

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

Writ Petition (WP) No. 1696 of 2007

Ku.Kalpana Keshavrao Barapatre,
Aged about 33 years,
R/o.Samaraspura, Achalpur,
District Amravati.

.... Petitioner

// VERSUS //

1. The State of Maharashtra,
through its Secretary,
Tribe Development Department,
Mantralaya, Mumbai-400 032
2. The Scheduled Tribes Certificate
Scrutiny Committee, Amravati
Division, Office of Joint
Commissioner, Irvin Chowk,
Amaravati.
3. Maharashtra State Electricity Board
through its Secretary, Prakashgarh
Bandra (East), Mumbai.
4. Maharashtra State Power Distribution
Company, Divisional Office at
Achalpur, though its Executive
Engineer, CCOM, Achalpur, District
Amaravati.

... Respondents

Shri S.S. Sanyal, Advocate for the Petitioner
Smt. K.R. Deshpande, AGP for the Respondent Nos.1 and 2 - State
Shri R.E. Moharir, Advocate for the Respondent Nos.3 and 4.

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

DATED : 28 JANUARY 2021

JUDGMENT : (PER:- ANIL S. KILOR, J.)

Heard. **Rule.** Rule made returnable forthwith.

2. The challenge raised in the present Petition is to the invalidation of the Tribe claim of the Petitioner as 'Halbi', Scheduled Tribe.

3. We have heard the respective learned counsels for the parties.

4. The brief facts which are relevant to decide the controversy involved in the present Petition are that, the Petitioner who is an Engineer and working as Sub-Engineer in the office of the Respondent No.4, was appointed in reserved category - Scheduled Tribe. Thereupon the Tribe claim of the Petitioner was referred to the Respondent No.2- Caste Scrutiny Committee for verification. The Police Vigilance Cell during inquiry obtained documents from maternal side including a school admission extract of the Petitioner's mother wherein word 'Koshti' alleged to have been struck off and word 'Halbi' was inserted. The rejection of the Tribe Claim of the Petitioner vide order dated 18 January 2005 was mainly based on the above referred documents from maternal side, which was questioned in a Writ Petition No.777 of 2005 and this Court vide order dated 04 April 2005 quashed and set aside the said order and remitted the matter back to the Committee to re-examine the Tribe claim

of the Petitioner. Whereupon the Committee once again invalidated the Tribe claim of the Petitioner vide order dated 31 January 2007, the legality of the said order is assailed by way of the present Petition.

5. Shri Sanyal, the learned Counsel for the Petitioner submits that Rule 11 of *the Maharashtra Scheduled Tribes (Regulation and Issuance and Verification of Certificate) Rules, 2003* provides that a candidate has to submit documents of his paternal side. It is pointed out that contrary to the said provision, the Police Vigilance Cell has collected the documents from maternal side of the Petitioner and made it the basis for rejection of Tribe claim of the Petitioner. He, thus, submits that the impugned order of the Scrutiny Committee is erroneous.

6. He further submits that though sufficient documents from paternal side having entries as 'Halbi', of pre-independence period were produced by the petitioner in support of her caste claim, the same have not been assessed and erroneously rejected the claim on an unsustainable ground that the documents from maternal side of the Petitioner found adverse. By arguing so, he prays for quashing and setting aside the impugned order of the Caste Scrutiny Committee.

7. On the other hand, Smt. K.R. Deshpande, learned Assistant Government Pleader for Respondent Nos. 1 and 2 supports the impugned order of the Cast Scrutiny Committee, while Shri R.E. Moharir, the learned Counsel for Respondent Nos. 3 and 4 supports the case of the Petitioner.

8. To consider the rival contentions of the parties, we have perused the relevant documents available on record. Thereupon, it is revealed that before and after the remand by this Court, on both the occasion the Committee rejected the caste claim of the petitioner, mainly on the basis of adverse entries relating to maternal side of the petitioner. At this juncture, it is therefore, necessary to refer to the reasons recorded by the Committee for rejection of the Tribe claim of the Petitioner, which are as under:

“The applicant contended that the document collected by the inquiry officer pertaining to her mother show her caste as ‘Halbi’. The correction was done at the time when the entry was made. Koshti entry was not correct hence it was corrected. In the fourth para of her submission she contended that the documents from maternal side cannot be relied upon to reject her caste claim for Halbi Scheduled Tribe. The documents from paternal side are only relevant to support her caste claim.

The applicant’s parent’s marriage is within caste marriage it means both her father as well as her mother do belong to the same caste which is Halba-Koshti. The applicant has not submitted any proof to show that the Koshti entry is altered as Halba entry at the same time. Hence in view of the above-mentioned observation her contention is not sustainable.

ii) The documents produced by the applicant in respect of her paternal relatives describe their caste as Halbi/Halba. However no document describe her or her relatives as Halbi Scheduled Tribe. It is true that caste certificate issued to her relatives describe them as Halbi Scheduled Tribe but they are of recent origin. They have been issued only on the basis of documentary evidence and without conducting detailed inquiry and without applying affinity test.

For all the aforesaid reasons the claim of the applicant could not be proved by documentary evidence. Hence we answer the issue No. 1 in negative.”

9. Rule 11 of the Rules 2013, clearly provides that the Petitioner has to produce documents of his father or from father side to establish the Caste claim. There is no requirement under the Act or Rules to submit the documents from the maternal side. Thus, on the basis of documents from maternal side, rejection of the Caste claim of the Petitioner shows that the Committee while evaluating the documentary evidence misdirected itself and indulged in unknown and unacceptable method of adjudicating the Tribe claim by relying upon the documents from maternal side of the petitioner. Thus, rejection of Tribe Claim of the Petitioner on the ground that the documents relating to maternal relatives found adverse, is contrary to well settled principles of law.

10. The other reason given by the Caste Scrutiny Committee for rejection is that, the documents submitted by the Petitioner from paternal relatives are having entries 'Halbi/Halba' and not 'Halbi Scheduled Tribe'. This finding is erroneous and not sustainable in the eyes of law, in view of the well settled principles of law laid down by the Hon'ble the Supreme Court of India in the case of *State of Maharashtra Vrs. Milind and others*¹

11. In that view of the matter, we are of the considered view that the impugned order of the Caste Scrutiny Committee is erroneous and needs to be quashed and set aside. Furthermore, the Tribe claim of the Petitioner will have to be remitted back for a decision afresh. Accordingly, we pass the following order:

¹ 2001(1) SCC 4
C.L.Dhakate

ORDER

- i. The Writ Petition No. 1696 of 2007 is partly allowed.
- ii. The order dated 31 January 2007 is quashed and set aside.
- iii. The Tribe claim of the Petitioner as 'Halbi', Scheduled Tribe is hereby remitted back to the Respondent-Caste Scrutiny Committee for a decision afresh.
- iv. It is directed to the Caste Scrutiny Committee to decide the Tribe claim of the Petitioner within a period of six months from the receipt of copy of this Judgment.
- v. The Writ Petition is accordingly disposed of in above terms. No order as to costs.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]