

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11964 OF 2021

Suryanarayan s/o Anand Katewar
Age: 18 years, Occu.: Education,
R/o. Manjari, Tq. Mukhed,
Dist. Nanded .. Petitioner

Versus

1. State of Maharashtra
Through Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
2. State Common Entrance Test Cell,
Maharashtra, Mumbai
8th floor, New Excelsior,
A.K. Nayak Marg, Fort, Mumbai,
through its Commissioner and
Competent Authority.
3. Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Region, Aurangabad.
Through its Member Secretary .. Respondents

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Mr. M. S. Deshmukh h/f Mr. S. S. Phatale, Advocate for petitioner.
Mr. A. R. Kale, AGP for respondent Nos.1 and 2 - State.
Mr. S. G. Karlekar, Advocate for respondent No.3.

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 21-10-2022

JUDGMENT :- [Per Smt. Vibha Kankanwadi, J.]

. Rule. Rule made returnable forthwith. Heard learned
Advocates for the parties finally, by consent.

2. The petitioner, by invoking the inherent powers of this Court under Article 226 of the Constitution of India challenges the order passed by respondent No.3 - Scrutiny Committee, Aurangabad dated 07.10.2021 thereby invalidating his tribe claim as belonging to "Rajgond".

3. The facts leading to the petition are that the petitioner belongs to Rajgond - Schedule Tribe. The tribe certificate has been issued by the competent authority to him on 16.10.2020 after adopting due procedure and thereafter, the petitioner had made an application for validating the said certificate while prosecuting his studies in 12th Science. The petitioner had approached this Court by filing Writ Petition No.7999 of 2021 and this Court by order dated 26.07.2021 has directed the Scrutiny Committee to decide the claim of the petitioner on or before 28.09.2021. The petitioner had submitted various documents to support his claim which included the certificate of validity issued in favour of his father Anand Balajirao Katewar. It has been declared that he is belonging to "Rajgond" - Scheduled Tribe by the said order dated 12.12.2007 by the same Scrutiny Committee i.e. respondent No.3. The petitioner had also submitted the validity certificate issued in favour of his cousin brother Satish Balaji Katewad dated 02.01.2006. Thereafter, respondent No.3 appears to have got done the vigilance

and the report has been submitted by the Vigilance Cell on 30.06.2021, which was not in his favour and, therefore, respondent No.3 issued notice on 11.08.2021 to the petitioner to remain present and give his reply. Accordingly, a detailed reply was given by the petitioner. It was found in the vigilance report that one cousin grandfather has been shown as that of in the relationship of petitioner by name Balaji Telang and it was pointed out that the surname of the petitioner is Katewar and not Telang. Telang has been taken as caste, which is different from Rajgond. By common order, as the cousin brothers of the petitioner were also claiming validity, respondent No.3 on 07.10.2021 rejected the claim. The petitioner contends that the impugned order is illegal and contrary to the provisions of law. The documents those were produced before the committee have not been considered properly and the Vigilance Cell has collected the evidence in respect of those persons, who were not related to the petitioner and it has been clamped upon the petitioner that he has suppressed the facts. The petitioner has, therefore, prayed for setting aside the impugned order and directions to issue validity certificate in his favour.

4. The application has been objected by the respondents. Learned AGP has made submissions supporting the reasons given in the impugned order.

5. Learned Advocate Mr. M. S. Deshmukh holding for learned Advocate Mr. Phatale for the petitioner submitted that the approach of respondent No.3 in scrutinizing the evidence of assigning reasons is not proper and not legal. When two family members in the family of the petitioner have been issued the caste validity certificate, then it was not necessary to re-assess the entire evidence once again. Reliance has been placed on the decision in ***Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, [2011 (2) Bom. C.R. 824]***, wherein it has been observed thus :-

"7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it."

6. There was nothing before the committee to arrive at a conclusion that the said certificate by the father and cousin brother of the petitioner has been obtained by fraud. No reasons to that

effect have been given in the impugned order. No doubt, as regards the father of the petitioner is concerned, it has been stated that word "Rajgond" has been written on the admission register of his school appears to be rewritten or by scoring the original. The fact that has been missed by the Committee is that the said document was old and appears to be in torn condition. Who has rewritten that document has not been gone into by the Scrutiny Committee. Neither the petitioner nor his father was the custodian of the said document and, therefore, the said correction cannot be attributed to the petitioner. Further, the committee has relied on documents in respect of certain persons who were not related to the petitioner. In his reply, he has specifically stated that the relationship stated by the Vigilance Cell in their report is not correct. Under such circumstance, the Scrutiny Committee ought to have gone into the said aspect. The learned Advocate for the petitioner relied on ***Limbaji Poshetti Kaypalwad and others Vs. The State of Maharashtra and another, Writ Petition No.8114 of 2020*** decided on 14.12.2020, wherein it has been observed thus :-

"5. Unless the Committee proves the relationship of those persons with the petitioner, the burden would never shift on the petitioner to disprove the same. It is only if the fact is proved, the same has to be disproved."

7. Further, it has been submitted that the scrutiny committee appears to have given more importance to the spelling. At some place, it is stated as 'Rajgond' (राजगोंड) and at some places, it is stated as 'Rajgaund' (राजगौंड). He pointed out that the Constitution (Scheduled Tribes) Order, 1950 and Part IX of Maharashtra has been substituted in respect of "Gond Rajgond" by Act 10 of 2003 and then comma has been inserted in clause 18 making it as "Gond, Rajgond". He pointed out that this Court in various matters has held that spelling mistakes in respect of Mannerwarlu in respect of letters "lu" has been taken note of and in ***Sayanna Vs. State of Maharashtra and others, [(2009) 10 SCC 268]***, the Hon'ble Apex Court has held that when Police Inspector of the Vigilance Cell had never taken care to find out whether the word "lu" was subsequently added by school authorities or by the appellant, then the Scrutiny Committee cannot jump to the conclusion that the claim of such petitioner would be wrong. Even recently in ***Asra Fatema d/o Zakir Ali Ahmed Vs. State of Maharashtra and another, Writ Petition No.920 of 2021*** decided on 13.10.2022, this Court Bench at Nagpur has also held that in absence of such investigation as to who has done the interpolation, the Vigilance Cell cannot be said to be based on any credible evidence and could not have been relied upon by the Scrutiny Committee. It has been further pointed out that Telang appears to be the surname and not

the caste and it has been taken note of by this Court in ***Ashish s/o Bhagwan Choudhari Vs. State of Maharashtra and others, in Writ Petition No.10388 of 2017*** decided on 05.10.2017, wherein it has been held, "In our considered view "Telang" is not a caste but is a surname or the description relating to the area from where the person belongs "Hindu" is also not a caste, but is a religion." Therefore, the findings given by the Scrutiny Committee are perverse and deserves to be set aside.

8. Per contra, the learned AGP strongly supported the reasons given by the Scrutiny Committee and submitted that when the validity certificate was obtained by the father of the petitioner as well as his cousin brother by playing fraud, the suppression of facts, then their certificate also will have to be cancelled and the committee has taken the said decision to issue notices to them as to why their certificate should not be cancelled. Respondent No.3 has taken note of that the petitioner has failed in affinity test as well as the documents produced are wrong, incorrect and those old documents appear to have been obtained by fraud. Even when the petitioner and his three cousin brothers were claiming the validity certificate and the said claim has been decided by a common order, it can be considered that the three of them were claiming that they are 'Rajgond', whereas fourth person i.e. Nitin Tanaji Katewar

contended that he belongs to 'Gond' community. This difference has been considered by the Committee and, therefore, impugned order is correct. It was also submitted that if the petition is allowed, then it will affect the further proceedings those have been taken by the Scrutiny Committee i.e. the show cause notice issued to those relatives of the petitioner to whom the validity certificate has been granted.

9. The first and the foremost fact that is required to be considered is that in view of the Constitution (Scheduled Tribes) Order, 1950 and Part IX of Maharashtra, 'Gond' as well as 'Rajgond' both are the tribes and that list has been included in view of clause (1) of Article 342 of the Constitution of India by the President, after consultation with the Governors and Rajpramukhs of the State. However, initially there was no comma between Gond and Rajgond and it was causing trouble. Therefore, it was then substituted by Act 10 of 2003 and between 'Gond' and 'Rajgond', the comma has been put. As regards the legal languages are concerned, even "comma" has its own meaning. It separates two words and, therefore, community/caste/tribe by name 'Gond' and 'Rajgond' both stood inserted in the said list. Therefore, it will not make much difference. As regards the fourth applicant is concerned that he would be claiming that he belongs to 'Gond'. Now it is to be

noted that at some places, the caste is shown as 'Gaund' and at some places, it is 'Gond'. Definitely, it is a mistake on the part of those persons, who had recorded the same as in the rural area. There would be misinterpretation or nomenclature to a caste and may not be in the same spelling as it is appearing in the list as per the Constitution of India, but the meaning is the same.

10. The second most important part is that two persons from the family of the petitioner had received the validity certificate. One is the father of the present petitioner Anand Balaji Katewar and another is his cousin brother Satish Balaji Katewad. The Scrutiny Committee was well aware about the issuance of the validity certificates to these persons and interestingly, in fact, it is the same Scrutiny Committee, which has issued those certificates. We will have to go by the designation and not the persons, who were chairing the said committee at the relevant time. Satish Balaji Katewad had received the validity certificate first in point of time i.e. 02.01.2006 and, thereafter, the father of the present petitioner made application and in the order, that has been produced on record dated 29.09.2007, the committee took note of the detailed home and school enquiry report obtained by the committee in respect of Satish Katewad and it was observed that there is no need to make re-enquiry into the current matter of the applicant. The

committee relied on the decisions of the Hon'ble Apex Court as well as this Court in respect of the validity of the blood relatives of the applicant and has granted the validity. Here, definitely, the decision in ***Apoorva Nichle (Supra)*** would be helpful to the petitioner. Now as regards the said validity which was granted in favour of the father of the petitioner, it has been stated that he had suppressed some relations, especially of one Balaji Narayanrao Telang, whom the committee states that he is the cousin grandfather of the petitioner and also that the school record of the father of the petitioner has correction. By the reply, the relationship of said Balaji Narayanrao Telang has been denied by the petitioner. No doubt, it appears that in his matter, Satish Balaji Katewad had given the genealogy, wherein also there was no name of Balaji Narayanrao Telang, but there is a person by name Balaji Narayanrao Katewar in his genealogy. Now, the committee is presuming that the Balaji Narayanrao Telang is the same person, who is shown as Balaji Narayanrao Katewar, however, in the entire impugned order there is no reason as to from which source this information has been gathered. Therefore, the observations from the decision in ***Limbaji Kaypalwad (Supra)*** by this Court would be applicable. It is not for the petitioner to disprove it, but he can challenge the same. Further, in this case, the Police Inspector of the Vigilance Cell has not taken statement of said Balaji Narayanrao Telang to come to a

conclusion as to how he is related to the petitioner. Even if we take that the said person is a same, yet Telang is a surname as observed in ***Ashish Bhagwan Choudhary (Supra)***.

11. It has been stated as to how the grandfather of the petitioner got migrated to Maharashtra though his family might be from a different State. On this point, the committee has relied on the full Bench decision of this Court in ***Yogita Anil Sonawane Vs. Stte of Maharashtra and others, (2017 (1) Mh.L.J. 643)***, however, it appears to be misinterpreted. All those points were also available when the validity certificate was granted to the father of the petitioner and his cousin brother. It cannot be stated that those two persons had obtained the validity certificate by playing fraud. It was the job of the Scrutiny Committee to consider all the aspects and make inquiry before granting such validity. Only on some stray points, the claim of the petitioner cannot be denied. One more aspect that is required to be considered that after coming to a place, people adopt the lifestyle of that place and it may not be the same as in their original area. Some differences in the rituals or lifestyles will not lead to any such conclusion that the said person does not belong to a particular caste. Adopting of a different lifestyle does not debar him or outcast him from his original caste. Therefore, taking into consideration all the documents, the order

passed by respondent No.3 - Scrutiny Committee appears to be illegal and illogical, which deserves to be set aside. We do not want to make any observation in respect of the notices those have been issued by the Scrutiny Committee. For the abovesaid reasons, we pass the following order :-

ORDER

- i) The Writ Petition stands allowed
- ii) The impugned common order passed by respondent No.3 - Scheduled Tribe Certificate Scrutiny Committee, Aurangabad dated 07.10.2021 is hereby quashed and set aside.
- iii) It is declared that the petitioner belongs to "Rajgond", Scheduled Tribe.
- iv) Respondent No.3 - Scheduled Tribe Certificate Scrutiny Committee, Aurangabad is directed to issue validity certificate to the petitioner within a period of six weeks from the receipt of the copy of this order.
- v) Oral request of learned AGP to make this order subject to the outcome of the decision of the show cause notice issued by respondent No.3 to those persons to whom earlier the validity certificate has been issued, is rejected.

- vi) Rule is made absolute in the aforesaid terms.
- vii) No order as to costs.
- viii) Pending civil application stands disposed of.

[Y. G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm