

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

WRIT PETITION NO. 3081 OF 2019

Saurabh S/o Deorao Deoghare,
Aged about 21 yrs, Occ. Student, R/o
103/B, Dattakripa Cooperative Housing
Society, Shailendra Nagar, Dahisar (E),
Mumbai-400068.

.... Petitioner

// VERSUS //

1. State of Maharashtra,
Through its Secretary, Medical & Drugs
Department, Mantralaya, Mumbai-32.
 2. Joint Commissioner & Vice-Chairman,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Adiwasi Vikas
Bhavan, Giripeth, Nagpur.
 3. Maharashtra University of Health
Sciences, through its Controller of
Examinations, having its office of
Mhasrul, Dindoshi Road, Nasik-
422004.
 4. Sinhagad Technical Education Society's
Sinhagad Dental College & Hospital,
Through its Principal, having its office at
Survey No. 44/1, Vadgaon Budruk,
Sinhagad Road, Pune-411041.
- ... Respondents

Shri S.N. Narnavare, Advocate for Petitioner.
Ms. Kalyani Deshpande, AGP for Respondent Nos.1 and 2.
Shri Abhijit Deshpande, Advocate for Respondent No.3.

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

DATED : 01 MARCH, 2021.

JUDGMENT: [PER:Anil S. Kilor, J.]

Rule. Rule made returnable forthwith. The matter is heard finally with the consent of the learned counsel for the parties.

2. The present Petition is an outcome of invalidation of the Tribe claim of the Petitioner as 'Halba', Scheduled Tribe.

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

4. Brief facts of the present case are as under:

4.1 The Petitioner claims to belong to 'Halba', Scheduled Tribe. The Petitioner's Caste claim was referred to the Respondent-Caste Scrutiny Committee, when he was in 12th standard. Now he is pursuing BDS course on reserved seat for Scheduled Tribe.

4.2. The Scrutiny Committee on receiving the Police Vigilance Cell report, has considered the same along with the documents submitted by the Petitioner and thereupon the Tribe claim of the Petitioner came to be rejected, vide order dated 30 March 2019. The legality and correctness of the same has been questioned in the present Petition.

5. Shri Narnavare, learned Counsel for the Petitioner submits that the Respondent-Committee has failed to consider and appreciate two

validity certificates submitted by the Petitioner, of his cousin uncles Shri Ramchandra Narendra Deoghare and Deepak Vithal Deoghare as 'Halba', Scheduled Tribe. It is submitted that, therefore, invalidation of the Tribe claim of the Petitioner is erroneous.

6. He further submits that, the documents submitted by the vigilance cell, of pre-constitutional period, having entries as 'Koshti' were never supplied to the Petitioner and thereby an opportunity to explain the said entries, was denied to the Petitioner. It is submitted that the aforesaid entries denote profession as 'weaver' and not the caste. To substantiate his contention, he has placed reliance upon a judgment of the Division Bench of this Court in *Priya S/o Pravin Parate Vs. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur and others*¹.

7. It is submitted that the Caste Scrutiny Committee erred in not assessing and evaluating the documents submitted by the Petitioners, having entries as 'Halba' along with the documents submitted by the vigilance cell, having entries 'Koshti', in totality. It is thus, submitted that no proper evaluation of documents, has been made by the Committee.

8. Per contra, Ms. Kalyani Deshpande, Assistant Government Pleader for the Respondent Committee opposed the Petition and pointed out that no document having entry as 'Halba' of pre-Constitutional period has been produced by the Petitioner in support of his Caste claim. It is further submitted that the two validity certificates on which the Petitioner is placing his reliance, are of the year 1995 and were issued without holding vigilance cell inquiry.

¹ (2013) 1 Mh.L.J. 180
C.L.Dhakate

9. Ms. Kalyani Deshpande, Assistant Government Pleader further points out that subsequent to grant of validity certificates to the Petitioner's uncle, the Tribe claims of cousin brothers of the Petitioner, were rejected. Thus, she submits that the Tribe claim of the Petitioner was rightly rejected.

10. Shri Abhijit Deshpande, learned counsel for the respondent No.3 University, echoed the contentions of the learned Assistant Government Pleader and prays for dismissal of the petition.

11. To consider the rival contentions of the parties, we have perused the documents available on record. Thereupon it is revealed that the Petitioner has failed to produce pre-Independence period document having entry as 'Halba'. The documents which are produced by the Petitioner in support of his Caste claim are of the period between 1951 to 2016 having entries as 'Halba'.

12. It is a settled law that while dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In the present matter, admittedly no document of pre-Constitution period having entry 'Halba' has been produced by the Petitioner.

13. As per the provision of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance of Verification of) Caste Certificate Act 2000, the burden lies on

the applicant to establish his/her Caste. The Petitioner in the present matter failed to discharge his burden by not producing documentary evidence having higher degree of probative value, to establish his Tribe claim.

14. The contentions of the Petitioner that the entries as 'Koshti' found in the documents produced by the Police Vigilance Cell, of the period 1923-1951 depict profession because it is common knowledge that persons engaged in the profession of weaving were called as 'Koshti'. By arguing this the Petitioner is trying to suggest that the entry as 'Koshti' be treated in favour of the Petitioner as 'Halba' or not adverse to him. Assuming these entries not adverse, the Petitioner will have to produce positive evidence which the Petitioner has failed.

15. As regards, the validity certificates issued to the cousin uncles or the Petitioner. The same were issued in the year 1995 and there is no dispute that till 1996 there was no Police Vigilance Cell in existence for conducting inquiry relating to Caste claims. Thus, it is clear that both the validity certificates issued in the name of Ramchandra Narendra Deoghare and Deepak Vithal Deoghare, were issued without holding any inquiry by the Police Vigilance Cell.

16. Furthermore, the Tribe claim of cousin brother of the Petitioner Naresh Gajanan Deoghare was invalidated by order dated 26 August 2010 and when it was assailed in Writ Petition No. 4940 of 2010, this Court granted interim protection as regards employment. However, it is made clear that he shall not be entitled to any of the benefits including

the promotion on the basis of his claim belonging to Scheduled Tribe, in future.

17. Similarly, the Caste claim of another cousin brother of the Petitioner Shri Vidyanand Chandrashaha Deoghare was invalidated by the Committee on 08 December 2016, the legality of which has not been challenged by him.

18. Thus, for the above reasons subsequent invalidation of Caste claim of two cousin brothers of the Petitioner i.e. after grant of validity certificates to cousin uncles in the year 1995, cannot be ignored and discarded while determining the Tribe claim of the Petitioner. Therefore, the contentions of the Petitioner that the Committee cannot invalidate the Tribe claim of the Petitioner in view of validity certificates issued to his uncles, needs to be rejected.

19. Having observed that the Petitioner failed to discharge his burden to establish his Tribe claim we do not find any reason in this matter to interfere into the impugned order rejecting the Tribe claim of the Petitioner. Hence, we pass the following order:

ORDER

- i. The Writ Petition No. 3081 of 2019 is dismissed.
- ii. No order as to costs.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]