

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

WRIT PETITION NO. 5977 OF 2017

Parshuram Nagnath Kamale	]	
Age – 29 years,	]	
R/o. 1-A, Kanchanganga Nagar,	]	
Saiful, Vijapur Road, Solapur	]	... Petitioner
Vs.		
1. State of Maharashtra	]	
through the Secretary, Tribal Development	]	
Department, Mantralaya, Mumbai-32.	]	
	]	
2. The Schedule Tribe Certificate	]	
Scrutiny Committee, Pune Region,	]	
28, Queens Garden, Pune, through	]	
Dy. Director (R) & Member Secretary.	]	
	]	
3. The Superintendent Engineer,	]	
Bhima Canal Circle, Solapur.	]	
	]	
4. The Executive Engineer,	]	
Minor Irrigation Division No.1,	]	
Gurunanak Chowk, Solapur	]	... Respondents

Mr.S.D. Thokade, Advocate for petitioner.

Mr.N.K. Rajpurohit, AGP for respondent Nos.1, 2 and 4.

**CORAM : B.R. GAVAI &
N.J. JAMADAR, JJ.**

DATE : 7TH FEBRUARY 2019

ORAL JUDGMENT (PER N.J. JAMADAR, J.) :

1. Rule. By consent of the parties, rule is made returnable forthwith and heard finally.

2. By this petition, the petitioner has prayed for quashing and setting aside the order dated 25th April 2017 passed by the respondent No.2- the Scheduled Tribe Certificate Scrutiny Committee (Scrutiny Committee) whereby the claim of the petitioner of belonging to Koli-Mahadev, Scheduled Tribe has been invalidated.

3. The petitioner has averred that despite several close relatives of the petitioner having been declared to be belonging to Koli-Mahadev, Scheduled Tribe, the respondent No.2-Scrutiny Committee has not taken into consideration the documents as well as the validity certificates issued in favour of the near blood relatives of the petitioner, including the real brother of the petitioner. The petitioner has further asserted that the Scrutiny Committee has simply brushed aside the documents and validity certificates, which amply show that the petitioner belongs to Koli-Mahadev, scheduled tribe. The respondent No.2-Scrutiny Committee has held that the petitioner has not succeeded in establishing the cultural affinity to the Koli-Mahadeo, scheduled tribe. On this premise, the claim of the petitioner was unjustifiably negated.

4. By an order dated 24th January 2019, after we had heard the matter for some time, we had granted two weeks time to respondent Nos.1, 2 and 4, by way of last chance, to file the affidavit in reply. It was further made

clear that if no reply is filed within two weeks, the Court will proceed further with the hearing of the petition taking allegations made in the petition to be uncontroverted. However, respondent Nos. 1, 2 and 4 have not filed any reply. Shri Rajpurohit, the learned AGP submitted that respondent No.2 could not file the reply as the relevant documents could not be traced.

5. We find that sufficient opportunity was given to the respondents to file reply and offer justification for the impugned order passed by the respondent No.2. Even otherwise, on perusal of the impugned order, we have noticed that respondent No.2 could not be in a position to add anything more than the reasons, as recorded in the impugned order itself.

6. The observations in paragraph 9 of the impugned order indicate that the respondent No.2-Scrutiny Committee proceeded on an incorrect premise that the petitioner has failed to prove his case on the basis of cultural affinity, and that the 'affinity test' was the only basis on which the claim for the validity was to be adjudicated. The Scrutiny Committee has not assigned any justifiable reason as to why due weightage was not given to the voluminous documents and validity certificates of the near relatives of the petitioner, including the real brother of the petitioner.

7. From the perusal of the record, it appears that a validity certificate was issued to the real brother of the petitioner-Saybanna Nagnath Kamale on 11th July 2004. There are validity certificates of other relatives of the petitioner also, on record. By now, it is well recognised that pre-constitutional documents are required to be given due weight in ascertaining the validity of the caste claim. The affinity test, though relevant, cannot be the only and 'litmus' test for determining the validity of the claim. In this context, a useful reference can be made to the judgment of Supreme Court in the case of *Anand Vs. Committee for Scrutiny & Verification of Tribe Claims & Ors.*¹

8. We have noticed that the Scrutiny Committees lightly brush aside the validity certificates issued in favour of the near relatives of the claimant, like parents, siblings and other paternal relatives, without any justifiable reason for discarding such documents on the premise that the claimant has failed to show affinity to the scheduled caste or tribe. This Court has time and again observed that the said approach of the Scrutiny Committee is not justifiable and even contemptuous. In the case of *Apoorva d/o. Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee & Ors.*² this Court has observed as under :-

“9 In the circumstances, we are of the view that

1 (2012) 1 SCC 113

2 2010 Mh.L.J. 401

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.”

9. In the instant case, we find that the Committee has fallen into similar and familiar error.

10. The learned AGP attempted to justify the impugned order by drawing our attention to the observations of the Scrutiny Committee in paragraph 3, wherein, the Scrutiny Committee had noted that certain relatives of the petitioner were belonging to castes like Hindu Talvar, Hindu Koli-Mahadeo, Hindu Mahadeo-Koli etc. More than 100 relatives of the petitioner were arrayed therein and thereafter the aforesaid observation was made. This approach of respondent No.2-Scrutiny Committee is not at all commendable. Such generalisation indicates that the Committee approached the question from a wrong premise and misdirected itself in drawing a totally unjustifiable and unwarranted

conclusion. When the near relatives of the petitioner, including his real brother, were declared to be the members of Koli-Mahadeo, scheduled tribe, the claim of the petitioner could not have been discarded with reference to the tribe/caste of persons with whom the petitioner had no blood relationship.

11. In these circumstances, we find that the Scrutiny Committee has erred in invalidating the claim of the petitioner. In this view of the matter, we are inclined to interfere with the order passed by the Scrutiny Committee. The petition, therefore, deserves to be allowed.

12. The petition is allowed. The impugned order passed by respondent No.2-Scrutiny Committee dated 25th April 2017 stands quashed and set aside. Respondent No.2- Scrutiny Committee is directed to issue the validity certificate to the petitioner of Koli-Mahadeo, Scheduled Tribe, within a period of three weeks from the date of the communication of this order.

13. In the circumstances, there shall be no order as to costs.

[N.J. JAMADAR, J.]

[B.R. GAVAI, J.]