

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

WRIT PETITION NO. 8107 OF 2019

Anil s/o Shivram Bandawar,
Aged about 42 years, Occ-Service,
R/o. Village Moharli, Post-Khudirampalli,
Tahsil-Mulchera, District Gadchiroli.

... Petitioner

V/s

1. The District Caste Certificate Verification
Committee, Gadchiroli, through its Member Secretary,
Office at Dr. Babasaheb Ambedkar Samajik Nyay Bhawan,
I.T.I. Square, LIC Road, Gadchiroli.

2. The Zilla Parishad, Gadchiroli,
through its Chief Executive Officer.

... Respondents.

Shri Rohit Joshi, Advocate for petitioner.

Ms N. P. Mehta, Assistant Government Pleader for respondent No. 1.

Shri Sachin Zoting, Advocate for respondent No.2.

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 order dated 23/10/2019 passed by the District Caste Certificate Verification Committee, Gadchiroli cancelling the Caste Validity Certificate issued to the petitioner on 17/12/2009 is under challenge in this writ petition filed under Articles 226 and 227 of the Constitution of India, particularly on the ground that the impugned order as passed is without

jurisdiction.

2. The petitioner who claims to belong to Zade-Nomadic Tribe-C was issued a Caste Validity Certificate by the Scrutiny Committee on 17/12/2009. The petitioner's nephew sought verification of his Caste Certificate and he thus approached the Scrutiny Committee. The petitioner's nephew sought to rely upon various documents including the Validity Certificate issued to the petitioner. During the process of verification of the petitioner's nephew's caste certificate the Research Officer and Member Secretary of the Scrutiny Committee issued a show cause notice to the petitioner on 15/03/2019. The petitioner was called upon to submit all documents on the basis of which he was issued the Validity Certificate in the backdrop of the fact that while verifying the caste certificate of his nephew an old record of the year 1920-24 indicating the entry "Zade-Kunbi" pertaining to the petitioner's predecessors was found. In response thereto the petitioner on 22/04/2019 submitted all relevant documents and restated that he belongs to Nomadic Tribe-C. The Scrutiny Committee by its order dated 23/10/2019 found that the petitioner had been issued the Validity Certificate 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's nephew as well as correctness of the Validity Certificate issued to the petitioner. It found that certain

revenue entries of the year 1920-24 in which it was mentioned that the petitioner's predecessors belonged to "Kunbi" caste had not been referred to by the petitioner during the validity proceedings. The Scrutiny Committee hence proceeded to cancel the Caste Validity Certificate dated 17/12/2009 issued to the petitioner as well as the Caste Certificate issued to him. Being aggrieved the petitioner has challenged the aforesaid order.

3. Shri Rohit Joshi, learned counsel for the petitioner 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 petitioner that by itself would not be sufficient to doubt such document unless there was material available to show that the petitioner or his predecessor 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 Certificate/Caste Certificate had been obtained by the petitioner by practicing fraud the same had been cancelled. It was thus submitted that the impugned order has 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 No.1 on the other hand supported the impugned order and urged that as it was found by the Scrutiny Committee that the old revenue records pertaining to the year 1920-24 recorded the caste of the

predecessors of the petitioner as “Kunbi”, the Validity Certificate indicating the caste of the petitioner of belonging to Nomadic Tribe-C was rightly cancelled. The petitioner by not referring to the old revenue records of the year 1920-24 which were found by the Vigilance Cell as relating to the predecessors of the petitioner had in fact committed a fraud and hence the petitioner was not entitled to claim that he 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 petitioner. Moreover, perusal of the impugned order would indicate that it was not the outcome of re-examination of the material relied upon by the petitioner 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 order.

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 petitioner had been issued a Caste Validity Certificate of belonging to Zade-Nomadic Tribe-C by the competent Scrutiny Committee on 17/12/2009. While undertaking the exercise of verification of the caste-claim of the petitioner’s nephew, the petitioner’s Caste Validity Certificate that was relied upon by his nephew was considered. The Scrutiny

Committee in that context proceeded to issue a show cause notice to the petitioner on 15/03/2019 and called upon him to produce all documents/material on the basis of which the Caste Validity Certificate was obtained. In the said show cause notice a reference was made to a revenue entry of the year 1920-24 and it was stated that a different caste was mentioned against the names of the petitioner's predecessors. It is thus clear that the show cause notice merely called upon the petitioner to produce documentary material/evidence on the basis of which the Caste Validity Certificate was issued to him. There is no statement in the said show cause notice that the Caste Validity Certificate had been obtained by the petitioner by practicing fraud or that the Scrutiny Committee issuing it had no jurisdiction. After giving an opportunity to the petitioner the Scrutiny Committee proceeded to cancel the Caste Validity Certificate particularly on the ground that in the old revenue records of the year 1920-24 the caste of the petitioner's predecessors was recorded as "Kunbi". Again in the impugned order there is no finding recorded by the Scrutiny Committee that either the caste certificate or the Caste Validity Certificate was obtained by the petitioner by practicing fraud. It is before this Court that the Scrutiny Committee seeks to support its order by stating that since the petitioner had obtained the Caste Validity Certificate by playing fraud, it was rightly cancelled.

6. We find that it was not permissible for the Caste Scrutiny Committee to have re-examined the caste certificate and Caste Validity Certificate issued to the petitioner on the grounds on which it was so sought to be so re-examined as stated in the show cause notice. 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 merely because a different view on the same facts could be arrived at, the same 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 1920-24 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 notice issued by it was without jurisdiction.

7. We may note that neither in the show cause notice nor in the impugned order cancelling the Caste Validity Certificate issued to the petitioner is there any reference made to “fraud” being practiced by the

petitioner while obtaining the Caste Validity Certificate. It is however sought to be urged by the Scrutiny Committee that it exercised such power on the premise that the petitioner while seeking verification of his caste-claim had not referred to the old revenue records of 1920-24 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 petitioner when he had sought verification of his caste-claim. The Scrutiny Committee did not deem it fit to obtain a report of the Vigilance Cell and instead proceeded to issue a Caste Validity Certificate to the petitioner. 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 Certificate issued to the petitioner has been cancelled is that the petitioner failed to bring before the Scrutiny Committee the old revenue records of 1920-24. In our view such alleged act of the petitioner 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 Certificate of the petitioner to have conducted an inquiry by the Vigilance Cell. The Scrutiny Committee however did not deem it necessary to have such inquiry conducted by the Vigilance Cell. The Scrutiny Committee was thus in a position to discover the old revenue records of 1920-24 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 1920-24 the petitioner was guilty of practicing fraud. As stated above though the aspect of fraud was neither mentioned by the Scrutiny Committee in its show cause notice nor referred to in the impugned order we have dealt with said aspect as the impugned order was 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 order and cancelling the Caste Certificate as well as Caste Validity Certificate that it had issued to the petitioner. The Scrutiny Committee had no jurisdiction in law to do so. Consequently the order dated 23/10/2019 passed by the District Caste Certificate Verification Committee, Gadchiroli is quashed and set aside. The Caste Validity Certificate issued to the petitioner on 17/12/2009 stands restored.

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

(A. S. CHANDURKAR, J.)

(CHIEF JUSTICE)