

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.10572 OF 2019

Pranay s/o Sudhakar Satlawar
Age 18 years, Occu. Education,
R/o Dundra, Tq. Kinwat,
District Nanded

... PETITIONER

VERSUS

1. The State of Maharashtra
through Secretary
Medical Education and Drugs Department,
Mantralaya, Mumbai
2. The Scheduled Tribe Caste Certificate
Verification Committee, Aurangabad
through its Dy. Director (R),
Aurangabad, Dist. Aurangabad
3. The Commissioner & Competent Authority,
Commissionerate of Common Entrance
Test Cell, Government of Maharashtra,
8th Floor, New Excelsior Building,
A.K. Naik Marg, Fort, Mumbai

... RESPONDENTS

.....
Mr. S.M. Vibhute, Advocate for petitioner
Mr. S.P. Sonpawale, A.G.P. for respondents No.1 and 2
.....

**CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.**

DATE : 21st DECEMBER, 2020.

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith. With the
consent of learned counsel appearing for the parties, taken up

for final hearing.

2. The claim of the petitioner to have belonged to "Mannerwarlu - Scheduled Tribe" has been negated by the respondent No.2 - The Scheduled Tribe Certificate Verification Committee, Aurangabad (Scrutiny Committee for short) on 8/8/2019. The petitioner is, therefore, before this Court for setting aside the said order with a direction to the Scrutiny Committee to grant the petitioner certificate validating his tribe claim.

3. Shri S.M. Vibhute, learned counsel appearing for the petitioner would submit that, the tribe certificate of paternal cousin uncle of the petitioner has been validated long back. The Scrutiny Committee, therefore, ought to have relied on the said validity certificate to grant the petitioner's claim. According to learned counsel, the Scrutiny Committee relied on area restrictions in spite of those having been done away with way back in 1976. According to him, the Apex Court has held that affinity test is not a litmus test. The Scrutiny Committee still negated the petitioner's claim on the ground of his failure to clear the said test. The petitioner had not been granted proper opportunity to respond to the vigilance report. According to learned counsel, the Scrutiny Committee ought to have granted the petitioner validity

certificate. He, therefore, urged for setting aside the impugned order.

4. Shri S.P. Sonpawale, learned A.G.P. for the respondents No.1 and 2 would, on the other hand, submit that the cousin uncle of the petitioner has obtained validity certificate by suppression of some material facts. His case would, therefore, be reopened. The school record of the father and other relations of the petitioner indicate them to have belonged to "Mannerwar". Some of the school record had been interpolated by addition of the word 'lu' after the word 'Mannerwar'. There are no pre-constitutional documents. The petitioner failed to clear the affinity test. Vigilance Cell report is against the petitioner. The learned A.G.P. thus supported the impugned order.

5. In support of his claim, the petitioner had produced before the Scrutiny Committee certain documents in the nature of school record of himself and his blood relations. In para 2 of the impugned order, a reference to the said record has been made. The said record indicates the petitioner, his father, cousin uncle and sister to have belonged to caste/ tribe 'Mannerwarlu'. The Scrutiny Committee did not rely on this evidence simply because the same is of recent origin. In our view, the school leaving certificate of the father

of the petitioner, dated 1/9/1975 records his caste/ tribe as 'Mannerwarlu'. This document has very much relevance since in the year 1975 a claim for particular caste or tribe had not gained importance so as to avail benefits made available thereto by the State.

6. It is true that, the school record of the relations of the petitioner, collected during the vigilance enquiry disclose their caste as 'Munurwar'. The vigilance committee reports that the word 'lu' has been suffixed to the word 'Mannerwar' in the school record of paternal aunt of the petitioner. The Scrutiny Committee, therefore, might have been justified in negating the petitioner's claim on the basis of school and other record of his relations.

7. The petitioner's cousin uncles Gangayya and Raju have been granted tribe validity certificates. The petitioner's cousin sister Priya also holds tribe validity certificate. Those validity certificates have been granted way back in 2010 and 2011.

8. In case of **Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 & ors. [2011 (2) Bom.C.R. 824]**, (Nagpur Bench), the Division Bench of this Court observed in paragraph No.7 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. Moreover, in case of Prathamesh Ravindra Thakur : Through his father & natural guardian Vs. The State of Maharashtra (Writ Petition No.8298 of 2019 at principal seat at Bombay), the Division Bench of this Court observed that, so long as the certificate of validity has not been doubted or suspected and held to be vitiated by fraud or misrepresentation of facts, after a show-cause-notice being issued to the certificate holder, a due inquiry as contemplated by law held and the certificate confiscated and cancelled, the same could not have been omitted from consideration or the same could not have been termed as having no probative value.

10. The Scrutiny Committee did not rely on the aforesaid validity certificates of the petitioner's blood relations. In view of the Scrutiny Committee, those validity certificates have been obtained by suppression of some

material facts. The Scrutiny committee has also observed that the law officer of the Committee granting those validity certificates was one of the members of the said Committee. This Court had invalidated the validity certificate on the ground of a law officer of a Scrutiny Committee to have been a member of the Committee constituted for verification of tribe certificates. In our view, so long as the validity certificates of the blood relations of the petitioner hold the field, the Scrutiny Committee ought to have granted the petitioner validity certificate. The Scrutiny Committee observed the petitioner to have failed to clear the affinity test. The Scrutiny Committee has also observed that the petitioner and his family are permanent residents of village Dundra.

11. The apex Court in case of **Jaywant Dilip Pawar V/s State of Maharashtra & ors. 2018 (5) ALL MR 975 (S.C.)**, observed :-

“The short point raised by learned counsel for the appellants in these appeals is that after “The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976) was published in the Gazette on 20.09.1976, the area restriction of Scheduled Tribes in the State of Maharashtra for the Thakur community has been deleted and all members of Thakur, Thakar, ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar community are treated to be Scheduled Tribes. The Scrutiny Committee has negated the claim of the appellants on

the ground that the relatives of the appellants were not residents of the areas mentioned in the Presidential Order, 1956 and further they were not able to give any details of customs and traditions being observed by the said community.

2. In our considered opinion, that is wholly irrelevant. The appellants have only to establish that they belong to community mentioned at Serial No.44 of Part IX of mentioned Part IX of Second Schedule of Act No.108 of 1976.”

12. The Scrutiny Committee went by area restrictions inspite of those having been removed way back in 1976. The school record of the persons who are not related to the petitioner by blood have been given undue importance. The Scrutiny Committee has observed that, the information received during the vigilance enquiry disclosed that the surnames of the relations of the petitioner are not that as found in case of the members belonging to Mannerwarlu – Scheduled Tribe. The information pertaining to marriage ceremonies performed in the family of the petitioner and his blood relations match with those performed in case of Hindus and not the persons belonging to Mannerwarlu – Scheduled Tribe.

13. The Apex Court in case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and ors., (2012) 1 SCC 113**, observed as under :

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernization and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

14. Since the blood relations of the petitioner referred to hereinabove have been granted validity certificates, the impugned order does not sustain. The same is, therefore, set aside in terms of the following order:-

Impugned order dated 08th August, 2019 passed by Respondent No.2 Scrutiny Committee is quashed and set aside. Respondent No.2 Committee is directed to forthwith issue requisite validity certificate to the petitioner of being 'Mannervarlu' Scheduled Tribe forthwith, which would be

subject to decision, in proceedings if are reopened in case of any validity holder relied on by petitioner, as it is stated that validity holder's tribe claim is being re-investigated. If the proceeding for cancellation of caste validity holder is 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 the petitioner should not be cancelled and it will be open for the committee to take those proceeding to its logical end. Needless to say that the certificate issued to the petitioner is subject to the outcome of the proceeding for cancellation of validity issued in favour of his blood relations.

Rule made absolute in above terms.

(R. G. AVACHAT)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

fmp/-