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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5349 OF 2019

Nikhil Suryakant Padalwar .. Petitioner
v/s.
State of Maharashtra Through Secretary,
Tribal Development Department And Ors. .. Respondents

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Mr. R.K. Mendadkar, a/w. Mr. Tanaji Jadhav for the Petitioner.

Mrs. P.J. Gavhane, AGP, for State.

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CORAM: SUNIL B. SHUKRE &
G.A. SANAP, JJ.

DATE : 3 MARCH 2022

P.C: (Per G.A. Sanap, J.):

Heard. Rule. Rule made returnable forthwith and heard finally by consent of parties.

2. In this petition, the challenge is to the order dated 1 April 2019, passed by Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane, whereby the Committee rejected the validity of the Caste Certificate of the Petitioner, being belonging to Mannervarlu Scheduled Tribe.

3. It is the case of the Petitioner that he belongs to Mannervarlu Caste, which is recognized as a Scheduled Tribe. The caste certificate is issued in his favour. The caste certificate was submitted to the Scrutiny Committee for obtaining the validity. The Scrutiny Committee called the Vigilance Cell Report. It is the case of the Petitioner that the Vigilance Cell has not taken the relevant documents into consideration, particularly the validity certificates issued in favour of his father, his uncle and paternal cousin. It is the case of the Petitioner that without taking these documents into consideration, the Committee has given undue importance to the other documents and rejected the claim. It is his case that he is entitled to get the validity in respect of his Tribe claim.

4. Reply has been filed by Respondent No.2. The petition is opposed. It is submitted that the Respondent Committee, apart from considering the Vigilance Cell Report, has taken into consideration number of other documents of the relatives of the Petitioner and, based on the same, came to the conclusion that the claim of the Petitioner belonging to Mannervarlu Scheduled Tribe was not at all acceptable.

5. We have heard the learned Advocate for the Petitioner and the learned AGP for the State. We have perused the record and proceedings.

6. The learned Advocate for the Petitioner submitted that the Scrutiny Committee, without assigning the acceptable and cogent reasons, rejected the caste validity certificates issued in favour of the blood relatives of the Petitioner. The learned Advocate relied upon the decision in the case of *Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee*¹ and submitted that in order to discard the caste validity certificates, the Committee ought to have recorded a concrete finding that the certificates were obtained by playing fraud or by mis-representation. Relying upon this judgment, it is further submitted that where the validity certificate is issued in favour of the blood relative, the other blood relative cannot be denied the validity.

7. The learned AGP submitted that in some of the documents, particularly the sale deed executed by grandfather of the Petitioner, he had relinquished his claim of a tribe. The learned AGP further submitted that the Committee opined that further enquiry into the aspect of genuineness of the validity granted in favour of the father and other relatives of the Petitioner would be warranted and, as such, the said matter has been referred to the Scrutiny Committee at Aurangabad. The learned AGP submitted that the Report of the Vigilance Cell is against the Petitioner, and on being confronted with this Report, no acceptable reasons were placed on record in writing so as to enable the Committee to take the view other than the view taken

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by the Caste Scrutiny Committee.

8. On perusal of the record, it is seen that the caste validity certificate was issued in favour of the father of the Petitioner. It is at page no.50. The caste validity certificate issued in favour of the paternal uncle of the Petitioner is at page no.48. The validity certificate issued in favour of the first paternal cousin is at page no.49. The Vigilance Cell, during the course of enquiry, collected number of documents of the close relatives of the Petitioner as well as distant relatives. It is pertinent to note at this stage that the caste validity certificate issued in favour of the above three persons submitted to the Vigilance Cell forms part of the report. The same were submitted before the Caste Scrutiny Committee. It is, therefore, undisputed that the caste validity certificates were issued in favour of the blood relatives of the Petitioner. In this background, it would be appropriate to consider the law laid down in the case of *Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee*. In this case, it is held that if caste claim of a blood relative is validated, then other blood relation cannot be denied the caste validity. It is further held that such claim can be rejected only where the facts proved indicate that the earlier validity certificate was obtained by playing fraud or by misrepresentation. In this case, it is nobody's case that either the validity certificates were obtained by playing fraud or by misrepresentation. It is pertinent to note that the fraud and mis-

representation are not only required to be pleaded, but it must be proved by leading cogent evidence. In this case, the pleading to this fact is lacking. The perusal of the report of the Scrutiny Committee would show that the Scrutiny Committee has not recorded the finding that the caste certificates and the subsequent validity, of the blood relatives of the Petitioner was either obtained by fraud or by misrepresentation. In our considered opinion, before rejecting the claim based on the three validity certificates relied upon by the Petitioner, it was necessary to record concrete finding on this aspect. In the absence of such concrete finding, the implicit reliance, placed on the other documents to discard the caste validity certificates of the above three persons, in our opinion, is not justified.

9. The learned AGP submitted that in the sale deed, which is produced on record at page no.119, it is clearly seen that the grandfather of the Petitioner has relinquished his Caste/Scheduled Tribe status. It is pertinent to note that this sale deed is required to be considered in juxtaposition with the caste validity certificates issued in favour of the above three persons. If so done, in our opinion, it cannot be given much weightage. It is further pertinent to note that the relinquishment of Caste/Tribe status made by one of the blood relatives, by no stretch of imagination could be said to be a ground to reject the validity certificate in respect of the Scheduled Tribe claim of a person, if it is supported by other documents. In this view of the

matter, we are not inclined to accept the submissions based on this sale deed.

10. The perusal of the report of the Caste Scrutiny Committee would show that the Caste Scrutiny Committee has given weightage to the invalidation of the Scheduled Tribe claim of one Babarao and Chandrakant. The learned AGP drew our attention towards the report of the Scrutiny Committee and particularly the observations made by the Scrutiny Committee. Based on these observations, the learned AGP submitted that invalidation of the caste claim of Babarao and Chandrakant creates doubt about genuineness of the claim of the Petitioner. There is no substance in this submission of learned AGP. The perusal of the Vigilance Committee Report would show that the names of Babarao and Chandrakant, whose certificates were invalidated, as mentioned in the order of the Scrutiny Committee, have not been mentioned in the said Vigilance Cell Report. Similarly, on being confronted with this important fact, the Scrutiny Committee was under an obligation to grant an opportunity of hearing to the Petitioner to deal with those documents. The observations, as can be seen from the report, are made without granting such an opportunity. It is further seen on perusal of Vigilance Cell Report that the names of these persons have not been mentioned in the same. Similarly, at para 2 of the Vigilance Cell Report, the names of 12 near relatives of the Petitioner have been mentioned. The perusal of the Vigilance Cell

Report, and particularly para 3, would show that the persons, whose names have been mentioned therein, are distant relatives. In our opinion, while deciding such a claim, the caste certificate or the validity of a caste claim of the blood relatives deserves due weightage. In this view of the matter, we are of the considered view that the Scrutiny Committee, without considering the documents, has rejected the claim. On the basis of the material on record, we are satisfied that there is substance in the claim. The Scrutiny Committee, in our opinion, ought to have validated the caste claim of the Petitioner. The petition, therefore, deserved to be allowed.

11. The petition is allowed. The impugned order dated 1 April 2019 is hereby quashed and set aside.

12. The Committee-Respondent No.2 is directed to issue the Tribe Validity Certificate, as claimed by the Petitioner, to him, within a period of two weeks from the date of the receipt of the copy of this order.

13. Respondent No.3, immediately, on production of the Tribe Validity Certificate, shall release the original documents of the Petitioner, including degree certificate and transfer/migration certificate to the Petitioner.

14. Rule is made absolute in the above terms.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)