

psv

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

WRIT PETITION NO.9012 OF 2019

Mr.Vishal S/o.Jivanrao Rajgirwad	..Petitioner
Vs.	
The State of Maharashtra through Secretary & Ors.	..Respondents

Mr.Sunil Vibhute for Petitioner.
Mr.A.A. Kumbhakoni, Advocate General with Mr.P.P. Kakade,
Government Pleader with Mr.M.M. Pable, AGP for State.

**CORAM : NITIN W. SAMBRE AND
G.S. KULKARNI, JJ.**

DATE : 20th AUGUST, 2019

P.C.:

1. Heard.

2. By the order impugned dated 26 July 2019 the claim of the petitioner as belonging to 'Koli Mahadev', Scheduled Tribe, is invalidated inspite of the old entries of 1948 in relation to grandfather of the petitioner as belonging to said tribe.

3. It is the claim of the petitioner that his two other cousins namely Nagin, daughter of Narayan holds validity as belonging to 'Koli Mahadev', Scheduled Tribe, so also Shivraj, son of Datta.

4. The learned Counsel for the petitioner submits that in view of the entry in the school register of the grandfather of the petitioner and the validity in favour of two cousins, the order impugned is not sustainable.

5. The learned Counsel for the respondent-committee supported the order on the ground that entire village consists of people from the Koli community whereas the petitioner claims to be an only exception as belonging to 'Koli Mahadeo'. Scheduled Tribe. It is further claimed that notices are already issued to the validity holders namely Nagin and Shivraj. As such the rejection is sought.

6. Considered submissions. It appears from the record that other than 1930 entry, there is no other document or any caste entry which could be considered adverse to the interest of the petitioner.

7. Just because the validity holders are served with a notice of cancellation that by itself will not dis-entitle the petitioner from claiming validity.

8. According to the learned counsel appearing for Petitioner, the decision of the Committee 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 the in the case of **Anand vs. Committee for Scrutiny and Verification of Tribe Claims and Others**³.

9. 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

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

2 (2008) 9 SCC 54

3 (2012) 1 SCC 113

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 done 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.”

10. In view of above, the Committee is directed to issue Tribe validity certificate to the Petitioner forthwith. As the Committee has already initiated proceedings for cancellation of 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 those proceedings within a period of six months from the date of receipt of copy of this order. If the proceedings for cancellation of caste validity are answered against such 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 petitioner should not be cancelled and it will be open for the Committee to take those proceedings to its logical end. Needless to say that the certificate issued to the Petitioner is subject to the outcome of the proceedings for cancellation of validity issued in favour of his blood relations.

11. With the aforesaid observation, the Petition is allowed to the extent indicated above.

[G.S. KULKARNI, J.]

[NITIN W. SAMBRE, J.]