

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8372 OF 2018

Miss Madhu Narayan Birkale,
Age : 19 years, Occ : Nil-Student,
R/o Bapu Saheb Nagar, Mudkhed,
Dist. Nanded 421 806.

...Petitioner

Versus

1. The State of Maharashtra
Through the Secretary
Tribal Development Department,
Mantralaya, Mumbai 400 032.
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division, Aurangabad,
Through its Member Secretary.
3. Guru Govind Singhji Institute of Engineering
and Technology, Vishnupuri, Nanded,
Through its Registrar.
4. The Director of Technical Education,
Maharashtra State,
3, Mahapalika Marg, Opp. Metro Cinema,
Mumbai.
5. Swami Ramanand Teerth
Marathwada, University,
Vishupuri, Nanded, Dist. Nanded,
Through its Registrar

...Respondents

...

Mr. C.R. Thorat, advocate for petitioner.

Mr. S.P. Tiwari, AGP for respondent nos.1 and 2.

...

**CORAM : R.D. DHANUKA &
S.G. MEHARE, J.J.**

RESERVED ON : 17th MARCH, 2022

PRONOUNCED ON : 11th APRIL, 2022

JUDGMENT (PER S.G. MEHARE, J) :-

1. Rule. Rule made returnable forthwith. By consent of the parties heard finally at the admission stage.
2. The caste claim of the petitioner belonging to Mannervarlu Scheduled Tribe is invalidated by the impugned order dated 30.06.2018.
3. The learned counsel for the petitioner would argue that rejection of the caste claim of the petitioner without holding the caste claim of near relative obtained by playing fraud cannot be invalidated. There was no evidence before the scrutiny committee that the word 'lu' was added at the last of the caste by the petitioner herself. There was absolutely no evidence before the vigilance cell that certificate dated 17.05.1972 was forge. The vigilance cell did not record the statement of the president of the municipality to find out the genuineness of the certificate dated 17.05.1972. In the absence of adding the word 'lu' to the caste would not lead to an irresistible conclusion that the said word was added by the petitioner. There was no evidence of handwriting expert before the caste scrutiny committee to prove that the word 'lu' was subsequently added. The school entry of the real uncle of the petitioner namely Mohan Gangadhar Birkale with Zilla Parishad School Shivangaon is shown as Kolam Mannervarlu cannot be considered as contra entry. The person namely Lingu Koneri mentioned in khasra patrak is not the closest

blood relative and also does not fall in the genealogy of the petitioner. However, the scrutiny committee has erred in believing that he is the close blood relative of the petitioner. The findings of the scrutiny committee on khasra pahani patrak of Mahadu Irba and Gunjabai Maruti are contrary to the facts.

4. It is also submitted that Kanchatwar Namdeo Narayan is not his grandfather but scrutiny committee has erroneously observed the said relation with the petitioner. The sufficient material on customs, tradition and culture of Mannervarlu community was submitted to the vigilance cell that proves the affinity test but committee has recorded the erroneous findings. To bolster his arguments, he relied on the case of *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Others*, (2012) 1 SCC 113, *Sayanna Vs. State of Maharashtra and Others*, (2009) 10 SCC 268, *Apoorva Vinay Nichale Vs. Divisional Caste Certificate Committee No.1 and Others*, 2010 (6) Mh.LJ 401, *J. Chitra Vs. District Collector and Chairman State Level Vigilance Committee, Tamil Nadu and Others*, 2021 (9) SCC 811, *Mahesh Pralhadrao Lad Vs. State of Maharashtra and Others*, 2009 (2) Mh.L.J. 90, *Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and others*, 2008 (9) SCC 54, *Bhaiya Ram Munda Vs. Anirudh Patar*, 1971 AIR (SC) 2533, *Sunil Hiranman Thakur Vs. State of Maharashtra and Others*, 2021 (5) Mh.L.J. 512, *Anil Shivram Bandawar Vs. District Caste Certificate Verification*

committee and another, 2021 (5) Mh. LJ 345. He also relied on the judgment passed by this Court at Principal Seat in Writ Petition No.5349 of 2019 in case of Nikhil Suryakant Padalwar Vs. State of Maharashtra through Secretary Tribal Development Department and Others dated 03.03.2022.

5. Per contra, learned AGP Shri S.P. Tiwari for the State has vehemently argued that no caste validity based on the blood relative shall be granted when the caste validity of blood relative is under suspicion and obtained by suppression of fact. He also argued that there is crystal clear evidence of interpolation of the record of the caste by adding the word 'lu'. The scrutiny committee has the power to call back or cancel the caste certificate issued if obtained by playing a fraud. The caste scrutiny committee under Rule 7 of Caste Certificate Act, 2000 has power to confiscate and cancel the false caste certificate either suo moto or otherwise. It has the power to call for the record of the person who has obtained the certificate falsely and inquire into the correctness of such certificate and if the committee is of the opinion that certificate was obtained fraudulently, the committee shall by order cancel and confiscate the certificate by following the prescribed procedure. He also urged that the scrutiny committee has a reasonable ground to have a suspicion on the certificate of the petitioner's uncle. He supported the impugned order and prayed to dismiss the petition.

6. The claim of the petitioner was based on the validity granted by the competent scrutiny committee in favour of her real cousin brother Manoj Vishvambhar Birkale. The applicant has submitted 26 documents in all in support of her tribe claim. The committee has called the vigilance report. The vigilance cell in its report mentioned that the caste of the father of the petitioner in school record was shown as Kolam Mannervarlu. He was admitted to school on 05.10.1968. Another entry of her father of the Mahatma Gandhi, Madhyamik and Ucchmadhyamik Vidyalaya, Mudkhed, his caste is shown as Mannervarlu but he was admitted in the school on 14.06.1984. The school entry of her uncle in Shevangaon also shows her caste as Kolam Mannervarlu and second uncle's caste is shown as Mannervarlu. However, the remark is put in a column that in the caste column there is a difference in ink and handwriting. It has also been reported that in the school record of Mahatma Gandhi School at Mudkhed, the word 'lu' was not seen added by or in different handwriting. The entry in column remark at page 3 in the impugned judgment appears wrongly typed. The original vigilance cell report which is supplied to this court shows that the word 'lu' is added by different ink and the handwriting. It appears that no due care has been taken by the person who typed the impugned judgment. It is clear that respondent no.1 has a specific case that the word 'lu' was added to his surname in the school record of Mahatma Gandhi School

at Mudkhed.

7. A similar dispute of adding of word 'lu' after the surname was dealt with by the Hon'ble Apex court in the case of Sayanna (supra). The fact of that case is similar to the fact of the case at hand. In that case also the vigilance cell had opined that the word 'lu' was added to the school record entry. On these facts, the Hon'ble Apex Court in para 9 of the said judgment has observed thus :

“the police did not examine the president of the Municipality to find out whether the certificate issued by him was genuine or not. It has also been observed therein that what is relevant to notice is that in the report dated December 1, 2003, the police inspector has merely stated as a matter of fact that the word 'lu' was subsequently added while recording the caste of the appellant as Mannervarlu in the school register. The police inspector has not stated that the word 'lu' was interpolated by the appellant. There is every possibility that the word 'lu' was not mentioned at the time of recording the caste of the appellant and on being pointed out the correct spelling of the caste, the word 'lu' was added. Addition of word 'lu' subsequently would not lead to an irresistible conclusion that the said word was added by the appellant or at his behest. It is difficult for this court to understand as to on which basis the scrutiny committee came to the conclusion that the word 'lu' was interpolated in the register of the school more particularly when it was not so opined by the police inspector who had conducted the enquiry. Whether interpolation by addition has taken place can be stated by a handwriting expert or by comparison of admitted letters of a person with this disputed one. It is an admitted position that the scrutiny committee has never attempted to get an experts opinion nor itself had

compared the disputed letters with admitted one of the appellant. Under the circumstances, the finding recorded by the scrutiny committee that the word 'lu' was interpolated will have to be regarded as not based on any credible evidence. The police inspector had never taken care to find out whether the word 'lu' was subsequently added by the school authorities or by the appellant. It was necessary for the said officer to undertake such an exercise in view of the specific defence of the appellant that the school record was lying with the school authorities and he had no opportunity whatsoever to tamper with the same. “

8. Similarly, in the case at hand, the investigation officer of the vigilance cell has merely stated as a matter of fact that the word 'lu' added to the caste of the father of the petitioner appears written in different ink and handwriting. The committee did not exercise to verify from the admitted handwriting of the father of the petitioner nor the scrutiny committee attempted to get an expert opinion. The statement of the father of the petitioner was recorded during the course of hearing of the caste claim. Surprisingly, the said statement does not bear the signature, name or seal of the person recording his statement. It seems to be a reply to the questions made to him by somebody. Vague questions were put to him that he did not apply to correct the caste entry. He was called by the committee to give a specific statement as regard to the interpolation ought to have asked to him but nothing as such happened.

9. It has been also the finding recorded by the caste scrutiny

committee that the word 'lu' is added in khasra patrak of Nagoba s/o Irba, Gunjabai Maruti, Nagoba s/o Munjaji, Maruti Irba and Mahadu Irba, shows the word 'lu' was added in different ink and different handwriting. The same rule as observed in the case of Sayanna (supra) would apply while relying upon such entries by the scrutiny committee. It is a mere statement of the vigilance cell on fact and the said record is not coming from the custody of the petitioner or her uncle and grandfather.

10. Recently the Bombay High Court at the Principal Seat in the matter of Satish Janardhan Thakur and another Vs. Scheduled Tribe Caste Certificate Verification Committee, Pune Division Pune Through its Member, Secretary and others in Writ Petition No.3770 of 2017 (one of us R.D. Dhanuka, J was the member) held that rejection of the claim of petitioners on the ground of failure to establish cultural affinity is absolutely unwarranted. Such findings cannot be legally sustained. Nobody can be denied the benefit on the ground that their present traits do not match the tribes peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies etc. Thus, the affinity test can only be used to corroborate to the documentary evidence and should not be the sole criteria to reject the claim.

11. While rejecting the claim of the petitioner based on the validity certificate issued in the name of cousin brother of the

petitioner, the caste scrutiny committee has recorded the reasoning that at the time of granting him the validity certificate, the vigilance inquiry was not made. It was also observed that the said validity was granted on the basis of the certificate issued to his sister Kavita Vishvambar Birkale. However, the documents which were discovered in this case were not before the then scrutiny committee in the case of Kavita Vishvambar Birkale.

12. The learned counsel for the petitioners vehemently argued that where the validity certificate is issued in favour of the blood relative, the other blood relative cannot be denied the validity. To bolster the arguments, he relied on the case of Apoorva (*supra*). In the said case, the Bombay High Court at Nagpur Bench has laid down the law, that the committee would be entitled to refuse to follow the caste validity certificate granted to a blood relative if it appears to the committee that earlier caste certificate has been scrutinized by a committee without jurisdiction or validity order is obtained by committing fraud on the committee. It has also been observed in the middle of para 9 as under:

“From the findings of the committee, it appears that the committee has observed that the change of caste has been done illegally. Obviously, the committee which decided the caste claim of the petitioners sister did not hold the same view, otherwise, it would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed doubt about the validity of caste claim of the

petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order.....”

13. The scrutiny committee rejected the claim of the petitioner based on the validity of the blood relative for the reasons stated above. The scrutiny committee nowhere recorded the finding that the cousin brother of the petitioner had obtained the caste certificate by fraud. On the contrary, it has recorded the finding that in the case of her cousin brother Manoj, no inquiry through the vigilance cell was done.

14. Rule 12(2) of the Certificate Rules, 2003, indicates that on dissatisfaction of the documentary evidence produced by the applicant, the scrutiny committee has the power to forward the application to the vigilance cell for conducting the school, home and

other inquiry. These are the inbuilt powers provided under the rules itself. The earlier committee granting the certificate in favour of Manoj might be satisfied with the documents placed before it, hence, did not feel it appropriate to forward the application to the vigilance cell for the inquiry. For not holding the vigilance inquiry, the claimant cannot be blamed.

15. The State has also not the case that a certificate of the cousin brother of the petitioner has been cancelled and confiscated on the ground that it was obtained by playing fraud on the committee. In this case, it is nobody's case that the blood relative of the petitioner has obtained the validity by playing fraud.

16. In view of the aforesaid fact, we are of the considered view that in the absence of concrete finding that the blood relatives i.e. the cousin brother of the petitioner has obtained the caste validity by playing the fraud on the scrutiny committee rejecting the claim of the petitioner on the basis of the blood relative is contrary to the settled law.

17. After having gone through the record and the earlier judgments, we are of the opinion that the scrutiny committee has erroneously rejected the caste claim of the petitioner. Therefore, the impugned judgment is liable to be quashed and set aside. Hence, we pass the following order:

ORDER

- a) The impugned order dated 30.06.2018 passed by respondent no.2 is quashed and set aside.
- b) Respondent no.2 is directed to issue the validity certificate to the petitioner of Mannervarlu Scheduled Tribe immediately.
- c) Rule is made absolute in the aforesaid terms. No order as to costs.
- d) Parties to act upon authenticated copy of this order.
- e) Record and proceedings be returned to the learned AGP.

(S.G. MEHARE. J.)

(R.D. DHANUKA, J.)