

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2289 OF 2020

PETITIONER : Ku. Shubhangi D/o Ashok Bokade,
Aged about 22 years, Occupation
Student, R/o Plot No. 376,
Shreenagar, Near Narendra Nagar,
Ring Road, Nagpur

...VERSUS...

RESPONDENT : The Schedule Tribe Caste Certificate
Scrutiny Committee, through its
Member Secretary and Deputy
Director, Sanna Building,
Opp. Govt. Rest House,
Camp Amravati – 444 601.

Shri. Ashwin Deshpande, Advocate for petitioner

Ms. M. A. Barabde, Assistant Government Pleader for respondent-Sole

CORAM:- A. S. CHANDURKAR AND
N. B. SURYAWANSHI, JJ.

DATED :- 26/10/2020

JUDGMENT (PER : N. B. SURYAWANSHI, J.)

1. When this matter was called out for admission hearing, the learned Assistant Government Pleader sought time to file reply affidavit. However, since the issue raised in

this petition is covered by the decision in *Apoorva Nichale ...Vrs... Divisional Caste Certificate Scrutiny Committee and others, 2010(6) Mh.L.J. 401*, as well as decision of this Court at Nagpur Bench in Writ Petition No.1311 of 2020, we are not inclined to accept the request of the learned Assistant Government Pleader and we have heard the matter finally.

2. Rule. Rule made returnable forthwith. Heard finally by consent.

3. This petition filed under Articles 226 and 227 of the Constitution of India challenges the order passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati Division, Amravati, dated 10.08.2020, whereby the caste claim of the petitioner belonging to Halba Scheduled Tribe is invalidated and the Caste Certificate No. 8413/2016 dated 28.06.2016 issued by the Sub Divisional Officer Revenue, Achalpur, District - Amravati was cancelled and confiscated.

4. The petitioner is a student having taken admission to B.E. Computer Science Engineering Course on a

seat reserved for Scheduled Tribe Category at Visvesvaraya National Institute of Technology College, Nagpur. The petitioner's caste claim was forwarded for verification to the respondent-Committee through College. The petitioner in support of her caste claim relied upon old documents of the year 1932 and 1934 of her Grandfather, in which his caste is mentioned as 'Halbi'. The petitioner also relied upon the Caste Validity Certificates issued in favour of her Father Ashok Balkrishna Bokade and Real Uncle Anil Balkrishna Bokade by the respondent, on the basis of the common decision dated 10.02.2016 in their favour in Writ Petition Nos.6129 of 2005 and Writ Petition No.3050 of 2004 respectively. The Committee, however, rejected the caste claim of the petitioner by relying upon the vigilance report, which indicated that in the documents pertaining to the blood relatives of the petitioner caste 'Koshti' is mentioned. Hence this petition.

5. Heard learned advocate for the petitioner and the learned Assistant Government Pleader for respondent, we have gone through the writ petition and annexures thereto, vigilance cell report and the impugned decision of the Committee.

6. Admittedly, petitioner's father Ashok and uncle Anil were granted Caste Validity Certificate of Halba Scheduled Tribe in pursuance of the decision of this Court in Writ Petition Nos.6129 of 2005 and Writ Petition No.3050 of 2004 respectively. The issue raised in this petition is covered by the decision of this Court at Nagpur Bench in Writ Petition No.1311 of 2020 (*Shubham s/o Sanjay Nandanwar ...Vers... The Scheduled Tribe Caste Certificate, Scrutiny Committee, Amravati and others*), wherein pursuant to the decision of this Court in favour of father of the petitioner, Caste Validity Certificate was issued by the Committee in favour of the father of the petitioner. In spite of that the Committee rejected the caste claim of the petitioner on the ground that in the documents pertaining to blood relations of the petitioner caste 'Koshti' was mentioned and that the father of the petitioner has suppressed those documents from this Court as well as from the Committee. Considering these facts, this Court observed :-

12. In the case of Apoorva Nichale (supra), taking into consideration Government of Maharashtra Resolution, dated 22/08/2007, which directed that during the course of enquiry or scrutiny of a caste claim, it is seen that the caste claim of a blood relative such as

father, son, daughter, brother and sister has been scrutinized and accepted, the caste claim of the applicant should be allowed without insisting on any other proof. This Court held :

"4. We have considered the matter and we are of the view that the petitioner's caste claim that she belongs to Kanjar Bhat-Nomadic Tribe ought to have been accepted by the Committee merely on the basis that identical caste claim of her sister that she belongs to Kanjar Bhat has been allowed by the Committee, even apart from the Government Resolution. We are of the opinion that the guidelines provided by the said Govt. Resolution are sound and based on sound principles. It would indeed be chaotic otherwise. If the relationship by blood is established or not doubted, and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent in the committee testing the same evidence and making the same conclusion unless of course the Committee finds on the evidence that the validity of the certificate of such relation has been obtained by fraud.

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 caste 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 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. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the petitioner."

This decision in Apoorva's case is being consistently followed by various Benches of this Court.

13. In view of the aforesaid observations and considering the facts of this case, the committee was not justified in taking different view, in the case of petitioner, since the father of the petitioner was issued caste validity certificate by the same committee, pursuant to the decision of this Court in Writ Petition No.5293/2013. There was also no question of the certificate obtained by father of the petitioner by fraud. The decision in that writ petition is binding on the committee and the committee has committed an error in initiating and / or embarking upon a fresh enquiry about the caste claim of the petitioner. In view of the fact that father was issued caste validity certificate, there cannot be a different caste of father and son i.e. the petitioner.

7. In the case in hand, the Committee while rejecting the caste claim of the petitioner has given similar finding of suppression of documents by the father of the petitioner. The said finding is unsustainable being perverse in view of the aforesaid observations. The Committee has not come to the conclusion that Caste Validity Certificate was obtained by the father of the petitioner by playing fraud. In fact, the Committee could not have come to such conclusion as the Caste Validity Certificate was issued to the father of the petitioner in pursuance of the common decision of this Court in Writ Petition Nos.6129 of 2005 and Writ Petition No.3050 of 2004, which was binding on Committee and the Committee has erred in embarking upon a fresh enquiry in the petitioner's case. In this view of the matter, the impugned order of the Committee is unsustainable and the petition deserves to be allowed, hence the following order :

ORDER

i) The impugned order dated 10.08.2020 at Annexure-1 passed by the respondent-Committee is hereby quashed and set aside. It is declared that the petitioner belongs to Halbi Schedule Tribe.

ii) The respondent - Scrutiny Committee is directed to issue Caste Validity Certificate of Halbi Scheduled Tribe in favour of the petitioner, within a period of four weeks from the date of communication of this order.

8. Rule is made absolute in above terms with no order as to costs.

(N. B. SURYAWANSHI, J.)

(A. S. CHANDURKAR, J.)

TAMBE