

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.374 of 2021

Abhishek s/o. Satish Bakde

Versus

Joint Commissioner & Vice-Chairman, Scheduled Tribe Caste Certificate
Scrutiny Committee and others

Shri S.R. Narnaware, Advocate for the Petitioner

Shri A.M. Deshpande, Addl.GP for the Respondent - State

Shri D.V. Thakare, Advocate for Respondent No.3

Shri S.V. Bhutada, Advocate for intervenor

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 10 FEBRUARY 2021

P.C.:

Heard learned Counsel for the parties.

2. The learned counsel appears for Respondent No.3. As regard Respondent No.2, the learned Counsel for the Petitioner states that the Respondent No.2 is served and further states that affidavit of service of notice will be filed within a period of four working days from today.

3 Statement is accepted.

4. On 20 January 2021, after considering the matter in detail, we have passed an order, recording that a case is made out to remand the matter to the Scrutiny Committee, however, the order was not passed since all the Respondents were not served. The order dated 20 January 2021 reads thus:

“ This petition is an outcome of an invalidation of caste claim of the Petitioner as Halbi, Scheduled Tribe.

2. Heard Shri S.R. Narnaware, learned Counsel for the Petitioner.

3. It is submitted that the impugned invalidation is mainly based on an entry in the name of one Baliram, dated 24 September 1917, wherein the caste was recorded as “Koshti”. It is urged that Baliram is not in relation with the Petitioner and the said document was never supplied to the Petitioner so as to provide an opportunity to him to submit his say and to deny the relationship with Baliram.

4. The learned Counsel further argues that, other pre-constitutional period documents wherein the caste was recorded as “Halbi”, were ignored and not considered only because of above referred entry of Baliram.

5. A strong reliance is placed upon the validity certificate issued to Petitioner’s cousin sister namely Ku. Sonal Bakde on 21 September 2016, pursuant to the directions issued by this Court vide judgment dated 22 August 2016 in Writ Petition No.289/2016. It is pointed out that the said validity certificate has been discarded by the Scrutiny Committee on the ground that the same had not been granted on merits, but, it was granted as per the directions of this Court.

6. *By arguing so, the learned Counsel for the Petitioner points out that the Petitioner has been admitted to first year of Four Year Degree Courses in Engineering and Technology for the Year 2020-21 and today is the last date to submit the validity certificate by 5 O'clock, failing which his admission in the first round will be cancelled and his claim would be considered from open category in the second round. Thus, in the above backdrop he prays for interim protection.*

7. *To consider the contentions of the Petitioner we have perused the relevant documents available on record. Thereupon it is revealed that 5 documents of pre-constitutional period were referred by the Committee in the impugned order. Out of said 5 documents, in 4 documents the caste is recorded as 'Halbi'. The said 4 documents are of Nago Baliramji - dated 24 September 1925, Baliram Tanba - dated 29 March 1930, Ramchandra Baliram Bakde - dated 19 March 1936 and Shankar Baliram Bakde - dated 3 April 1940.*

8. *The document other than these 4 documents wherein caste was not recorded as 'Halbi' but as "Koshti", is the documents in the name of Baliram, dated 24 September 1917. According to the Petitioner the aforesaid document was never supplied to him along with the Police Vigilance Cell report. In the petition there is a specific denial as regards relationship of the Petitioner with said Baliram. The Petitioner could have pointed out the said fact to the Committee if such opportunity had been offered to him by supplying the said document.*

9. *Besides this entry, while the Committee considered 4 documents of pre-constitutional period, having entry "Halbi", the Committee ought to have made evaluation of*

the same in totality, which has undisputedly not been done by the Committee and simply discarded the same on the ground that one entry was found as “Koshti”.. We, therefore, do not find the said approach of the Respondent Committee as judicious and sustainable in the eyes of law.

10. We are surprised to note that the validity certificate issued to the cousin sister of the Petitioner namely Ku. Sonal Prakash Bakde was not considered on the ground that, it was issued in view of the directions of this Court and not on merits.

11. At the first place the Caste Scrutiny Committee was not stopped to point out any contrary evidence, in the said matter at the relevant time. Moreover, the said judgment was not challenged by the Caste Scrutiny Committee before higher Court on any ground whatsoever. Therefore, we find the reason for discarding the validity certificate of cousin sister of the Petitioner, not correct.

12. Having observed that the Caste Scrutiny Committee erred in not evaluating all the documents of pre-constitutional period in totality, and further having observed that the reason for not considering the validity certificate of the cousin sister of the Petitioner, not correct, we could have allowed the present petition by remanding the matter to the Caste Scrutiny Committee with a direction to decide the same afresh. However, as nobody is representing Respondent Nos. 2 and 3, we are passing the following order.

- (i) Issue notice to Respondents, returnable on 10 February 2021. Learned Additional Government Pleader waives notice for Respondent No. 1.*

(ii) *By way of an ad-interim relief we direct Respondent No.2 to provisionally allot the seat to the Petitioner for admission to First Year of Four Year Degree Courses in Engineering and Technology for the year 2020-21 against the seat reserved for Scheduled Tribe Category (Halba), without insisting for the validity certificate. The admission to be made subject to the result of this Petition.*

(iii) *Liberty to the Petitioner to inform this order to Respondents by way of Advocates' letter."*

5. Now all the Respondents are served and by ad-interim order, the provisional admission has been granted, as it was the exigency of time at that stage.

6. We therefore dispose of this petit

tion, by quashing and setting aside the impugned order dated 15 January 2021 passed by the Respondent No.1-Scrutiny Committee, Amravati and restoring the proceeding to the Scrutiny Committee.

7. An ad-interim order dated 20 January 2021, regarding provisional admission shall continue till the disposal of the proceeding before the Scrutiny Committee, Amravati.

8. Considering the facts that the Petitioner has been granted admission in the above circumstances, and there are other claimants to the said seat, the Scrutiny Committee will decide the proceeding within a period of four weeks from the date the order reaches to the Scrutiny

Committee. In case the Scrutiny Committee is not able to decide the proceedings within a period of four weeks, it is open to the Scrutiny Committee to the Civil Application recording reason for the same.

9. The Writ Petition is accordingly Disposed of.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]