

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

WRIT PETITION NO.9595 OF 2016

Rajanna Ganganna Rashalawar
Age : 42 years, Occu : Service,
R/o. Bellori (K) Tq. Kinwat,
Dist. Nanded.

...Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai.

2. The Divisional Caste Scrutiny Committee no.2,
Aurangabad Division Latur,
Dist. Latur.

3. The Chief Executive Officer,
Zilla Parishad, Nanded.

4. The Block Education Officer,
Panchayat Samiti, Kinwat,
Dist. Nanded.

...Respondents

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Mr. Anandsingh Bayas, Advocate for the Petitioner.

Mr. K.N. Lokhande, AGP for Respondent Nos.1 & 2.

Mr. S.B. Pulkundwar, Advocate for Respondent Nos.3 & 4.

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

DATED : 16th MARCH, 2022

ORAL JUDGMENT (PER R.D. DHANUKA, J.) :-

1. Rule. Rule made returnable forthwith. Learned AGP
waives service for the respondent nos.1 and 2. Learned counsel

waives for respondent nos.3 and 4.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a writ of certiorari for quashing and setting aside the impugned order dated 12.05.2016 passed on 06.08.2016 by the respondent no.2 - Scrutiny Committee invalidating the caste claim of the petitioner. The petitioner also seeks declaration that the petitioner belongs to "Madgi" Scheduled Caste.

3. The petitioner is the resident of Village Bellori in Taluka Kinwat District Nanded. It is the case of the petitioner that petitioner belongs to Madgi Scheduled Caste which is notified at serial no.35 in the list of Presidential Notification.

4. On 15.05.1987 and 09.09.2004, the Tahsildar Kinwat issued a caste certificate certifying that the petitioner belongs to Madgi Scheduled Caste. The petitioner however was required to obtain caste certificate in proper format. The Sub-Divisional Officer issued a caste certificate to the petitioner on 09.09.2004 accordingly.

5. On 29.06.1998, the petitioner was appointed on the post of Assistant Teacher in respondent no.3 department. The said appointment was not reserved against the seat reserved for the scheduled caste category. The caste claim of the petitioner was however forwarded to the scrutiny committee for verification in the year 2013. Before the scrutiny committee, the petitioner submitted all the available documents in support of his claim. It is the case of

the petitioner that as the forefathers of the petitioner were illiterate and the petitioner and his brother are the only two members who entered into school, the old school record of the forefathers of the petitioner was not available. The petitioner submitted his primary school record which pertains to the year 1980. The caste certificate issued by the Sub-Divisional Officer indicates that the petitioner belongs to Madgi Caste.

6. The scrutiny committee referred the claim of the petitioner for vigilance enquiry. The vigilance officer after verifying the school record of the petitioner, his brother and son found the school record of the petitioner as correct. The vigilance officer also recorded the statement of villagers and recorded the trade tradition and customs followed by the petitioner. Pursuant to the report submitted by the vigilance committee, the scrutiny committee issued a show cause notice upon the petitioner. The petitioner responded to the said show cause notice and clearly stated that the record for the period prior to 1950 were not available due to the illiteracy of the forefather of the petitioner.

7. The scrutiny committee by the impugned order dated 12.05.2016 issued on 06.08.2016 invalidated the caste claim of the petitioner on two grounds i.e. (i) the petitioner has not produced any documents proving the caste claim of the petitioner prior to 10.08.1950 and (ii) the documents produced by the petitioner were

pertaining to the period post 10.08.1950.

8. Mr. Bayas, learned counsel for the petitioner placed reliance on the judgment of this Court in the case of Mahesh Pralhadrao Lad Vs. State of Maharashtra and others, 2009 (2) Mh.L.J. 90 and in particular paragraph nos.2, 4, 8 and 9. He also placed reliance on the judgment of the Hon'ble Supreme Court in case of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others, (2012) 1 SCC 113 and in particular paragraph no.22, in support of his submission that even if the applicant is unable to produce any documents prior to pre-constitution, the claim for caste claim cannot be rejected on that ground.

9. It is submitted by the learned counsel that there is no adverse record available to deny the caste claim of the petitioner.

10. The learned AGP for the State on the other hand submits that the petitioner did not produce any document prior to 10.08.1950. The scrutiny committee was thus justified to reject the caste claim of the petitioner on that ground and also on the ground that the documents produced by the petitioner were for the period subsequent to 10.08.1950 and were new documents.

11. This Court in the case of Mahesh Pralhadrao Lad (Supra) has considered the identical facts and has held that there is no requirement either under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 or the Rules or the

Judgment of the Supreme Court or of this Court that documentary evidence other than pre-constitution, pre-presidential notification or State Notification notifying caste or nomadic tribe to be excluded from being considered when a Committee considers an application for verification of Tribe/Caste status for the purpose of issuing a validity certificate. The procedure under the Rules is to enable the Committee if it is satisfied based on the documentary evidence of the claim to proceed to issue the validity certificate without conducting the vigilance enquiry or asking the applicant to lead other evidence.

12. The Hon'ble Supreme Court in case of Anand (Supra) has also considered the similar issue and has held 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 case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. It is held that, the mere fact that he is the first generation ever to attend the school, some benefit of doubt in favour of the applicant may be given. It is further held that needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant.

13. In this case, it is the specific case of the petitioner that the petitioner and his brother were the first to enter the school for education. The forefathers of the petitioner were illiterate and never visited the school and thus there was no possibility of producing any document prior to independence. Though the claim of the petitioner was referred to vigilance committee, the vigilance committee did not produce any material contrary to or adverse to the interest of the petitioner.

14. The Scrutiny Committee simply brushed aside the other documents produced by the petitioner on the ground that those documents were of the period subsequent to 10.08.1950 and thus could not have been relied upon. In our view the principles laid down by the Hon'ble Supreme Court in case of Anand (Supra) and by this Court in case of Mahesh Pralhadrao Lad (Supra) apply to the facts of this case. We are respectfully bound by these principles. This Court in the case of Mahesh Pralhadrao Lad (Supra) has held that all documents whether post or pre-constitution or pre-Presidential or State Notification can be considered as also oral evidence, treated in the form of affidavit evidence.

15. In our view, the impugned order passed by the caste scrutiny committee is contrary to the principles of law laid down in the case of Anand (supra) and by this Court in case of Mahesh Pralhadrao Lad (Supra) and thus deserves to be quashed and set

aside.

16. In view of the fact that there was no adverse material produced against the petitioner, during the course of enquiry before the caste scrutiny committee and also when the matter was referred to the vigilance cell, we are inclined to declare the petitioner as belonging to Madgi Scheduled Caste. We accordingly pass the following order:

ORDER

- I) The impugned order dated 12.05.2016 issued on 06.08.2016 passed by respondent no.2 – committee is quashed and set aside.
- II) The caste claim of the petitioner with caste Madgi Scheduled Caste is allowed.
- III) It is declared that the petitioner belongs to Madgi Scheduled Caste.
- IV) Rule is made absolute in terms of prayer clause (A) and (B).
- V) The respondent no.2 – committee is directed to issue caste validity certificate to the petitioner as Madgi Scheduled Caste within two weeks from the date of communication of this order.
- VI) No order as to costs.
- VII) Parties to act on authenticated copy of this order.

(S.G. MEHARE. J.)

(R.D. DHANUKA, J.)

Mujaheed//