

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

WRIT PETITION NO. 472 OF 2020

1. Ishwar s/o Naga Bondalwar,
Aged about 52 years, Occ. Service,
R/o Gurukunj Colony, Armori Road,
Tahsil & District Gadchiroli
2. Harshad s/o Ishwar Bondalwar,
Aged about 21 years, Occ. Student,
R/o Police Nagar, Near Staywell Hostel,
Hingna, Tahsil Hingna, District Nagpur

... Petitioners

V/s

1. The District Caste Certificate Scrutiny
Committee, Gadchiroli, through its Principal Secretary,
Dr. Babasaheb Ambedkar Samajik Nyay Bhawan,
I.T.I. Square, LIC Road, Gadchiroli 442605
2. The State of Maharashtra
Through its Secretary, Home Department,
Mantralaya, Mumbai-32
3. The Principal
Priyadarshini College of Engineering,
Digdoh, Hingna, Tahsil-Hingna,
District Nagpur

... Respondents.

Shri Rohit Joshi, Advocate for petitioners.

Ms N. P. Mehta, Assistant Government Pleader for respondent Nos. 1 and 2.

Shri H. D. Dangre, Advocate for respondent No.3.

CORAM : DIPANKAR DATTA, C.J. AND A. S. CHANDURKAR, J.

DATE : 26th July 2021

Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned
counsel for the parties.

The orders dated 23/10/2019 passed by the District Caste Certificate Verification Committee, Gadchiroli cancelling the Caste Validity Certificate dated 06/03/2014 issued to the petitioner No.1 as belonging to Nomadic Tribe-C as well as the Caste Validity Certificate dated 19/01/2015 issued to the petitioner No.2, who is the son of petitioner No.1 are under challenge in this writ petition filed under Articles 226 and 227 of the Constitution of India, particularly on the ground that the impugned orders as passed are without jurisdiction.

2. The petitioners claim to belong to Zade-Nomadic Tribe-C and the caste certificates issued to them were the subject matter of verification before the Scrutiny Committee. On 06/03/2014 and 19/01/2015 both the petitioners were issued Caste Validity Certificates by the Scrutiny Committee. The daughter of petitioner No.1 sought verification of her caste certificate and hence she approached the Scrutiny Committee. The daughter of petitioner No.1 relied upon various documents including the Validity Certificates issued to the petitioners. During the process of verification of the caste certificate of the daughter of petitioner No.1, the Research Officer and Member Secretary of the Scrutiny Committee issued show cause notices to the petitioner No.1 on 18/04/2019 and 22/05/2019. A show cause notice was also issued to the petitioner No.2 on 22/05/2019. In the said show cause notices the petitioners were informed that while undertaking

verification of the caste-claim of the daughter of petitioner No.1, a Vigilance inquiry was conducted and in the school records of petitioner No.1 the entries showing the caste as “Beldar” were found. Similarly, old revenue records of the year 1922-24 indicated the entry of the caste as “Zade-Kunbi”. The Scrutiny Committee therefore sought a response from the petitioners as to why the Caste Validity Certificates issued to them should not be cancelled. In response thereto the petitioners submitted their reply and reiterated that they belonged to Nomadic Tribe-C. The Scrutiny Committee by its order dated 23/10/2019 found that the petitioners had been issued the Validity Certificates without the report of the Vigilance Cell being called and in the absence of any enquiry by the Vigilance Cell. The Committee then proceeded to adjudicate the caste-claim of the petitioner No.1’s daughter as well as correctness of the Validity Certificates issued to the petitioners. It found that certain revenue entries of the year 1922-24 in which it was mentioned that the petitioners’ predecessors belonged to “Zade-Kunbi” caste had not been referred to by the petitioners. The Scrutiny Committee hence proceeded to cancel the Caste Validity Certificates dated 06/03/2014 and 19/01/2015 issued to the petitioners as well as the Caste Certificate issued to them. Being aggrieved the petitioners have challenged the aforesaid orders.

3. Shri Rohit Joshi, learned counsel for the petitioners submitted

that in absence of any provision in the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes And Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short, the Act of 2000) and particularly the Rules framed thereunder to re-examine a Validity Certificate already granted by the Scrutiny Committee, it had no jurisdiction to re-open such adjudication. Re-examination of the material on the basis of which the Validity Certificate was issued would amount to exercising the power of review which was not conferred on the Scrutiny Committee in the Act of 2000 or under the Rules framed thereunder. The only limited scope/power available with the Scrutiny Committee for revisiting the Validity Certificate already granted was in case where the Scrutiny Committee found that the Validity Certificate was obtained by fraud or that it was issued by the Scrutiny Committee without jurisdiction. To support this contention the learned counsel placed reliance on the decision in *Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and ors. 2010 (6) Mh.L.J. 401* . He further submitted that if the Vigilance Cell merely had doubt with regard to certain old entries pertaining to the predecessors of the petitioners that by itself would not be sufficient to doubt such document unless there was material available to show that the petitioners or their predecessors were instrumental in making such changes in the old documents. In that regard the learned counsel referred to the decision in *Suraj s/o Rajesh*

Sandekar vs. Joint Commissioner & Vice Chairman, Schedule Tribe Caste Certificate Scrutiny Committee, Nagpur and ors. 2020 (1) Mh.L.J. 874.

Referring to the observations made by the Scrutiny Committee in the impugned order it was urged that by reconsidering the material on record along with other fresh material but without recording any finding that the Validity Certificates/Caste Certificates had been obtained by the petitioners by practicing fraud the same had been cancelled. It was thus submitted that the impugned orders had been passed without the Scrutiny Committee having jurisdiction to do so and on that count it was liable to be set aside.

4. Ms N. P. Mehta, learned Assistant Government Pleader for the respondent Nos.1 and 2 on the other hand supported the impugned orders and urged that as it was found by the Scrutiny Committee that the old revenue records pertaining to the year 1922-24 recorded the caste of the predecessors of the petitioners as “Zade-Kunbi”, the Validity Certificates indicating the caste of the petitioners of belonging to Nomadic Tribe-C were rightly cancelled. The petitioners by not referring to the old revenue records of the year 1922-24 which were found by the Vigilance Cell as relating to the predecessors of the petitioners, had infact committed a fraud and hence the petitioners were not entitled to claim that they belonged to Nomadic Tribe-C. Since the Scrutiny Committee had the jurisdiction to recall its earlier order on finding that the same had been obtained by practicing fraud, no fault

could be found with the impugned order. The same had been passed after giving due opportunity to the petitioners. Moreover, perusal of the impugned orders would indicate that it was not the outcome of re-examination of the material relied upon by the petitioners earlier but on the basis of fresh material found by the Vigilance Cell. She therefore submitted that no interference was called for in the impugned orders.

5. We have heard the learned counsel for the parties at length and we have given due consideration to their respective submissions. It is not in dispute that the petitioners had been issued Caste Validity Certificates of belonging to Zade-Nomadic Tribe-C by the competent Scrutiny Committee on 06/03/2014 and 19/01/2015. While undertaking the exercise of verification of the caste-claim of the petitioner No.1's daughter, the petitioners' Caste Validity Certificates that were relied upon by the petitioner No.1's daughter were considered. The Scrutiny Committee while verifying the documents relied upon by the petitioner No.1's daughter proceeded to issue show cause notices to the petitioners on 18/04/2019 and 22/05/2019 and called upon them to produce all documents/material on the basis of which the Caste Validity Certificates were obtained. In the said show cause notices a reference was made to a revenue entry of the year 1922-24 and it was stated that a different caste was mentioned against the names of the petitioners' predecessors. It is thus clear that the show cause notices merely

called upon the petitioners to produce documentary material/evidence on the basis of which the Caste Validity Certificates were issued to them and a reference was made to the old revenue entries of 1922-24. There is no statement in the said show cause notices that the Caste Validity Certificates had been obtained by the petitioners by practicing fraud or that the Scrutiny Committee issuing it had no jurisdiction. After giving an opportunity to the petitioners the Scrutiny Committee proceeded to cancel the Caste Validity Certificates particularly on the ground that in the old revenue records of the year 1922-24 the caste of the petitioners' predecessors was recorded as "Zade-Kunbi". Again in the impugned orders there is no finding recorded by the Scrutiny Committee that either the caste certificates or the Caste Validity Certificates were obtained by the petitioners by practicing fraud. It is before this Court that the Scrutiny Committee seeks to support its orders by stating that since the petitioners had obtained the Caste Validity Certificates by playing fraud, they were rightly cancelled.

6. We find that it was not permissible for the Caste Scrutiny Committee to have re-examined the caste certificates and Caste Validity Certificates issued to the petitioners on the grounds on which it was so sought to be re-examined as stated in the show cause notices. It is undisputed that there is no provision either in the Act of 2000 or the Rules framed thereunder to re-open/re-examine the matter of issuance of a

Validity Certificate by it. This aspect as regards absence of statutory power to do so stands concluded by the decision of this Court in *Apoorva Vinay Nichale* (supra). It has been held in clear terms that a mere different view on the same facts would not entitle the Scrutiny Committee dealing with a subsequent caste-claim to reject such claim. As stated above it is on the basis of fresh material in the form of old revenue records of the year 1922-24 that the exercise of re-examining the Caste Validity Certificate was undertaken by the Scrutiny Committee. We thus find that in absence of any statutory power either under the Act of 2000 or the Rules framed thereunder to re-examine a Caste Validity Certificate already issued, the exercise undertaken by the Scrutiny Committee pursuant to the show cause notices issued by it was without jurisdiction.

7. We may note that neither in the show cause notices nor in the impugned orders cancelling the Caste Validity Certificates issued to the petitioners is there any reference made to “fraud” being practiced by the petitioners while obtaining the Caste Validity Certificates. It is however sought to be urged by the Scrutiny Committee that it exercised such power on the premise that the petitioners while seeking verification of their caste-claims had not referred to the old revenue records of 1922-24 and hence the same amounted to playing fraud. It may be stated that it was the Scrutiny Committee which was satisfied with the documents relied upon by the

petitioners when they had sought verification of their caste-claims. The Scrutiny Committee did not deem it fit to obtain a report of the Vigilance Cell and instead proceeded to issue Caste Validity Certificates to the petitioners. Such power of dispensing with an inquiry by the Vigilance Cell is vested with the Scrutiny Committee by virtue of Rule 17(6) of the Rules of 2012. The premise on which the Caste Validity Certificates issued to the petitioners has been cancelled is that the petitioners failed to bring before the Scrutiny Committee the old revenue records of 1922-24. In our view such alleged act of the petitioners failing to bring before the Scrutiny Committee the old revenue records can hardly amount to playing fraud while seeking the Caste Validity Certificate. In this regard useful reference may be made to the observations in *Shri Krishnan vs. The Kurukshetra University*, *Kurukshetra AIR 1976 SC 376* wherein the Honourable Supreme Court observed that it is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It would neither be a case of *suggestio falsi* or *suppressio veri*. In other words, it was open for the Scrutiny Committee while verifying the Caste Certificates of the petitioners to have conducted an inquiry by the Vigilance Cell. The Scrutiny Committee however did not deem it necessary to have such inquiry being undertaken by the Vigilance Cell. The Scrutiny Committee was thus in a position to discover the old revenue records of 1922-24 by exercise of due diligence which could have been done by holding

an inquiry by the Vigilance Cell. It however did not choose to do so and thus it would not be legally permissible now for the Scrutiny Committee to urge that by not referring to old revenue records of 1922-24 the petitioners were guilty of practicing fraud. As stated above though the aspect of fraud was neither stated by the Scrutiny Committee in its show cause notices nor referred to in the impugned orders we have dealt with said aspect as the impugned orders were sought to be supported on that count before this Court.

8. Thus in the light of aforesaid discussion we find that the Scrutiny Committee committed a jurisdictional error in passing the impugned orders and cancelling the Caste Certificates as well as Caste Validity Certificates that it had issued to the petitioners. The Scrutiny Committee had no jurisdiction in law to do so. Consequently the orders dated 23/10/2019 passed by the District Caste Certificate Verification Committee, Gadchiroli in the cases of both the petitioners are quashed and set aside. The Caste Validity Certificate issued to the petitioner No.1 on 06/03/2014 and that issued to the petitioner No.2 on 19/01/2015 stand restored.

Rule is made absolute in aforesaid terms leaving the parties to bear their own costs.

(A. S. CHANDURKAR, J.)

(CHIEF JUSTICE)