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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7610 OF 2018

Mangesh Baburao Bodhankar through
natural guardian- father Baburao s/o.
Mogalaji Bodhankar. ..Petitioner.

V/s.

The State of Maharashtra & Ors. ..Respondents.

Mr.A.S.Golegoankar with Mr.Madhav A. Golegoankar for the
petitioner.

Mr.A.A.Kumbhakoni, Advocate General with Mr.Nitin V. Gangal,
Special counsel for the respondents-State.

Mr.Bambalge Vijaykumar with Mr.Nayyim Shaikh, Law Officers
present.

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

DATE : JULY 24, 2018

P.C.:-

With consent of parties, heard finally and disposed of.

2. Through this Petition filed under Article 226 of the
Constitution of India, the Petitioner has assailed **the order dated
June 30, 2018** passed by the **Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad (Respondent No.2)** in short

'the Committee' whereby the Petitioner's claim for Tribe validation has been rejected.

3. The grievance of the petitioner is that though Caste Validity Certificate granted by the Committee in favour of **Shubham, real brother of the petitioner** was relied upon, the Committee has discarded the same on the ground that the same would not be conclusive proof and would not absolve the petitioner from discharging the burden of production of the relevant evidence. The Committee also took a view that the certificate has been granted to him without taking into account the suppression of material facts and interpolations / adverse entries in the documents, on which reliance was placed at the time of issuance of the validity certificate by its holder. It is stated by the respondent-State that appropriate show cause notice has already been issued to the caste validity certificate holder.

4. According to the learned counsel appearing for petitioner, the decision runs contrary to the Division Bench judgment of this Court in the case of *Apoorva Vinay Nichale v/s Divisional Caste Certificate Scrutiny Committee No.1 and*

*others*¹, which was based upon the Supreme Court judgment passed in the case of *Raju Ramsing Vasave v/s Mahesh Deorao Bhivapurkar and others*². So also in the case of *Anand V/s. Committee for Scrutiny and Verification of Tribe Claims and others*³.

5. The Division Bench of this Court 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

1 2010(6) Mh. L.J. 401

2 (2008) 9 SCC 54

3 (2012) 1 SC.C.113

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 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."

6. The learned Government Pleader submits that since some interpolation is noticed in the school record of the **Shubham, real brother of the petitioner**, the Committee has issued show cause notice to **Shubham, real brother of the petitioner**. We find that the Committee has not recorded specific findings as regard possibility of some interpolation. Be that as it may, we have noticed that **Shubham, real brother of the petitioner** has been granted caste validity certificate. Thus, in our considered view, the

reason assigned by the Committee for rejection of the claim of petitioner cannot be sustained as it runs contrary to the view taken by the Division Bench of this Court in the case of *Apoorva Vinay Nichale* (supra).

7. In the circumstances, in the light of the judgment in the case of *Apoorva Vinay Nichale, Anand V/s. Committee* and *Raju Ramsing Vasave* (supra), the petitioner be granted caste validity certificate forthwith. However, the issuance of the certificate shall be subject to the outcome of the show cause notices issued which has been issued against **Shubham, real brother of the petitioner** by the Committee as the caste validity certificates issued to **Shubham, real brother of the petitioner** is found to be based on suppression of material facts and interpolations / adverse entries.

8. In view of above, the Committee is directed to issue Tribe validity certificate to the petitioner forthwith. As the Committee has already initiated proceeding for cancellation of caste validity issued to the blood relation of the petitioner, in response to the Courts' query, it is assured by the Committee that

the Committee will conclude the proceeding within a period of three months from the date of receipt of copy of this order. If the proceeding for cancellation of caste validity holder is answered against such caste certificate holder, it shall be open for the respondent Committee to issue show cause notice to the petitioner as to why the validity certificate granted to him should not be cancelled and it will be open for the Committee to take those proceeding to its logical end. Needless to say that the certificate issued to the petitioner is subject to the outcome of the proceeding for cancellation of validity issued in favour of her blood relation.

9. With the aforesaid observations, the petition is allowed to the extent indicated above.

(NITIN W.SAMBRE, J.)

(SHANTANU KEMKAR, J.)

Srikrishna
Ananth
Sharma

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by Srikrishna
Ananth Sharma
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