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

WRIT PETITION NO. 7588 OF 2018

Laxminarayan Piraji Galande

.....Petitioner

V/s.

The State of Maharashtra and others

.....Respondents

Mr. S. B. Talekar a/w Mr. O B. Boinwad for the petitioner

Mr. A. A. Kumbhakoni AG a/w Mr. A. B. Vagyani GP a/w Mr. C. P. Yadav AGP for the State

Mr. B. Vijaykumar a/w Mr. Shrikant Solanke Law Officers

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

DATE : JULY 26, 2018.

P.C.

Heard the learned counsel for the petitioner. Impugned in the petition is the order dated 09/07/2018 passed by the respondent committee wherein the claim of the petitioner belonging to 'Koli Mahadev' came to be negated.

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2 Shri. Talekar would invite attention of this Court to various documents produced by the petitioner in support of proving his

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claim for validity of his father and the petitioner. Shri. Talekar then would urge that in view 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."

3 Mr. Talekar then would urge that in view of **Apoorva Vinay Nichale** [cited supra] he would rely upon affidavit of the validity holder **Girishkumar Galande** and submits that Girishkumar

Galande, uncle of the petitioner being validity holder, in blood relation, petitioner is entitled for validity.

4 The learned Government Pleader would oppose the claim and submits that there is vast variance in the genealogy tendered by the petitioner, validity holder Girishkumar Galande and one Vaishnavi Galande.

5 The Scrutiny Committee has produced the original record of petitioner Laxminarayan son of Piraji, Girish son of Vishwanath & Vaishnavi daughter of Ramesh.

In the petitioner's case, the Vigilance Cell has brought on record the family tree which details were provided by Piraji son of Bapurao. In the case of petitioner-Laxminarayan he is shown to be son of Piraji. The petitioner and Piraji are belonging to the branch of Vyankat son of Narayan. So far as Vaishnavi daughter of Ramesh is concerned, in the said family tree, there is no mention of Ramesh who is shown to be son of Bhojaji. Neither Ramesh nor Bhojaji is part and parcel of family tree provided by Piraji.

6 So as to substantiate the claim, Piraji has filed affidavit dated 14/01/2018 alongwith affidavit of Girishkumar and Vaishnavi Ramesh Galande. As stated herein above, the family tree stated by Vaishnavi in her affidavit dated 14/01/2018 is not matching with that of family tree provided by Piraji and the validity holder Girishkumar Galande. So far as the claim granted to Girishkumar son of Vishwanath Galande is concerned, his claim is based on validity granted to Subhash son of Motiram Chunawade who is related to Girishkumar from his mother's side.

7 So far as the case of Vaishnavi is concerned, she was granted validity pursuant to order of this Court dated 03/10/2017 passed in Writ Petition no. 10323 of 2017. The fact remains that from the genealogy reflected in the affidavit and in the Vigilance Cell Report, there is no material to establish that the petitioner is directly in relation with Vaishnavi or her father Ramesh. Apart from above, the validity of Girishkumar Galande which was granted based on the validity granted to his maternal aunt's son cannot be considered for

grant of validity to the petitioner in this case.

8 Petitioner owes an explanation to all the above observations which are noticed by this Court upon perusal of the original order.

9 Apart from above, there also appears to be violation of Rule 12 (8) of Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003.

10 In view thereof, the impugned order dated 09/07/2018 passed by the respondent committee is quashed and set aside. The petitioner to treat the order impugned as show cause notice and shall submit his explanation by 31/10/2018. The Committee shall make every endeavour to decide the claim of the petitioner by 31/01/2019.

11 Petition stands disposed of.

[NITIN W. SAMBRE, J.]

[SHANTANU KEMKAR, J.]