

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8794 of 2018

Ashlesh Chandrakant Dange	.. Petitioner
Versus	
State of Maharashtra & ors	.. Respondents

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Mr. C.K. Bhangoji i/b Mr.R.K. Mendadkar for the petitioner.
Mr. S.B. Kalel, AGP for the State.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 8th AUGUST 2018

JUDGMENT (Per BHARATI H. DANGRE, J)

1 The petitioner, a student had initially approached this Court seeking direction to the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, to decide the application of the petitioner for grant of Caste Validity Certificate belonging to *Halba* Scheduled Tribe. However, during the pendency of the petition before us, the claim of the petitioner came to be rejected by an order dated 7th August 2018 and the petition was

therefore, amended and the said order of invalidation is challenged by the petitioner and a direction is also sought to issue validity certificate in his favour declaring him to be belonging to Halba Scheduled Tribe.

2 The petitioner claims to be belonging to Halba Scheduled Tribe and he was granted a caste certificate belonging to the said Tribe on 15th July 2014 by the Sub-Divisional Officer, Gadchiroli. Since the petitioner was intending to pursue his higher education, he approached the respondent no.2 Committee for verification of his claim through Motilal Hargovindas Vidyalay, the college in which he was pursuing his 11th and 12th Standard. He preferred an application for verification of the caste certificate in the prescribed form and in the prescribed manner along with the necessary documents which included the caste validity certificate granted in favour of his father and real uncle. Since the petitioner had participated in the State CET conducted by the Commissioner and Competent Authority, Mumbai, he was allotted a seat in Pune Institute of Computer Technology for

Electronics and Telecommunication and Degree course for the Academic year 2018-19 from the reserved category of Scheduled Tribe. He was directed to produce the caste validity certificate on or before 10th August 2018 which constrained him to approach this Court seeking expeditious disposal of his claim.

During the pendency of this petition, the Scrutiny Committee at Gadchiroli rejected the claim of the petitioner on 7th August 2018 and this order is challenged in the present Writ Petition.

In support of the petitioner, we have heard Shri Mendadkar, learned counsel appearing for the petitioner. The petitioner has placed reliance on the validity certificate issued in favour of his father Chandrakant Krishnarao Dange and his uncle Ravikumar Krishnarao Dange in pursuance to the direction issued by the Hon'ble High Court in Writ Petition No.1621 of 2003 and 1622 of 2003 respectively. The case of the petitioner is that the Committee has not considered the four documents of pre-constitutional period in relation to Vithoba Laxman Halbi, the cousin great great grand father of the petitioner from paternal side reflecting the social status as

'Halbi' in 1931-32. Further, the grievance of the petitioner is that the Committee has not considered the probative value of the Revenue Record in relation to Maroti Laxman Halbi, the great grand father of the petitioner which is also a document of pre-constitutional era. Further, according to the petitioner, the two caste entries *Halbi* recorded as Halbi on 8/3/1950 in relation to blood relatives of the petitioner have also been ignored. The petitioner has also placed on record the registered sale deed wherein caste of Jairam Vithoba and Maroti Laxman Dange and Mahadeo Dange are reflected as Halbi as on 18th January 1950 and these documents which form integral part of the explanation submitted by the petitioner to the Vigilance Cell have not been looked into by the Committee. It is the case of Shri Mendadkar that the Committee had relied upon the Revenue record in relation to one Mahadeo Maroti and has proclaimed that he is the great grand father of the petitioner which was dispelled by the petitioner by filing a detailed reply in response to the vigilance cell inquiry that the person named 'Mahadeo Dange' is not relative of the petitioner as his surname is "Dahake" which is not the surname of the family of the

petitioner. However, Shri Mendadkar's grievance is that the Committee has passed a stereotype order without taking into consideration the law laid down by this Hon'ble Court as well as the Apex Court and has ignored the authoritative pronouncement from this Court and has rejected the claim of the petitioner as belonging to Halba Scheduled Tribe citing stating any cogent reasons, and the said orders, according to Shri Mendadkar, suffers from non-application of mind.

With the assistance of the learned counsel Shri Mendadkar and the learned AGP Shri Kalel appearing for the State as well as the Committee, we have perused the writ petition along with its annexures. We have carefully gone through the impugned order passed by the Committee on 7th August 2018.

3 The Committee has proceeded to verify the claim of three applicants i.e. Ashlesh, Chandrakant Dange, Kum.Alka Krishnarao Dange and Kum.Kavita Sharad Dange. The present petition is filed by Ashlesh Chandrakant Dange. Perusal of the order reveals that the applicants before the Committee, being

cousins have placed reliance on the common documents belonging to their forefathers. The list of documents reveal that the petitioner has relied on the validity certificate granted in favour of his father Chandrakant Krishnarao Dange issued on 12th December 2012 in pursuance of the decision of the Hon'ble High Court. Validity certificate is also issued in favour of the father of the petitioner i.e. Pradeep Kumar. The documents of the grand father Krishna Mahadeo Dange including extract Dakhal Kharij register and the School Leaving Certificate recording the date of birth of the grandfather as 1st July 1933 is also placed on record where the caste is recorded as 'Halbi'. The document of Mahadeo Maroti i.e. great grandfather of the petitioner recording the date of birth as 30th January 1919 and the entry into the school as 13th June 1928 is also placed on record. A genealogical tree showing the relationship of the applicant with the document holders have also been placed before the Committee. The Committee also obtained the said genealogy tree on affidavit from Shri Pradip Kumar Dange, the uncle of the present petitioner which establishes the relationship of the petitioner with the certificate holders.

4 The impugned order reveals that the Vigilance Cell had collected information from the Head Master, Nagar Parishad Primary School Abbaspura Achalpur as well as Nagar Parishad Primary School Saranspura Achalpur and also the Head Master of Zilla Parishad School, District Gadchiroli in relation to the other applicants along with the documents from the Deputy Superintendent, Land Records. The order refers to the said documents i.e. eight in number out of which it is stated that three documents reflect the caste as 'Koshti'. The said documents are in the form of Dakhal kharij extract in favour of the aunt of the petitioner i.e. Usha Krishnarao Dange, Alka Dange and one document of alleged great grandfather Mahadeo Maroti which is an extract of record of rights of the year 1947 where the caste is recorded as 'Koshti'. The said document is of the year 1947 and is obtained during Vigilance enquiry from the land record department at Achalpur. The Committee also refers to the documents collected during the vigilance inquiry of Shri Shreyas Pradipkumar Dange and a list of 38 documents is referred to. Barring a few documents

recording the caste as caste 'Koshti', most of the documents record the caste as 'Halba/ Halbi'. The Committee then makes a reference to the Home Inquiry and concludes that on the basis of the report submitted by the Dy. Superintendent of Police and the Research Officer, the cultural traits, customs and usages claimed by the petitioner do not tally with that belonging to Halba Scheduled Tribe. The Committee also makes a reference to the show cause notice issued to the petitioner which has been replied to by the father of the petitioner. Reference is also made to the orders passed by the Nagpur Bench of the Bombay High Court in Writ Petition No.1621 of 2005 and 1622 of 2003 dated 18th October 2012 based on which the father and uncle of the petitioner have been granted validity certificate. It is mentioned that the said decision delivered by the Court has been assailed in a Special Leave Petition and the same is pending before the Hon'ble Apex Court.

5 Perusal of the impugned order reveals that the Committee has proceeded to decide the claim of the petitioner belonging to Halba Scheduled Tribe on the ground as to

whether on the basis of the documentary evidence, the claim of belonging to Halba/Halbi has been proved and secondly on the point as to whether by applying the affinity test, the petitioner has been able to establish his ethnic and sociological affinity towards Halba/Halbi. The Committee has also proceeded to determine several other issues and for the said purpose, only referred to the extracts of various judgments delivered by this Court as well as Hon'ble Apex Court. When we have perused the said extracts, we can only say that the Committee has reproduced only the relevant portion and on occasions, only the relevant sentences from the said judgment, which records a finding in favour of the Committee. We deprecate the approach of the Committee in just extracting a few paragraphs/lines from a particular judgment as it is settled that the judgment can't be read not in isolation but as a whole and whatever the Court has pronounced has to be read in the backdrop of the facts of the case. We have noted that the Committee has only referred to that portion which is relevant and beneficial to it. In such circumstances, we have no option but to ignore that portion of the order which is nothing but written in form of a thesis which

are only the observations from precedents of the Court in favour of the Committee and reproduced by selection.

6 However, as regards the relevant issue as to whether the petitioner has been able to establish his claim on the basis of the documentary evidence and the affinity test, we have taken note of the conclusions derived by the Committee based on the material present before it. As far as first point is concerned, the Committee has observed that there are certain entries which have come on record which are reflecting the caste as 'Halbi'/Koshti and therefore, the affidavits filed by the petitioner and his relatives create a doubt as to the genuineness of the claim of the petitioner. A specific entry on which the Committee relies upon is in respect of great grandfather Mahadeo Maroti wherein the caste is recorded as 'Koshti' and it is an extract of the record of rights and though the petitioner has offered an explanation about Mahadeo Maroti, the Committee conclusively holds that the said Mahadeo Maroti is ancestor of the petitioner.

We have also perused the explanation of the petitioner in response to the Vigilance Cell Inquiry and he has stated that his great grandfather Mahadeo Maroti Dange Halbi, has taken education in primary Marathi School Abbaspura, Achalpura. He has produced on record the documents reflecting the said entry where the name of his father is recorded as 'Maroti Laxman Dange'. He has categorically stated that the documents which have been referred to by the Committee as the extract of the record of rights reflects that in the document of 1947, the names are recorded to the effect Mahadeo Ramkrishna and Maroti and Kamlabai (husband) Maroti. The petitioner has brought on record that the said documents belongs to one Mahadeo Maroti Dahake and therefore, it has no relationship with the petitioner's family whose surname is 'Dange'. The petitioner has submitted a detailed explanation to the Vigilance Cell report which is in great detail and has rebutted every contention and presumption raised by the Committee about the documents where the caste is recorded as 'Koshti'. We have noted that the Committee has

completely ignored the entire explanation and has simply raised presumptions and assumptions on its own basis.

As far as affinity test is concerned, the Division Bench of this Court in case of *Priya Pravin Parate Vs. Scheduled Tribes Caste Certificates Scrutiny*¹ (WP 2571 of 2012). The Division Bench of this Court has taken a view relying upon *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and ors*,² that an affinity test cannot be considered as *litmus* test and the documents of pre-independent era will have greater probative value. The Division Bench had emphasized that genuineness of the caste claim has to be considered not only on thorough examination of documents submitted in support of the claim, but also on affinity test which would include Anthropological and Ethnological traits etc. However, the said test cannot be applied mechanically. The Division Bench held that greater reliance has to be placed on pre-independence documents because they have probative value to the declaration of status tribe. While deciding the said case, the Division Bench has

1 2013 (1)Mh.L.J. 180

2 2011 (6) Mh.L.J 919

observed that there were atleast four documents on pre-constitutional era which clearly reveal that the petitioner's great grandfather and his brothers belong to Halbi Tribe. The following observation of the Division Bench needs a reproduction.

“In so far as the reliance on some of the entries pertaining to petitioners relatives from paternal side showing caste to be 'Koshti' on which Mrs. Deshpande, learned Counsel relies, are concerned, perusal of the said document would reveal that though the caste of the said person is written as Koshti, the profession is also shown as weaving. As can be seen from the Gazetteer of Amravati District, that Halbi's in erstwhile Ellichpur and Anjangaon Surji in Daryapur Taluq in Amravati District were also engaged in the profession of weaving. It is common knowledge that persons engaged in the profession of weaving were called as "Koshti". A possibility cannot be ruled out that due to this, said entries might have recorded. It is also relevant to refer to some Judgment wp2571.01 portion from the authority of R.V. Russell on Tribes and Casts of the Central Provinces of India, published in 1916, wherein while dealing with the Halba Tribe, it has been stated that "Some of these soldiers may have migrated west and taken service under the Gond Kings of Chanda, and their descendants may now be represented by the Bhandara Zamindars, who, however, if this theory be correct, have entirely forgotten their origin. Others took up weaving and have become amalgamated with the Koshti caste in Bhandara and Berar.”

From the aforesaid authority, it would reveal that persons belonging to Halba Tribe had migrated to west and taken service taken service under the Gond Kings of Chanda. It can also be seen that some of them had taken to weaving and had amalgamated with the Koshti caste in Bhandara and Berar. Merely because some stray entries as "Koshti" are recorded in respect of caste of some of the relative of petitioners from their paternal side; the voluminous documentary evidence of pre-Constitution era which clearly certify the petitioners great-grand father and his brothers to be Halbi, could not have been lightly brushed aside by the Scrutiny Committee. As discussed herein above, the Hon'ble Apex Court in case of Anand (supra), found that the pre-Independence documents have a greater probative value and they should be given due consideration while considering the claim of a Judgment wp2571.01 tribal.

As already discussed herein above, merely because it was found that the petitioners forefathers were involved in the profession of weaving, could not have been a ground to reject their tribal claim, particularly in view of the observations contained in the Amravati District Gazetteer, so also in the authority of R.V. Russell, cited above.

In that view of the matter, we find that the Committee has grossly erred in rejecting the caste claim of the petitioners. In view of the voluminous documentary evidence of pre-Constitution era, not only in case of one grand father of petitioner, but also three of his siblings, which consistently go to show that in the school record maintained by the Achalpur Municipal Council, wherein the caste is recorded as Halbi, we find that the impugned orders are unsustainable.

7 The claim of the father and uncle of the petitioner which was rejected on the ground that in the sister's document, the caste was shown as 'Koshti' and it was subsequently changed to Halba/Halbi. The Division Bench of this Court while deciding Writ Petition No.1621 of 2003 with Writ Petition No.1622 of 2003 had heavily relied in case of Priya Parade (supra). In the backdrop of the observations of Priya Parade (supra), the Division Bench has concluded thus :

“In that view of the matter, the present writ petitions deserve to be allowed. The impugned orders passed by respondent no.2 Scrutiny Committee are quashed and set aside. The respondent Scrutiny Committee is directed to forthwith issue a certificate of validity in favour of the petitioners certifying them to be belonging to Halba / Halbi Scheduled Tribe”.

Based on the said judgment, the father and uncle of the petitioner have been conferred with the validity certificate as belonging to Halba Scheduled Tribe.

Perusal of the list of documents which the petitioner has produced on record would reveal that the documents of the grandfather as well as great grandfather of the petitioner of

pre-constitutional era clearly records the cast as Halbi and merely because the Committee expresses a suspicion about the documents which it has unearthed during vigilance inquiry in respect of some Mahadeo Maroti, which the petitioner has categorically disputed, would not be a ground to reject the claim of the petitioner. In any contingency, the father and uncle of the petitioner are enjoying the status of Halba Scheduled Tribe in pursuance of the order passed by this Court and we do not find any justiciable reason to deprive the petitioner of the said benefit. In light of the judgment of the Division Bench of this Court in case of *Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1*³ (Writ Petition No.1504/2010 dated 27th July 2010). In any case, the Committee has observed that the order passed by this Court in Writ Petition No.9762 of 2017 has been challenged in the Hon'ble Apex Court. In such circumstances, since the father of the petitioner has been declared to be belonging to Halba Scheduled Tribe, the petitioner is also held entitled for conferment of the same status as a Scheduled Tribe. In case the

3 2010 (6) Mh.L.J 401

Hon'ble Apex Court does not find favour with the judgment delivered in case of the father, needless to say that the petitioner would also not be in a position to reap the benefits of the said judgment and the declaration in favour of his father as belonging to Halba Scheduled Tribe.

8 As a result of the above discussion, the following order is passed :-

ORDER

- (a) Writ Petition succeeds.
- (b) The impugned order dated 7th August 2018 is quashed and set aside.
- (c) The certificate of validity be issued to the petition on or before 9th August 2018.
- (d) The matter be placed for reporting compliance on 10th August 2018 at 11.00 a.m.
- (e) The learned AGP to communicate this order to the Committee and its officials forthwith.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)