shri. Talekar would rely upon the Judgment 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** which was based upon the Supreme Court judgment passed in the case of **Raju Ramsing Vasave v/s Mahesh Deorao Bhivapurkar and others, reported in (2008) 9 SCC 54**. The Division Bench in the case of **Apoorva Vinay Nichale** (supra) in Paragraph Nos. 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.”

4 He would also submit that there are caste entries of other blood relation of pre-Constitutional era which supports the claim of the petitioner as belonging to Tokare Koli.

5 Per contra, the learned AGP would urge that the order impugned is not sustainable for the reason that the validity holder Kishor cannot be termed to be in blood relation with petitioners as according to him, the great grandfather of present petitioner and grandfather of validity holder Kishor were brothers. According to him, Kishor has neither narrated any relation with present petitioners while claiming the validity nor blood relation is

established. He would then urge that Kishor while claiming validity has suppressed substantial material i.e. adverse and tampered entries.

6 Considered rival submissions.

7 Fact remains that there is violation of Sub-rule (8) of Rule 12 of Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003. In the case in hand, sufficient notice period was not given to the petitioner considering exigency involved. However, the petitioners have prayed that they be granted sufficient opportunity to submit their explanation to the Vigilance Cell Report.

8 Apart from above, the family tree/genealogy furnished by the petitioners and the validity holder Kishor is required to be synchronized which burden is on the petitioner which he has not discharged and for which he has sought an opportunity before the Committee once again.

9 In the aforesaid background, considering the fact that though petitioners are students, it will be appropriate in the interest of justice to grant an opportunity to appear before Scrutiny Committee.

10 For the aforesaid reasons, the impugned order dated 09/07/2018 passed by respondent Committee is hereby quashed and set aside. Petitioners to submit their detailed explanation to the Vigilance Cell Report by 31/10/2018. The Committee shall make every endeavour to decide the claims of the petitioners by 31/01/2019. If the Committee decides to issue show cause notice to validity holder Kishor Sapkale, it will be open for the Committee to decide both proceedings together.

11 Petition stands disposed of.

[NITIN W. SAMBRE, J.]

[SHANTANU KEMKAR, J.]