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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9017 OF 2019

Kum Bhagyashri Murlidhar Baviskar	...Petitioner.
V/s.	
The State of Maharashtra & Ors.	..Respondents.

Mr.A.S.Golegaonkar for the petitioner

Mr.A.A.Kumbhkoni, Advocate General with Mr.P.P.Kakade, Govt. Pleader with Mr.Umesh Mankapure. Counsel 'A' Panel for the State.

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

DATE : AUGUST 23, 2019

P.C.:-

On July 17, 2019, claim of the petitioner as belonging to "*Tokre Koli*" a scheduled tribe came to be negated. As such, this petition.

2. The submissions of learned counsel for the petitioner are, the petitioner has produced documents from 1960 onwards whereby the entries of '*Tokre Koli*' could be inferred in his favour. Apart from above, the petitioner has invited attention of this Court to the affidavit tendered by Murlidhar, father of the petitioner demonstrating that the

cousin brothers Shyamkant and Manohar are granted validity by the Committee. Attention of this Court is invited to the Division Bench order dated February 3, 1994 passed in Writ Petition No.383 of 1994 at Aurangabad Bench whereby a declaration is made that the petitioner belongs to 'Tokre Koli' scheduled tribe.

3. As such, the contention is, in view of the judgment in the matter of Aurangabad Bench Writ Petition No.383 of 1994 in the matter of *Shamakant Vasantrao Baviskar V/s. The Director, Tribal Research and Training Institute, M.S., Pune and others*, once the uncle of the petitioner holds validity by virtue of Division Bench judgment, the claim of the petitioner ought not to have been invalidated. It is also brought to our notice that Aman, son of Manohar Baviskar is also granted validity recently on September 17, 2018, who also happens to be the second cousin of the present petitioner.

3. *Per contra*, learned counsel for the respondent-committee while supporting the order submits that the 1960 entries are of 'Koli' which is consistently reflected in all the school admission record of the blood relations of the petitioner, namely, father, grand-father, uncle, etc. As such, rejection of the petition is sought.

4. Considered rival submissions.

5. It is worthwhile to refer to para 9 of the Division Bench judgment in the case of *Apoorva Vinay Nichale V/s. Divisional Caste Certificate Scrutiny Committee No.1 and others*¹ which reads thus:-

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

¹ 2010 (6) Mh. L.J. 401

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."

6. If the claim of the petitioner is appreciated in the backdrop of the aforesaid observation, in our opinion, the order impugned passed by the Committee is not sustainable and the same is liable to be quashed and set aside.

Shyamkant Vasantryao Baviskar approached the Aurangabad Bench in Writ Petition No.383 of 1994 seeking

quashing of the order for invalidation, who is the cousin brother of the father of the petitioner i.e. cousin uncle of the petitioner. The Bench at Aurangabad *vide* order dated February 3, 1994 has granted declaration in favour of Shyamkant as belonging to '*Tokre Koli*' scheduled tribe which order still governs the field. Apart from above, cousin uncle Manohar and his son Aman are also validity holders.

7. In view of the above settled position, the Committee ought not to have rejected the claim of the petitioner as that of belonging to '*Tokre Koli*' scheduled tribe.

8. As such, the order impugned passed by the respondent-committee dated July 17, 2019 is hereby quashed and set aside. The respondent-committee is directed to issue caste validity in favour of the petitioner forthwith as belonging to '*Tokre Koli*' scheduled tribe.

9. The caste validity issued to the petitioner shall be subject to the outcome of the proceedings, if any, taken out seeking review of the judgment dated February 3, 1994 in Writ Petition No.383 of 1994.

10. The petition stands disposed in above terms.

(G.S.KULKARNI, J.)

(NITIN W.SAMBRE, J.)