

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 9183 OF 2019

Sanjivani d/o Sudhakar Bodhgire
age 23 years, occ. Student
R/o At Post Jangamwadi
Tq. Kandhar, Dist. Nanded

Petitioner

Versus

1. The State of Maharashtra
Through its Secretary
Tribal Development Department
Mantralaya, Mumbai -32.
2. The Director of Medical Education
Saint John Hospital Campus
Mumbai 32.
3. Maharashtra University of Health Science
Through its Registrar
Dindori Road, Mharsul
Nasik, Dist. Nasik
4. Deputy Director (Research)
and Member Secretary,
Scheduled Tribe Certificate
Verification Committee
Near Saint Lawrence High School
Town Centre, CIDCO, Aurangabad
Dist. Aurangabad.
5. Government Ayurved College
Vazirabad, Nanded
Maharashtra 431601
Through the Dean

Respondents

Mr. C.R. Thorat, , Advocate for the petitioner.
Mr. P.N. Kutti, AGP for respondents No. 1, 2, 4 and 5.
Mr. K.C. Sant, Advocate for respondent No. 3.

CORAM : SUNIL P. DESHMUKH &
M. G. SEWLIKAR, JJ.

DATE : 4th November, 2020.

JUDGMENT : (PER M. G. SEWLIKAR, J.)

1. Rule. Rule made returnable forthwith.
2. By consent, heard both the sides for final disposal.
3. By this petition under Article 226 of the Constitution of India, the petitioner has assailed the order of respondent No. 4 – Scheduled Tribe Certificate Verification Committee (in short ‘Respondent No 4 – the Committee’) whereby the petitioner’s claim for validation as belonging to Mannernarlu Scheduled Tribe has been rejected.
4. It is not in dispute that Ashwini Bodhgire is the real sister of the petitioner and the caste validity certificate has been issued to her. There is a decision of this Court validating claim of Ganesh – real brother of petitioner viz., Ganesh s/o Sudhakar Bodhgire Vs. State of Maharashtra (Writ Petition No. 9056/2019).

5. In the case at hand, Respondent No. 4 – the Committee noticed that there are some interpolations in the school record of the petitioner, as such respondent No. 4 – the Committee did not issue caste validity certificate to the petitioner. This very issue has been dealt with by a Division Bench of this Court in the case of Ganesh s/o Sudhakar Bodhgire (cited supra). The Division Bench of this Court (Nitin W. Sambre and G.S. Kulkarni, JJ) in paragraphs No. 6 and 7 of the judgment has observed as under :-

6. The learned Government Pleader submits that since some interpolation is noticed in the school records of the Ashwini Sudhakar Bodgire and Vinod Bapurao Bodhgire, the Committee has issued a show cause notice to them. 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 Ashwini and Vidon Bapurao Bodhgire have already been granted caste validity certificates. 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 judgment in the case of law laid down in the case of Apoorva Vinay 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 Ashwini and Vinod

Bapurao Bodhgire by the Committee as the caste validity certificates issued to Ashwini and Vinod Bapurao Bodhgire is found to be based on interpolation/adverse entries.

6. Shri Thorat, learned counsel for the petitioner refers to and relies on with emphasis on the case of Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and others reported in **2010(6) Mh.L.J. 401**. Division Bench of this Court in the aforesaid case (Apoorva supra) has observed in paragraphs No. 7 and 9 as under :-

“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 father 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 caste 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."

7. The claim of the petitioner that she belongs to Mannervarlu tribe has been invalidated by the respondent No. 4 – the Committee without considering the fact that her real sister Ashwini d/o Sudhakar Bodhgire and Vinod s/o Bapurao Bodhgire have been granted validity certificates to the effect that they belong to

Mannervarlu tribe. Having regard to authoritative pronouncement of this Court in the case of Apoorva Nichale (cited supra) it was not necessary of respondent No. 4 – the Committee to refer the case to vigilance cell as there was no evidence to show that the orders in favour of said Ashwini Bodhgire and Vinod Bodhgire were obtained by fraud or were passed by the Committee without having jurisdiction.

8. In the case at hand, it is not in dispute that petitioner is the real sister of Ganesh s/o Sudhakar Bodhgire. Genealogy of the petitioner is mentioned in Form 'F' Exhibit 'H' annexed to this petition. Said genealogy shows that the petitioner Sanjivani is the real sister of Ganesh and Ashwini. In the circumstances, we deem it appropriate and it would be expedient to follow the course adopted by the Division Bench of this Court in the case of Ganesh Sudhakar Bodhgire (cited supra). Said judgment also shows that proceedings for cancellation of certificate of Ashwini Bodhgire and Sudhakar Bodhgire have been initiated.

9. In this view of the matter, respondent No. 4 – the Committee is directed to issue tribe validity certificate to the petitioner forthwith. Since respondent No. 4 – the Committee has

already initiated proceedings for cancellation of validity issued to Ashwini Bodhgire and Vinod Bodhgire, issuance of tribe validity certificate to the petitioner shall be subject to the outcome of the said proceedings. If the Committee finds that the tribe validity certificates issued in favour of Ashwini Bodhgire and Vinod Bodhgire are not valid, it shall be open for the respondent No. 4 – the Committee to initiate appropriate proceeding in respect of petitioner's validity certificate. Rule is accordingly made absolute in above terms.

(M. G. SEWLIKAR)
Judge

(SUNIL P. DESHMUKH)
Judge

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