

psv

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

WRIT PETITION NO.9358 OF 2019

Atul S/o.Namdev Nayne

..Petitioner

Vs.

The State of Maharashtra through
Secretary & Ors.

..Respondents

Mr.Hamzakhon Pathan for Petitioner.

Mr.A.A. Kumbhakoni, Advocate General with Mr.P.P. Kakade,
Government Pleader with Mr.Umesh Mankapure Counsel 'A' Panel for
State.

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

DATE : 26th AUGUST, 2019

P.C.:

1. More than 10 matters from today's board are from Aurangabad Schedule Tribe Caste Certificate Scrutiny Committee. In all these matters what is observed by this Court is the orders impugned negating the claim of the candidates, are passed either contrary to the rules, statutory provisions, or the documentary evidence which is brought on record. In some cases, real brother, real sister, father or uncle are granted validity by the Committee on its own or pursuant to the orders of this Court and inspite of above, the claims are rejected by the Committee by relying on such documentary evidence which is either never served or brought to the notice of the candidates alongwith the

vigilance cell report or otherwise. In some cases, vigilance cell report of other candidates which are found to be basis for granting validity in those cases, is relied on for rejecting the claim. Even if blood relation as defined under Rule 2(1)(h) of the Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 holds the validity, rejection is ordered based on the caste entries of non blood relation.

2. In the case in hand, the vigilance cell has relied on such a document i.e. the extract of the school admission in regard to the grandfather of the petitioner which is at all not part of the vigilance cell report or record of the Scrutiny Committee.

3. The law officers of the respective Committees are attending the Court proceedings and when confronted, they are unable to give any convincing explanation in regard to such orders being passed by the committee, which are *per se* without application of mind or considering the orders of this Court or of the Apex Court, passed in cases of the applicants blood relations.

4. At times we are informed that the advice given by the law officers are not even looked into or considered as the Committee or its members.

5. The aforesaid position is brought to the notice of the learned Advocate General who has ably assisted us in some of the matters who has assured us to advice appropriate corrective measures to be taken by the Committee while dealing with the tribe claim and more particularly of the applicants who are medical aspirants. He has placed on record note suggesting the steps to be initiated at Government level. Said note is taken on record. The State is at liberty to take such steps as may be deemed fit for effective and meaningful disposal of these cases by the committee, in the light of above observations.

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

7. By this Petition under Article 226 of the Constitution of India, the Petitioner has assailed the order dated **5th July, 2018** passed by the **Schedule Tribe Caste Verification Scrutiny Committee, Aurangabad (Respondent No.2)** in short “the Committee” whereby the Petitioner's claim for Tribe validation as belonging to 'Koli Mahadev', Scheduled Tribe, has been rejected.

8. The grievance of the Petitioner is, though Caste Validity Certificate granted on 29 June 2011 by the Committee in favour of his father Namdeo Gunaji Naiyane was relied upon, the Committee has discarded the same on the ground that the same would not be conclusive proof and 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 **Namdeo Gunaji Naiyane** without taking into account the interpolations/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 Respondents-State that appropriate show cause notice has already been issued to the caste validity certificate holder.

9. 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.

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

2 (2008) 9 SCC 54

3 (2012) 1 SCC 113

10. 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.”

11. The learned Government Pleader submits that since some interpolation is noticed in the school record of Petitioner's father **Namdeo Gunaji Naiyane**, the Committee has issued show cause notice to him. 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 the Petitioner's father **Namdeo Gunaji Naiyane** has 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*).

12. In the circumstances, in the light of the law laid down by the judgments in **Apoorva Nichale, Anand vs. Committee** 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 the father Namdeo Gunaji Naiyane by the Committee as the caste validity certificate issued is found to be based on interpolation/adverse entries.

13. 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 relation.

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

[G.S. KULKARNI, J.]

[NITIN W. SAMBRE, J.]