

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

WRIT PETITION NO.4809/2019

Roshan S/o Ratanlal Balbanshi,
aged 30 Yrs., Occ. Student,
R/o at Post Asegaon Purna,
Tah. Chandurbazar, Dist. Amravati.

..Petitioner.

..Vs..

1. The Committee for Scrutiny and
Verification of Tribe Claims, Amravati,
Chaprashipura, Dist. Amravati.
2. The Government Medical College
Akola, through its Dean, Collector Office
Road, infront of Mungilal Bajoriya
Mahavidyalaya, Akola.
3. Maharashtra Health University Nashik,
Dindori Road, Nashik, through it's
Registrar.

..Respondents.

Mr. N.S. Warulkar, Advocate for the petitioner.
Ms Mayuri Deshmukh, A.G.P for respondent Nos.1 and 2.
Mr. Abhijit Deshpande, Advocate for respondent No.3.

CORAM :- SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.
DATED :- 28.10.2021.

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

Heard. **Rule.** Rule made returnable forthwith. Heard finally by
consent.

2. It is seen, in this case, that there are two oldest pre-constitutional documents which have the entries such as “Aarakh” and “Arakh”, the genuineness of which cannot be questioned nor has it been by the Scrutiny Committee. One document of the date of 26.2.1931, a school leaving certificate issued to Wasudeo Beniprasad, admittedly a blood relative of the petitioner from the paternal side, discloses social status of Wasudeo Beniprasad as “Aarakh”. The second document is of the date 25.12.1934. This document is an extract of Kotwal Register for recording entries regarding births and deaths. There is an entry dated 25.12.1934 taken in this document and this entry shows that the community of Ramkumar Gayodin, admittedly a blood relative of the petitioner from the paternal side as “Arakh”.

3. Although said two documents show slightly different entries but, the entries “Aarakh” and “Arakh” appear at serial No.18 of the Constitution (Scheduled Tribe) Order, 1950 (C.O.22) as Scheduled Tribe and they do not match with the said documents. As stated earlier, there is no circumstance available on record which casts any doubt about the genuineness of these two documents. The relationship with the persons named in these two documents with the petitioner is also not in dispute. Despite such circumstances favouring

the petitioner being available on record, the Scrutiny Committee has struck a different note. The Scrutiny Committee ignored these documents and simply relied upon the documents most of which, except for one document, related to a period which was post Constitution Order 1950. There was just one document relating to the date 26.8.1946, which was an extract of the register of birth and death which showed the community of Wasudeo Beniprasad, a blood relative of the petitioner from the paternal side as Pardeshi. The rest of the documents having such entries as Ahir, Pardeshi, Thakur Arakh were all of post Constitution Order period and, therefore, possessed lesser probative value. These post Constitutional Order documents, it is seen from the impugned order, however, have been given more importance and treated as if they were having greater probative value than the pre Constitution Order and this is in ignorance of the settled position of law that such documents have higher probative value.

4. The pre Constitution Order documents are already referred to earlier. If the documents which were post Constitution Order were to be treated with greater respect and value, it was necessary for the Scrutiny Committee to have rejected the pre-constitutional documents or expressed doubt about the genuineness of the entries taken in these documents first. But, that was not done by the Scrutiny Committee.

The Scrutiny Committee, ignoring those documents, only opined that since other documents particularly the documents pertaining to period from 1946 to 1948 had different entries such as Pardeshi Thakur, Pardeshi Ahir, the petitioner could not be said to have proved his claim that he belonged to “Arakh Scheduled Tribe”. Such appreciation carried out by the Scrutiny Committee of the material available before it, in our opinion, is perverse as it is in ignorance of relevant evidence available on record and is the result of non-application of mind to the relevant pieces of evidence available on record.

5. This would bring us to consideration of the oldest documents containing entries of the dates of 26.2.1931 and 25.12.1934. We must say that these documents being genuine and of the pre-constitutional period, have greater probative value and there are no circumstances nor any evidence available on record to reject or discard these documents. Of course, there is an entry dated 26.8.1946 standing in the name of Wasudeo Beniprasad showing him to be Pardeshi but, this entry being of the period which was much after the period of 1931 and 1934 and also being of the period which witnessed a great divide in the society on account of caste and communal considerations, there is a possibility of this entry having been taken deliberately in a misleading way only with a view to hoodwink the

mischievous mongers and protect the person from adverse impact of the social hiatus in the society that was prevailing then and, therefore, not much importance can be attached to the entry dated 26th August, 1946. If this is not done, then we would have to reject entries of 1931 and 1934. But, that is not possible as we have already found that there being no circumstances available on record throwing cover of doubt on them, the documents would have to be treated as genuine having high probative value, and which we have already done. We, therefore, discard the entry dated 26th August 1946 and then what remains are the entries dated 26.3.1934 and 25.12.1934, which undoubtedly establish the claim of the petitioner as he belonging to Arakh community which has been declared to be Scheduled Tribe as per the Constitution (Scheduled Tribes) Order, 1950 (C.O. 22) at Serial No.18.

6. In the result, we allow the writ petition partly.
7. The impugned order is hereby quashed and set aside.
8. It is declared that the social status of the petitioner is that of “Arakh Scheduled Tribe”.
9. Respondent No.1 is directed to issue Tribe Validity Certificate to the petitioner as he belong to “Arakh Scheduled Tribe” within a period

of one month from the date of receipt of the order.

10. Rule accordingly. No costs.

CIVIL APPLICATION (CA.W.) NO.938/2021

11. In view of disposal of main petition, this application does not survive and is **disposed of** accordingly. No costs.

JUDGE

JUDGE

Tambaskar.