

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

Writ Petition No.7965 of 2018

Sharad s/o Shrawan Golait

...Petitioner

Versus

Joint Commissioner & Vice Chairman, Scheduled Tribe

...Respondents

Certificate Scrutiny Committee, Nagpur and another

Shri S.R. Narnaware, Advocate for the Petitioner

Shri Amit Madiwale, AGP for the Respondent Nos.1 and 2 - State

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

DATED : 8 MARCH 2021

P.C.:

Heard learned Counsel for the parties.

2. The Petitioner has challenged the order passed by the Respondent No.1 – Scrutiny Committee, Nagpur dated 19 September 2018 invalidating the Caste Certificate of the petitioner as belonging to “Halba” Scheduled Tribe. The Petitioner has also sought a declaration that Section 6 (1) of *the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified 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 Rule 9 of *the Maharashtra Scheduled Caste (Regulation of Issuance and Verification of) Certificate Rules 2003* (for short “the Rules of 2003”) are unconstitutional.

3. The Petitioner is working with the Respondent No.2 as ‘Clerk’. He was appointed against the vacancy reserved for Scheduled Tribe category on the basis of the Caste Certificate issued by the Executive Magistrate, Samudrapur, District Wardha on 9 August 1988. The claim of the Petitioner was referred to the Caste Scrutiny Committee for verification. The Petitioner had produced the documents in his favour and the Vigilance Cell Inquiry was conducted. After examining the evidence produced by the Petitioner, the Vigilance Cell conducted an affinity test, thereafter the Respondent - Scrutiny Committee negated the claim of the Petitioner and invalidated the Caste Certificate as belonging to “Halba”.

4. The learned Counsel for the Petitioner firstly states that since there is a challenge to the validity of the provisions, the Petition be admitted and Rule be issued and interim relief be granted. The Petitioner will have to demonstrate at least a strong *prima facie* case of Petitioner’s Caste Claim as he is occupying a post meant for Scheduled Tribe. If the Petitioner has no evidence in support of his claim, the Court will keep the challenge to the provisions open to be examined in appropriate cases. The learned Assistant Government Pleader states that the challenge is already negated.

5. We have examined the case of the petitioner on merits. The Petitioner's claim is as belonging to the "Halba" Scheduled Tribe. Burden is upon the person claiming the benefit as belong to the Scheduled Caste/ Scheduled Tribe to place on record the documents in support of the claim.

6. As regard the documents of the pre-constitutional period, the learned Counsel for the Petitioner accepts that there are no documents showing entry as "Halba". They are also not on record. Vigilance Cell produced the documents of the pre-constitutional period regarding Petitioner's paternal relatives showing the entry as "Koshti". Even assuming the contention of the Petitioner that the entry "Koshti" cannot be held to be adverse to the claim of "Halba" is accepted, there should be at least some documents showing the Petitioner as belonging to the "Halba" of the pre-constitutional period. In complete absence of any documents prior to the constitutional period showing the entry as "Halba", the view taken by the Scrutiny Committee cannot be considered as illegal or perverse.

7. No interference is therefore warranted in writ jurisdiction. The Writ Petition is rejected.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]