

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 370 OF 2014

Sangita d/o Kisan Sagale @
Sangita w/o Dnyandeo Thorat
Age : 35 years, occu.: household
R/o Khanapur, Tal. Shevgaon,
District Ahmednagar.

Petitioner.

Versus

1. State of Maharashtra
Through its Secretary
Rural Development Dept.
Mantralaya, Mumbai.
2. The Collector, Ahmednagar.
3. The Tahsildar, Shevgaon,
District Ahmednagar.
4. The Divisional Caste
Verification Committee No.1,
Nasik Division, Nasik.
Through its Member Secretary.

Respondents.

Mr. S.P. Salgar, Advocate holding for
Mr. N.V. Gaware, Advocate for the petitioner.
Mr. C.V. Bodkhe, Advocate holding for
Mr. R.V. Gore, Advocate for the intervener.

Mr. A.B. Chate, A.G.P. for respondent Nos.1 to 4.

**CORAM : T.V. NALAWADE AND
SUNIL K.KOTWAL, JJ.**

**Judgment reserved on : 7 March 2019.
Judgment pronounced on : 29 March 2019.**

JUDGMENT (Per Sunil K. Kotwal).

1. Rule. Rule made returnable forthwith. With consent of the parties, petition is heard finally.

2. By filing this Writ Petition, the petitioner has assailed the order passed by Caste Scrutiny Committee, Nashik Division, Nashik.

3. The petitioner was elected in Grampanchayat Election held in the year 2012 for the post reserved for the category of Other Backward Classes (O.B.C.) on the basis of caste certificate issued by Deputy Collector, Special Land Acquisition Officer, Ahmednagar. As the complaint was submitted by Kalpana Subhash Khose challenging the validity of caste certificate relied on by the petitioner, the Competent Authority i.e. Tahsildar, Shevgaon referred the caste certificate of the petitioner to the Caste Scrutiny Committee, Nashik Division.

4. The Caste Scrutiny Committee obtained Vigilance Report and as it was not satisfied with the said Vigilance Report, a notice was issued to the petitioner and complainant alongwith copy of Vigilance Report and opportunity of hearing was given to both on 25.10.2013. At last on 05.12.2013, after hearing both

parties, the matter was reserved for order. On 13.12.2013 by passing the impugned order, the Scrutiny Committee invalidated the caste certificate of the petitioner issued by Deputy Collector, Special Land Acquisition Office, Ahmednagar. Therefore, this Writ Petition arises.

5. Heard Mr. S.P. Salgar, learned Counsel holding for learned Counsel Mr. Gaware for the petitioner, Mr. C.V. Bodkhe, learned Counsel holding for learned Counsel Mr. R.V. Gore for the Intervener and Mr. A.B. Chate, learned Additional Government Pleader for respondent Nos. 1 to 4.

6. Learned Counsel for the petitioner submits that the petitioner belongs to "Kunbi Maratha" caste which falls under the Category of "Other Backward Classes". He submits that though the Vigilance Report was in favour of the petitioner and entries in pre-independence document show that the blood relatives of the petitioner belonged to "Kunbi" caste, the Scrutiny Committee illegally invalidated the caste certificate issued by Deputy Collector, Ahmednagar. He has drawn our attention towards death entry of Smt. Soni d/o Namdeo and birth entry of Kondi d/o Damodar Namdeo which show that these two belong to

“Kunbi” caste. He has drawn our attention towards affidavit filed by petitioner before Tahsildar, Shevgaon, wherein the petitioner had given genealogy of her parental family. The petitioner prays for remand of the matter for reconsideration by Scrutiny Committee. He placed reliance on the judgment passed by Division Bench of this Court in **Writ Petition No.4270 of 2017 (Prashant Vasantrao Deshmukh Vs. State of Maharashtra and others)** and the case of “**Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and others**” reported in [**2012 (1) SCC 113**].

7. In reply, learned Counsel for the respondents submit that the affidavit relied on by the petitioner is signed by her husband and not by the petitioner herself. Learned Counsel for the respondents submit that the documents relied on by the petitioner are doubtful as the surnames of so called Soni Namdeo and Kondi Damodar are not mentioned in their respective entries. Therefore, the petitioner cannot prove that these two entries are regarding the blood relatives of the petitioner. Learned Counsels for the respondents submit that the Scrutiny Committee held proper enquiry after all opportunities of hearing

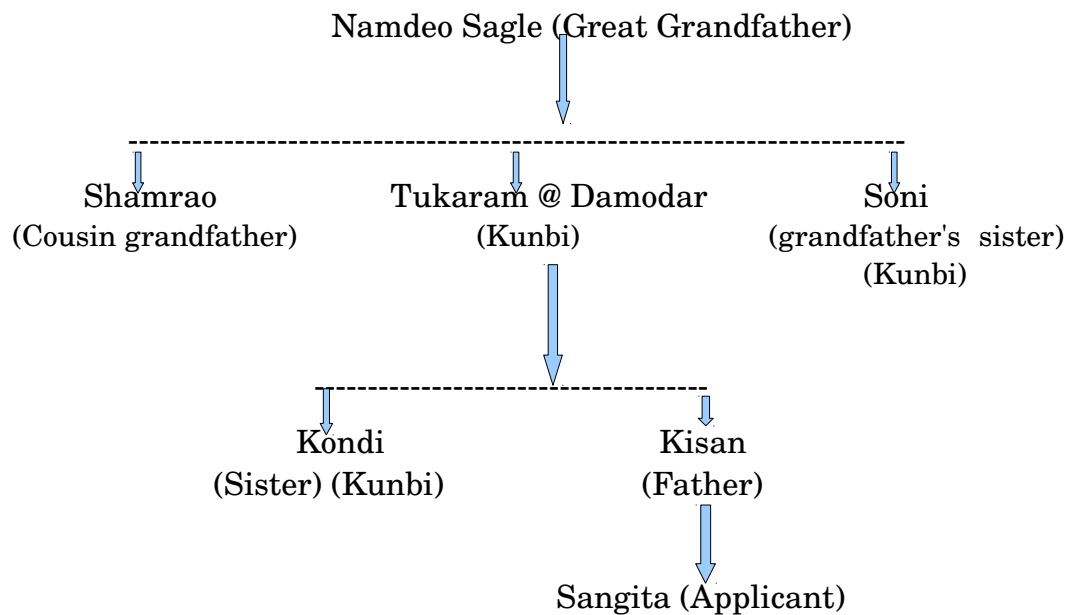
as required under Maharashtra Scheduled Tribes (Regulation For Issuance and Verification of Certificates) Rules, 2003. As there was no violation of principal of natural justice, the matter need not be remanded to the Scrutiny Committee.

8. Undisputedly, the the Caste “Kunbi” alongwith sub-castes “Leva Kunbi”, “Leva Patil”, “Leva Patidar”, “Maratha Kunbi” and “Kunbi Maratha” are included in the State List of Other Backward Classes of Sr. No.83. However, under Section 8 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act XXXIII of 2001) (hereinafter referred to as the “Act”), the burden lies on claimant to prove that she belongs to “Kunbi” caste or any other sub-caste as mentioned in Entry No.83 of Maharashtra State List of Other Backward Classes.

9. After going through the school record of the father of petitioner namely Kisan Tukaram Sagle, it emerges that his caste is recorded as only “Maratha”. Even the school record of the petitioner shows that her caste is mentioned as “Hindu-

Maratha". Thus, these two school entries are of no help to the petitioner to show that she belongs to "Kunbi" caste and she is from "Other Backward Classes" category.

10. By filing affidavit the petitioner has placed on record her so called genealogy, which is reproduced as under :-



11. Thus, the petitioner claims that name of her paternal aunt was "Kondi" and the name of the sister of her grandfather was "Soni". The name of the great grandfather of the petitioner is "Namdeo Sagle". To substantiate her claim the petitioner has heavily relied on two entries in death and birth register. The entry in death register at Sr. No.71 dated 7th January 1919 shows that 'Soni d/o Namdeo' died on 12.12.1918 and her caste was recorded "Kunbi". The second entry is a birth entry of one 'Kondi

Damodar Namdeo' and her caste is shown as "Kunbi". However, in these both death and birth entries surname of child is not mentioned. So also the name of grandfather of the petitioner is Tukaram Namdeo Sagle. However, the birth entry of child namely Kondi shows that name of her father is Damodar and not Tukaram. No doubt, the petitioner has filed an affidavit to the effect that Damodar and Tukaram is one and the same person. However, merely on the basis of such affidavit, which is not corroborated by any supporting entry in revenue record or other official record, the petitioner cannot prove that name of her grandfather was the Damodar alias Tukaram. Therefore, otherwise also on the basis of birth entry of "Kondi Damodar Namdeo", the petitioner cannot prove that the said Kondi was her paternal aunt. Thus, on the basis of this birth entry the petitioner cannot prove that she belongs to "Kunbi" caste.

12. Otherwise also, the death entry No.104 shows that great grandfather of the petitioner namely Namdeo Nana Sagle died on 20.07.1943. However, the names of his two legal heirs are shown as (1) Tukaram Namdeo and (2) Shamrao Namdeo Sagle. It must be noted that this death entry does not show that the

grandfather of petitioner was known by two names i.e. one as Tukaram and other as Damodar. Thus, this death entry also falsifies the contention of petitioner that Kondi Damodar Namdeo was her paternal aunt.

13. So also due to absence of surname in death extract of Soni Namdeo, that entry cannot be considered to hold that the Said Soni Namdeo was the sister of grandfather of the petitioner. Even the death entry of great grandfather namely Namdeo Nana Sagle shows only two sons as his legal heirs and this death entry does not show that Namdeo Nana had any daughter namely Soni. In the circumstances, even this death entry of Soni Namdeo is of no help to the petitioner to prove that she belongs to Kunbi caste.

14. Another important aspect to be noted is that in the residence certificate issued by Talathi, Khanapur initially the caste of the petitioner was mentioned as "Hindu-Maratha" which is scored subsequently. Even the papers of Vigilance Report and Home Enquiry show that the Vigilance Officer recorded statement of one Balasaheb Motilal Pardeshi, aged 70 years, residence of Shevgaon. However, from his statement it emerges that he had no knowledge regarding the family of father of

petitioner. This person cannot tell even the caste of the father of petitioner. Thus, otherwise also, the statement of Balasaheb Motilal Pardeshi is a useless piece of evidence.

15. The Vigilance Officer also recorded the statement of Digambar Amrutrao Bhise, aged 50 years and Eknath Dagdu Jagdhane, aged 28 years, residents of village Balam Takli, Taluka Shevgaon. However, it cannot be ignored that Digambar Bhise has stated before the Vigilance Officer that Kisan Tukaram (father of the petitioner) has two sons and three daughters. This statement is in conflict with the genealogy given by the petitioner which shows that she was the only daughter of Kisan Tukaram Sagle. Thus, on the basis of the statement of Digambar Bhise, the petitioner cannot prove that she belongs to "Kunbi" caste. So also Eknath Jagdhane being a very young person and resident of Khanapur, is not expected to tell regarding the details of the family of the parents of petitioner, who are not residents of Khanapur. Even the statement of Dinkar Shamrao Madke is of no help as he is resident of Khanapur and not the resident of Balam Takli. In the result, there remains no substance on record to show that the petitioner

belongs to “Kunbi” caste, which falls in the category of Other Backward Classes”.

16. Accordingly our conclusion is that neither the Vigilance Report nor school enquiry record support the contention of the petitioner that she belongs to “Kunbi” caste. In the circumstances, though certain observations of the Scrutiny Committee are incorrect regarding signing of the affidavit of petitioner by her husband, the other reasons recorded by the Scrutiny Committee for rejecting the caste claim of the petitioner are correct and are in consonance with the documents placed on record before the Scrutiny Committee.

17. The judgment in the case of **“Prashant Deshmukh”** (supra) is distinguishable on facts as in that case the pre-independence documents show that the blood relatives of the petitioner in that case belong to Kunbi caste. Even the case of **“Anand Vs. Committee For Scrutiny and Verification of Tribe Claims** (supra) is distinguishable on facts for the reason that in that case also pre-independence documents were available before the Scrutiny Committee showing the caste of the petitioner.

18. So far as giving opportunity of hearing to the petitioner, the record and proceeding before the Scrutiny Committee shows that as required under Rule 12 (8) of Maharashtra Scheduled Tribes (Regulation For Issuance and Verification of Certificates) Rules, 2003 the notice with the copy of Vigilance Report was served on the petitioner. Even the petitioner was heard by the Scrutiny Committee through her Advocate. Thus, it cannot be said that proper opportunity of hearing was not given to the petitioner and there was violation of the principle of natural justice.

19. In the result, our conclusion is that the impugned order passed by the Scrutiny Committee rejecting the caste claim of the petitioner is proper and needs no interference by invoking powers of this Court under Article 226 of the Constitution of India.

20. Accordingly, Writ Petition is dismissed. Rule is discharged. Parties to bear their respective costs of the petition.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE