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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2992 OF 2019

Bhaskar Abhimanyu Bhosale.

...Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. R. K. Mendadkar for the Petitioner.

Mrs. M. S. Bane, AGP for Respondent No. 1 and 2.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

Date : December 20, 2021.

P. C. :

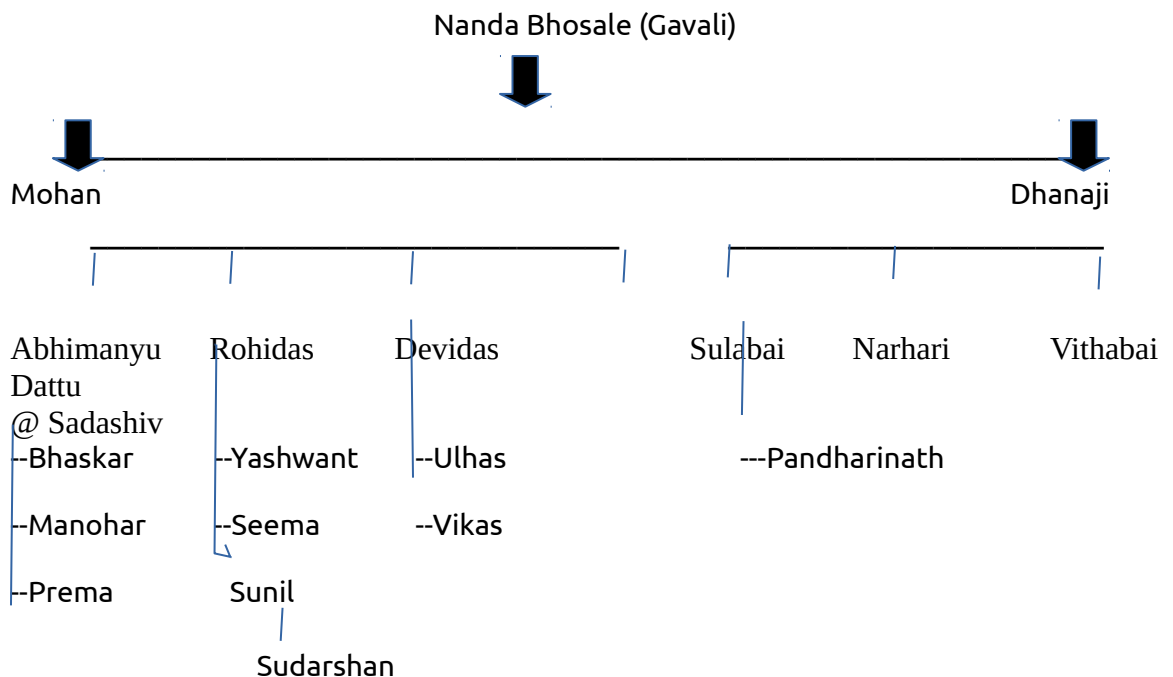
1. Heard learned counsel appearing for the petitioner and learning AGP for the respondent-state. Though Respondent No.3 is duly served, none appears on behalf of Respondent no.3. As the petitioner is challenging the order of scrutiny committee invalidating the caste claim of petitioner, we deem it appropriate not to wait for the submissions of Respondent No.3, who is only a formal party in this petition.

2. The scrutiny committee's order, which is impugned in the present petition, dated 15th February 2019 is an outcome of earlier decision of this Court. The perusal of the documents placed on record shows that it the Petitioner Bhaskar Abhimanyu Bhosale had on earlier occasion approached this Court on the backdrop of rejection of his caste

claim vide an order dated 24th September 2015.

3. The petitioner in support of his caste claim as belonging to “Thakar” scheduled tribe, apart from other documents, showing the social status of petitioner and his nearest family members, relied upon the validity certificates issued in favour of his first degree relatives, that is, cousins, namely Seema Rohidas Bhosale, Sudarshan Sunil Bhosle and Yashwanth Rohidas Bhosale.

4. Learned counsel Mr. R. K. Mendadkar appearing on behalf the Petitioner invited our attention to the genealogy referring to the family members of Petitioner in an affidavit filed before the committee at the instance of Yashwant Bhosale. Photocopy of the said affidavit is placed on record at Exhibit-F (page no. 51) to the petition, and the family tree reads thus :



. The family tree clearly shows that Bhaskar and Yaswhant are cousins and they are sons of Abhimanyu and Rohidas respectively, – the sons of Mohan, who is son of Nanda Bhosale.

5. In the first round, scrutiny committee rejected the claim of Petitioner Bhaskar Abhimanyu Bhosale as belonging to Thakar – scheduled tribe, discarding the material in the form of validity certificates issued in favour of Yashwant Rohidas Bhosale assigning an erroneous reason. The Division Bench of this Court in the order dated 17th July 2017 referred to the observations in the case of Apoorva Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee [2010(6) Mh.L.J. 401] in paragraph no.3 and further in clear terms observed that the reason assigned for rejection of petitioner's claim cannot be sustained as it runs contrary to the view taken by the Division Bench of this Court in *Apoorva's case (supra)* and accordingly, order impugned in that petition passed by the scrutiny committee was quashed and set aside and the matter was remanded back to the scrutiny committee for fresh decision. It was specifically observed by the Division Bench while setting aside the order and remanding matter back for decision afresh, is keeping in view

the law laid down by the Division Bench of this Court in *Apoorva's case (supra)*. The committee was directed to decide the claim of Petitioner afresh within a stipulated period.

6. Now, very interestingly the committee in the second round, though referred to various documents submitted by petitioner as well as the written submissions of Petitioner, has rejected the claim of petitioner by making reference to the validity certificates issued in favour of the nearest relatives of Petitioner, namely, Seema Rohidas Bhosale, Yashwant Rohidas Bhosale and Sudarshan Sunil Bhosale. The scrutiny committee flatly refused to place any reliance on the validity certificates issued in favour of Sudarshan Bhosale and Seema Rohidas Bhosale on the ground that those certificates were issued by the scrutiny committee without there being any vigilance cell enquiry. It is stated that as there was no vigilance cell enquiry in the case of Sudarshan Sunil Bhosale and Seema Rohidas Bhosale, the ratio cannot be made applicable in the case of Petitioner. We are unable to find any reason or logic for such flat refusal by the committee. The committee assigned a reason of non availability of vigilance cell enquiry. This exercise is to be conducted by the scrutiny committee as per the provisions of law; the petitioner on his own cannot play any role in the matter; the petitioner cannot assign any reason as to why the vigilance cell enquiry was not conducted in the

matter of Sudarshan Bhosale or Seema Bhosale. Now, on all these admitted facts, the observations of committee for non consideration of the validity certificates issued in favour of Seema Bhosale and Sudarshan Bhosle are clearly unsustainable.

7. Then, the committee assigned the reason for non considering the validity certificate issued in favour of Yashwant Rohidas Bhosale, the cousin of Petitioner. Admittedly, the rejection of committee in the case of Yashwant Bhosale was the subject matter of consideration before this Court in Writ Petition No.1313 of 1997. The photocopy of order dated 29th July 2004, made by Division Bench in the matter of Yashwant Bhosale is placed on record at Exhibit-D (page no.41) to the petition. The Division Bench of this Court by its detailed order, quashed and set aside order of the scrutiny committee and directed the scrutiny committee to issue validity certificate in favour of Petitioner therein, namely, Yashwant Bhosale, as belonging to “Thakar”-scheduled tribe, within a stipulated period of eight weeks. As there was no challenge to the said order of this Court by the Committee, it can safely be said that the order of Division Bench has been accepted by the committee. The committee in pursuance of the order of Division Bench, has issued a validity certificate in faour of Yashwant Rohidas Bhosale on 30th

September 2004. Evidently, the issuance of validity certificate in favour of Seema Rohidas Bhosale, that she belongs to “Thakar”– scheduled tribe is also taken note of by the Division Bench in its order dated 29th July 2004 in Yashwant Bhosale’s petition.

8. It may not be out of place to state that decision in the case of *Apoorva’s case (supra)* was rendered by the Division Bench of this Court (at Nagpur Bench) on 27th July 2010 in Writ Petition No.1504 of 2010. The scrutiny committee though referred to the order of this Court in the matter of Yashwant Bhosale, placed heavy reliance on the judgment in the case of *Madhuri Nitin Jadhav vs. State of Maharashtra [2014(3) ABR 414]* as well as the judgment in the matter of *State of Maharashtra vs. Ravi Prakash Babulsing Parmar [(2007) 1 SCC 80]*. Every claimant approaching the scrutiny committee has to prove his claim on the basis of material submitted before the committee. But when the claimant (the petitioner herein) is approaching the committee placing reliance on validity certificate issued to his nearest relative as per the directions of this Court, the said validity certificate certainly assumes a significant importance and carries more probative value than other documents. The Respondent-committee clearly failed to assess the claim of Petitioner in the light of validity certificates issued to his nearest

relatives and relied only on the contra material so as to reject the claim of Petitioner. The approach of committee is neither acceptable nor sustainable.

9. Then, the committee by merely referring to the written submissions dated 8th September 2015, arrived at a conclusion that Petitioner has failed to prove affinity test and stated that as there was an earlier order dated 24th September 2015 passed by the committee referring to affinity test, it is not necessary for the committee to again assess the material independently, post the remand of matter. In our opinion, this approach of the committee is not at all sustainable. In the affidavit-in-reply filed in this Court, the committee has only re-iterated those grounds which are assigned by it in the rejection order and referred to by us in detail in the earlier part of this order. It may not be out of place to state that the Petitioner has filed a rejoinder to the affidavit-in-reply filed by the committee referring to the documents of pre-independence era which were placed on record before the committee. The committee has not assigned any reason for non consideration of these documents either in the rejection order or by filing any additional affidavit-in-reply before this Court.

10. The perusal of material further shows that the Petitioner

had placed before the committee at least six documents of pre-independence era. The document bearing date 11th September 1920 is in respect of Maruti Shankar Sahebrao Gawali – the cousin-cousin grandfather of Petitioner. The document bearing date 15th August 1935 is in respect of Dattu Banaji Nanda Gawali – the cousin uncle of Petitioner. The document bearing date 12th November 1935 pertains to Vithabai Dhana Nanda Gawali – the cousin aunt of Petitioner. The document bearing date 12th March 1942 pertains to Sulabai Mohan Nanda Gawali – the aunt of Petitioner. The document dated 26th October 1945 is in respect of Kisabai Dhanaji Nanda Gawali – cousin aunt of Petitioner. The document dated 18th December 1945 is in respect of Ambadas Shankar Gawali – the cousin uncle of Petitioner.

11. We are unable to find any logic or rational in the observations of committee when the committee while referring to the order of Division Bench in the case of Yashwant Bhosale, wherein the decision of Apoorva Nichale (supra) of the year 2010 is observed and heavily relied on by further observations stating that there is change in the judicial scenario and then reference to the judgment of Apex Court in the matter of Ravi Prakash Parmar (supra), which was on altogether different issue, passed the impugned order rejecting the claim of Petitioner. Least we can say that approach of the committee is certainly

not appreciable and the committee must consider judicial decision of this Court in its proper perspective.

12. Considering all these aspects, we are of the view that the order of committee rejecting the claim of Petitioner as belonging to "Thakar"-scheduled tribe is clearly unsustainable. *Resultantly, the petition is allowed in terms of prayer clause (a).* The Respondent Committee is directed to issue tribe validity certificate in favour of Petitioner as early as possible and not later than 10 weeks from today. The petition stands disposed of.

13. As we have quashed and set aside the order of the scrutiny committee and further directed the scrutiny committee to issue validity certificate in favour of Petitioner, Respondent No.3 is directed not to take any coercive action against the services of Petitioner till the Petitioner receives validity certificate from the scrutiny committee.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]