

BDP-SPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAYBharat
D.
PanditDigitally signed
by Bharat D.
Pandit
Date:
2019.08.26
13:54:43 +0530**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 9171 OF 2019**

1] Vishwesh S/o Sanjay "Thakare
[Petitioner No.1 deleted
as per order dated 23.8.19]

2] Siddesh S/o Sanjay Thakare

3] Vidyesh S/o Avinash Thakare
[Petitioner No.3 deleted as per order
dated 23.8.19]

....Petitioners.

V/s.

The State of Maharashtra & Ors.

..Respondents.

Mr. D.B. Boinwad I/b Mr. S.R. Barlinge for the Petitioner No.2.

Mr. A. A. Kumbhkoni, Advocate General a/w Mr. P. P. Kakade,
Govt. Pleader a/w Mr V.M. Mali, AGP for State.

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

DATE : AUGUST 23, 2019

P.C.:-

1] The motion is made for deletion of Petitioner Nos. 1 and 3
with liberty to question the order impugned independently.

2] Deletion is allowed with liberty as prayed. Amendment be carried out forthwith.

3] With consent of the parties, Petition qua Petitioner No.2 – Siddhesh S/o Sanjay Thakare (Hereinafter referred to as “Petitioner”) is heard finally and disposed of.

4] By this Petition under Article 226 of the Constitution of India, the Petitioner has assailed the order dated 16/07/2019 passed by the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar (in short “the Committee”) whereby the Petitioner's claim for Tribe validation as belonging to “Tokre Koli” has been rejected.

5] The grievance of the Petitioner is, though Caste Validity Certificate granted on 03/06/2005 by the Committee in favour of his father viz. Sanjay Ramdas Thakare and also to other blood relations were relied upon, the Committee has discarded the same on the ground that the same would not absolve the Petitioner from discharging the burden of the production of the relevant evidence. The Committee also took a

view that the validity certificate has been granted to the said blood relations of the Petitioner without taking into account the interpolation/adverse entries in the documents, on which reliance was placed at the time of issuance of the validity certificate by its holder. It is stated by the Respondent-State that appropriate show cause notice has already been issued to the caste validity certificate holder.

6] 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

7] The Division Bench in the case of *Apoorva Vinay Nichale (supra)* in Paragraph Nos. 7 and 9 observed thus :

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

2 (2008) 9 SCC 54

3 (2012) 1 SCC 113

“7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity 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.”

8] The learned Government Pleader submits that since some interpolation is noticed in the school record of father of the Petitioner viz. Sanjay Ramdas Thakare and also his other blood relations, Committee has issued a show cause notice to them. We find that the Committee has not recorded specific findings as regards possibility of some interpolation. Be that as it may, we have noticed that said blood relations of the Petitioner have already been granted caste validity certificate. Thus, in our considered view, the reason assigned by the Committee for rejection of the Petitioner's claim cannot be sustained as it runs contrary to the view taken by the Division Bench of this Court in the case of *Apoorva Vinay Nichale (supra)*.

9] In the circumstances, in the light of law laid down by the judgments in *Apoorva Nichale, Anand, Raju Ramsing Vasave* (supra), the Petitioner is entitled to be granted caste validity certificate forthwith. However, the issuance of the certificate shall be subject to the outcome of the show cause notice which has been issued against his father viz. Sanjay Ramdas Thakare and also other blood relations by the Committee as the caste validity certificate issued to them is found to be based on interpolation / adverse entries.

10] In view of above, the Committee is directed to issue Tribe validity certificate to the Petitioner forthwith. The Committee has already initiated proceedings for cancellation of validity issued to the blood relations of the Petitioner. In response to the Court's query, it is assured by the learned Counsel for the Committee that the proceedings will be concluded 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 her

should not be cancelled and it will be open for the Committee to take those proceedings to its logical end.

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

(G.S.KULKARNI, J.)

(NITIN W.SAMBRE, J.)