

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1722/2018

Sumit s/o Gajendra Bawane,
Aged about 18 years, Occupation Student of First
Year Engineering Course of Government College
of Engineering, Amravati, Resident of Qtr. No.B/3,
Uppar Wardha Irrigation Colony, Camp Amravati.

PETITIONER

.....VERSUS.....

1. State of Maharashtra, through its Secretary,
Ministry of Tribal Welfare and Social Justice
Department, Mantralaya, Mumbai – 32.
2. Scheduled Tribe Certificate Scrutiny Committee,
Nagpur Division, through its Deputy Director (R)
and Member-Secretary, Adivasi Vikas Bhavan,
Giripeth, Nagpur.
3. Government Engineering College, Amravati
through its Principal.
4. Sant Gadge Baba Amravati University,
through its Registrar, Amravati.

RESPONDENTS

Shri N.C. Phadnis, counsel for the petitioner.
Mrs. K.R. Deshpande, Assistant Government Pleader for the respondent nos.1 to 3.
Shri J.B. Kasat, counsel for the respondent no.4.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : 23RD JUNE, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The petitioner is aggrieved by the order dated 29.12.2017
passed by the Scrutiny Committee invalidating the petitioner's claim of
belonging to Koli Mahadev Scheduled Tribe.

3. Shri N.C. Phadnis, learned counsel for the petitioner submitted that the petitioner's father was issued a validity certificate by the Scrutiny Committee on 30.08.1995. Earlier, an appeal filed by the petitioner's uncle - Vijay Chaintaman Bawane was allowed by the Divisional Commissioner on 03.06.1987 and the caste certificate issued by the Executive Magistrate, Nagpur dated 22.12.1981 indicating the fact that said uncle was belonging to Koli Mahadev Scheduled Tribe was upheld. Yet another uncle - Dilip Chintaman Bawane had filed Writ Petition No.2032 of 1983 challenging the order passed by the Divisional Commissioner as well as the original order passed by the Director of Social Welfare invalidating such claim. By the judgment dated 19.04.1993 this Court had allowed the said writ petition and after setting aside the orders impugned therein, it was declared that the petitioner's uncle belonged to Koli Mahadev Scheduled Tribe. Though these orders passed by the Divisional Commissioner as well as this Court alongwith the validity certificate issued to the petitioner's father were placed before the Scrutiny Committee, the same were not accepted by the Scrutiny Committee while considering the petitioner's tribe claim. By holding that the aforesaid adjudication was not accompanied by any enquiry by the Vigilance Cell, the Scrutiny Committee proceeded to independently examine the petitioner's tribe claim and thereafter invalidate the same. Placing reliance on the judgment of the Hon'ble Supreme Court in

Amruta Vijay More Versus State of Maharashtra [Civil Appeal No.7230 of 2011 @ SLP (C) No.(s) 29364 of 2010] decided on 23.08.2011, it was submitted that if the earlier adjudication had been undertaken by the Scrutiny Committee in accordance with the procedure prescribed prior to coming into force of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance of Verification of) Caste Certificate Act, 2000 (for short, 'the Act of 2000') due weightage was required to be given to such adjudication. Similarly, the Division Bench of this Court in *Madhuri Nitin Jadhav Versus State of Maharashtra & Others* [2014 (3) Mh.L.J. 900] had also held that unless a case of fraud and/or misrepresentation had been made out, the orders invalidating the caste/tribe claim based upon the procedure prevailing prior to the enactment of the Act of 2000 ought to be accepted. As a result of the impugned order, the petitioner had been deprived of the benefit which his father and uncles had been enjoying. It was thus submitted that there being no allegation of fraud and/or misrepresentation attributed to the petitioner while seeking adjudication of his tribe claim, the impugned order was liable to be set aside.

4. Mrs. K.R. Deshpande, learned Assistant Government Pleader for the respondent nos.1 to 3 supported the order passed by the Scrutiny

Committee. She submitted that it was an admitted position that while upholding the claim of the petitioner's father and uncles, the Scrutiny Committee did not have the advantage of the report of the Vigilance Cell. In absence of there being any such enquiry the Scrutiny Committee in the present case was justified in conducting such enquiry and thereafter passing the impugned order based on such enquiry. The Act of 2000 required conducting of such enquiry and therefore the petitioner could not raise a grievance in that regard. Referring to the order dated 15.04.2016 passed in **Public Interest Litigation No.102 of 2013** [*Narayan Dinbaji Jambule & Others Versus The Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli & Others*] along with Public Interest Litigation No.11 of 2016, it was submitted that the Division Bench had clarified that it was not the ratio of the decision in the case of *Apoorva Vinay Nichale Versus Divisional Caste Certificate Scrutiny Committee No.1 & Others* [2010(6) Mh.L.J. 401] that even when a validity was granted to a candidate without following the procedure prescribed then even in such case the kith and kin of a person who was granted validity should also be granted a validity certificate. The learned Assistant Government Pleader therefore submitted that the impugned order ought to be independently examined and the challenge raised to it ought to be adjudicated accordingly. It was thus contended that since the impugned order had been passed after following the due procedure and granting

due opportunity to the petitioner there was no reason to interfere with the same.

5. Shri J.B. Kasat, learned counsel appearing for the respondent no.4 submitted that the education undertaken by the petitioner during the present proceedings was subject to the outcome of the challenge to the order passed by the Scrutiny Committee. Depending upon such outcome, the University would be required to take further steps.

6. We have heard the learned counsel for the parties and we have given due consideration to the rival submissions. It is an undisputed fact that the petitioner's two uncles have been held to belong to Koli Mahadev Scheduled Tribe. Similarly, the petitioner's father has also been held to belong to Koli Mahadev Scheduled Tribe and has been issued a validity certificate. That adjudication has attained finality. It is seen that Writ Petition No.2032 of 1983 was decided on 19.04.1993 while the Divisional Commissioner decided the appeal of the petitioner's uncle on 03.06.1987. The claim of the petitioner's father has been upheld by the Scrutiny Committee on 30.08.1995. It is thus clear that prior to the Act of 2000 coming into force the claim of the petitioner's father and his two uncles was examined in accordance with the procedure then prevailing and it was held that they had proved that they belonged to Koli Mahadev

Scheduled Tribe. The effect of such adjudication prior to coming into force of the Act of 2000 has been considered by the Hon'ble Supreme Court in *Amruta Vijay More* (supra). The facts of that case indicate that the claim of Amruta's blood relative was examined by the Screening Committee prior to coming into force of the Act of 2000. On the question whether there could be re-consideration of the tribe claim after the Act of 2000 came into force, it was held by the Hon'ble Supreme Court that the Screening Committee as it then existed had found that various blood relatives of Amruta had been held to be belonging to Scheduled Tribe and therefore the subsequent decision of the Scrutiny Committee on the basis of an affinity test would not stand scrutiny.

In *Madhuri Nitin Jadhav* (supra), the Division Bench of this Court has held that caste certificates and/or orders validating the caste/tribe claim based upon the procedure that was prevailing prior to the Act of 2000 would be required to be accepted unless a case of fraud and/or misrepresentation was made out. Such certificates could not be overlooked in subsequent proceedings. In absence of a case of fraud and/or misrepresentation the Scrutiny Committee could not be permitted to overlook and/or deny the same because such certificates were obtained prior to the Act of 2000 and/or without due enquiry and/or passing the affinity test.

7. From the aforesaid it is thus clear that if there has been an adjudication prior to the coming into force of the Act of 2000 the same would have to be taken into consideration and given its due weightage notwithstanding the fact that such adjudication was not preceded by an enquiry by the Vigilance Cell. This is for the reason that it is only under the Act of 2000 that an enquiry by the Vigilance Cell has been statutorily contemplated. In absence of any allegations of fraud and/or misrepresentation during the course of such prior adjudication or while obtaining the earlier certificate, the validity certificate cannot be overlooked merely on the ground that there has been no enquiry by the Vigilance Cell. As stated above, such enquiry by the Vigilance Cell was not contemplated prior to the Act of 2000 coming into force. It is only with the decision of the Hon'ble Supreme Court in the case of *Madhuri Patil Versus Additional Commissioner Tribal Development* [(1994) 6 SCC 241] decided on 02.09.1994 that holding of enquiry by the Vigilance Cell was first directed. In the present case, adjudication of the tribe claim of the petitioner's blood relatives by the Scrutiny Committee is much prior to the decision in the case of *Madhuri Patil* (supra) and the Act of 2000 coming into force. The Division Bench in *Narayan Dinbaji Jambhule & Others* (supra) was concerned with validity proceedings conducted after the Act of 2000 came into force and hence there can be no quarrel with the observations of the Division Bench therein that the ratio of the

decision in *Apoorva Vinay Nichale* (supra) could not be said to be holding that even if validity has been granted to the candidate without following the procedure prescribed then even in such case the kith and kin of a person granted validity should also be granted a validity certificate. Hence it cannot be said that while undertaking such adjudication there was no enquiry by the Vigilance Cell as such enquiry was never contemplated at that point of time. Permitting a fresh re-look while undertaking the exercise of validation would in these facts result in the Scrutiny Committee ignoring the earlier adjudication by a superior forum even in the absence of any fraud or misrepresentation and taking a view contrary thereto. It is reiterated as held in *Narayan Dinbaji Jambhule & Others* (supra) that if validity has been granted to a candidate without following the procedure prescribed by the Act of 2000, the kith and kin of such person cannot be *ipso facto* granted validity on that sole ground.

8. In that view of the matter, since it is undisputed that the petitioner's father and two uncles have been issued validity certificates by holding that they belong to Koli Mahadev Scheduled Tribe prior to enactment of the Act of 2000, the Scrutiny Committee was not justified in going behind grant of such validity certificates and re-opening the proceedings. There are no allegations of fraud and/or misrepresentation having been practiced during the course of the earlier adjudication. The

petitioner therefore would be entitled to claim that he too belongs to Koli Mahadev Scheduled Tribe and the ratio of the decision in *Apoorva Vinay Nichale* (supra) would be applicable in the present case.

9. Hence for what has been observed hereinabove, the following order is passed:-

- (I) The writ petition is allowed.
 - (II) The order passed by the Scrutiny Committee on 29.12.2017 is hereby set aside.
 - (III) It is declared that the petitioner belongs to Koli Mahadev Scheduled Tribe. The Scrutiny Committee shall issue validity certificate in favour of the petitioner within a period of four weeks from the receipt of copy of this judgment.
 - (IV) The respondent nos.3 and 4 shall declare the petitioner's result in the course of Bachelor of Engineering (Information and Technology). Civil Application (W) No.2034 of 2021 is disposed of.
10. Rule is made absolute in aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE