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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9167 OF 2019

Ashiwini Laxman Boinwad ..Petitioner.

V/s.

The State of Maharashtra & Ors. ..Respondents.

Mr.Suresh N,Kulkarni for the petitioner

Mr.A.A.Kumbhkoni, Advocate General with Mr.P.P.Kakade, Govt.
Pleader with Smt. S.D.Vyas, counsel 'B' panel for the State.

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

DATE : AUGUST 21, 2019

P.C.:-

With consent of the parties, heard finally and disposed of.

2. By this petition under Article 226 of the Constitution of India, the petitioner has assailed the order dated July 31, 2018 passed by the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad (in short "the Committee") whereby the petitioner's claim for Tribe validation as belonging to "*Koli Mahadev*" has been rejected.

3. The grievance of the petitioner is, though Caste

Validity Certificate granted on January 2, 2010 by the Committee in favour of real uncle Prakash Shankarao Bonwad was 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 real uncle Prakash Shankarao Bonwad 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.

4. 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***

¹ 2010 (6) Mh. L.J. 401

² (2008) 9 SCC 54

Scrutiny and Verification of Tribe Claims and Others³

5. 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 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."

6. The learned Government Pleader submits that since some interpolation is noticed in the school record of Prakash Shankarao Bonwad, uncle of the petitioner, the Committee has issued a show cause notice to the Prakash Shankarao Bonwad. We find that the Committee has not recorded specific findings as regard possibility of some interpolation. Be that as it may, we have noticed that Prakash Shankarao Bonwad has already 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*).

7. In the circumstances, in the light of the law laid down in **Apoorva Nichale, Anand and 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 Prakash Shankarao Bonwad by the Committee as the caste validity certificate issued to him is found to be based on interpolation / adverse entries.

8. In view of above, the Committee is directed to issue Tribe validity certificate to the petitioner forthwith. The Committee has already initiated proceeding for cancellation of validity issued to Prakash Shankarao Bonwad. In response to the Courts query, it is assured by 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 proceeding for cancellation of caste validity are answered against such certificate holders, it shall be open for the respondent Committee to issue show cause notice to the petitioner as to why the validity certificate granted to him /

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

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

(G.S.KULKARNI, J.)

(NITIN W.SAMBRE, J.)