

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

WRIT PETITION NO. 1623 of 2019

KU. CHHAYA BHASKARRAO PARATE (SAU. CHHAYA ASHOK BENDE)
Versus
THE SCHEDULED TRIBE CERTIFICATE SCRUTINY COMMITTEE, AMRAVATI
AND ANOTHER

Shri S. P. Bhandarkar, Advocate with Shri M.O.Shukla, Advocate for petitioner.
Shri D.P. Thakre, Additional Government Pleader for respondent no.1/Scrutiny Committee.
Ms U.R. Tanna, Advocate for respondent no.2-BSNL.
Shri P.S.Wathore, Advocate for intervenor/respondent no.3.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
ARGUMENTS WERE HEARD ON : 06.10.2022
ORDER IS PRONOUNCED ON : 13.10.2022

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In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

2. The challenge raised in this writ petition is to the order passed by the Scrutiny Committee, Amravati Division, Amravati dated 22.05.2017(26.05.2017) thereby invalidating the tribe claim of the petitioner of belonging to 'Halba' Scheduled Tribe. In addition, the memorandum of charges dated 25.06.2018 issued by the respondent no.2-Bharat Sanchar Nigam Limited (BSNL), Yavatmal initiating disciplinary proceedings against the petitioner on account of invalidation of her tribe claim is also under challenge.

3. The petitioner who claims to belong to 'Halba' Scheduled Tribe came to be appointed on the post of Telecom Office Assistant on 31.10.1991.

This appointment was on a post reserved for a Scheduled Tribe candidate. In view of the certificate dated 22.06.1989 issued by the Executive Magistrate, the tribe claim of the petitioner was forwarded to the Scrutiny Committee for verification. In those proceedings, the petitioner on 29.03.2016 submitted various documents in support of aforesaid claim which included her tribe certificate as well as the documents on which she sought to rely. The school leaving certificate dated 13.08.1987 of the petitioner was submitted alongwith the leaving certificate of her father dated 14.08.1985 with the entry 'Halba'. The petitioner also relied upon the leaving certificate of her grandfather - Narayan which indicated that he had studied at Zilla Parishad High School, Yavatmal from 01.04.1913 to 23.11.1920 wherein the entry 'Koshti' was made as well as the death certificate of her grandfather issued by the Municipal Council, Yavatmal which also indicated the entry 'Koshti'. The birth extract of her uncle -Sudhakar of the year 1942 also had an entry 'Koshti'. In the light of these documents, the Scrutiny Committee on 10.05.2016 issued a notice to the petitioner in which it was stated that the petitioner had not submitted her original tribe certificate and the family tree as required in the proforma. After referring to the old documents of 1903 and 1942 with the entries 'Koshti', the petitioner's explanation was sought. It was stated that the documents indicated the entry 'Koshti' as recorded prior to 1950 and that 'Koshti' was now included in the Special Backward Class category. The petitioner was therefore called upon to state as to whether she was insisting for her claim of belonging to 'Halba' Scheduled Tribe or whether she wanted to withdraw the claim. Accordingly,

she was directed to file affidavit in that regard. In response, the petitioner on 23.05.2016 issued a communication to the Research Officer and Member of the Scrutiny Committee that after her employer had called upon her to produce the validity certificate, she had obtained a certificate of belonging to 'Koshti' Special Backward Class category dated 29.02.2016 as well as of 'Koshti' Other Backward Class category on 16.03.2016. She further stated that as per the documents submitted by her, the entries of 'Koshti' were found which was admitted by her. She therefore stated that she was withdrawing her claim of belonging to 'Halba' Scheduled Tribe. An affidavit on stamp paper of Rs.100/- was also executed by her in which she stated that she was admitting that she belonged to 'Koshti' community and that she was withdrawing her claim of belonging to 'Halba' Scheduled Tribe.

4. The Scrutiny Committee considered the aforesaid documents placed on its record by the petitioner and on 26.05.2017 passed the order noting that the petitioner had given up her claim of belonging to 'Halba' Scheduled Tribe. In view of the petitioner's affidavit, the Scrutiny Committee did not deem it necessary to hear the petitioner and it proceeded to cancel her certificate of belonging to 'Halba' Scheduled Tribe issued by the Executive Magistrate on 22.06.1989. Her employer was directed to take action against the petitioner under Sections 10 and 11 of the Maharashtra Scheduled Caste and Scheduled Tribes, De-Notified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short, the Act of 2000). Based on this adjudication, First Information Report

bearing No.4 of 2018 came to be registered against the petitioner under Sections 465, 468, 471 and 420 of the Indian Penal Code as well as under Sections 10 and 11 of the Act of 2000. The petitioner was then placed under suspension vide order dated 04.01.2018. The employer also proceeded to initiate disciplinary proceedings against the petitioner on the ground that the petitioner had secured employment by misrepresentation that she belonged to 'Halba' Scheduled Tribe. Being aggrieved, the petitioner has filed the present writ petition.

5. The learned counsel for the petitioner submitted that the Scrutiny Committee was not justified in invalidating the petitioner's tribe claim. There were old documents with the entry 'Halba' which substantiated her claim that she and her forefathers belong to 'Halba' Scheduled Tribe. The documents of her father had the entry 'Halba' and the Scrutiny Committee ought to have given due weightage to the same. Similarly, the caste certificate of her uncle - Sudhakar also indicated that he belonged to 'Halba' Scheduled Tribe. It was submitted that 'Koshti' was not a caste but a profession which was being practiced by the forefathers of the petitioner and merely because in some of the documents there was an entry indicating 'Koshti', the same would not mean that the petitioner did not belong to 'Halba' Scheduled Tribe. As regards the affidavit submitted by the petitioner before the Scrutiny Committee, it was submitted that the same came to be submitted under misconception. The Scrutiny Committee ought to have conducted vigilance enquiry and ought to have determined the petitioner's tribe claim thereafter. Similarly, the petitioner ought to have been heard in

the matter before her claim came to be invalidated. The learned counsel for the petitioner sought to rely upon the extract of 'Tribes and Castes of the Central Provinces of India' by R.V. Russell. In addition, the learned counsel placed reliance on the decisions in *State of Maharashtra Vs. Milind and others [(2001) 1 SCC 4]*, *Shilpa Vishnu Thakur Vs. State of Maharashtra and others [2009(3) Mh.L.J.995]*, *Dinesh Narayanrao Nandanwar Vs. State of Maharashtra and others [2014(4) Mh.L.J. 198]*, *District Collector, Satara and another Vs. Mangesh Nivrutti Kashid [(2019) 10 SCC 166]* and the decision of this Court in **Writ Petition No.2571 of 2001** (*Priya Pravin Parate Vs. Scheduled Tribes Caste Certificates Scrutiny Committee and others*) with connected writ petitions to submit that the tribe claim of the petitioner was liable to be accepted. In the alternate, it was submitted that the proceedings ought to be again conducted in accordance with the procedure laid down by the Act of 2000. As a consequence, the disciplinary action initiated by the respondent no.2 would not survive and the articles of charges as well as the enquiry report were liable to be set aside.

6. The learned Additional Government Pleader for the Scrutiny Committee supported the impugned order. By relying upon the affidavit in reply, it was submitted that in the old documents submitted by the petitioner of the period prior to 1950, it was clear that the petitioner's forefathers belonged to 'Koshti' community and not 'Halba' Scheduled Tribe. The petitioner herself having submitted those documents, the Scrutiny committee was justified in calling upon the petitioner to indicate as to whether she was interested in pursuing her claim of belonging to Halba

Scheduled Tribe or whether she desired to prosecute her claim of belonging to Koshti - Special Backward Class. Since the petitioner in her own affidavit had stated that she was not interested in prosecuting her claim of belonging to 'Halba' Scheduled Tribe, there was no reason whatsoever to hear the petitioner and then pass an order. The conclusion recorded by the Scrutiny Committee could not be said to be illegal or incorrect in the light of the material on record.

The learned counsel for the respondent no.2-BSNL also opposed the writ petition. It was submitted that the petitioner had secured employment on a post that was reserved for the Scheduled Tribe category. A complaint was received against the petitioner in which it was stated that she did not belong to 'Halba' Scheduled Tribe and thereafter the petitioner was directed to have her tribe claim validated. In that process the Scrutiny Committee has passed the order on the basis of documents supplied by the petitioner herself. Since the certificate on basis of which the petitioner had secured employment had been cancelled, the employer was justified in initiating disciplinary proceedings against her. It was also pointed out that insofar as these proceedings were concerned, the jurisdiction to challenge such action was with the Central Administrative Tribunal and the petitioner could raise her grievance there. Hence the writ petition was liable to be dismissed.

The learned counsel for the intervenor who was granted permission to intervene in the present proceedings in view of the order dated 01.09.2021 submitted that the intervenor had made a complaint

against the petitioner in which it was stated that the petitioner's claim of belonging to 'Halba' Scheduled Tribe had been earlier invalidated by the Scrutiny Committee at Pune on 28.03.1988. This material information was suppressed by the petitioner and hence she was not entitled to be heard in the present proceedings. The Scrutiny Committee while passing the impugned order rightly held that from the old documents prior to 1950, it was clear that the petitioner belonged to 'Koshti' community. It was thus submitted that the writ petition was liable to be dismissed.

7. On hearing the learned counsel for the parties and after perusing the documentary material on record, we are satisfied that the impugned order dated 26.05.2017 passed by the Scrutiny Committee invalidating the petitioner's tribe claim of belonging to 'Halba' Scheduled Tribe does not call for any interference whatsoever. It is undisputed that pursuant to certificate dated 22.06.1989 issued by the Executive Magistrate stating that the petitioner belonged to 'Halba' Scheduled Tribe, the petitioner secured employment on the post of 'Telecom Office Assistant'. On a complaint being received that the petitioner did not belong to 'Halba' Scheduled Tribe, she was called upon by her employer to have her tribe claim validated. The petitioner in support of her claim submitted an application on 29.03.2016 alongwith various documents. It is pertinent to note that the oldest document submitted by the petitioner was the school leaving certificate of her grandfather - Narayan. The same indicated that his caste was recorded as 'Koshti' while pursuing education from 01.04.1913 to 23.11.1920. Similarly, the death certificate of her grandfather indicating that he had

expired on 26.07.1970 referred to his father -Dadaji Parate with the entry 'Koshti'. Besides this, the birth extract of the petitioner's uncle - Sudhakar showed the entry of his father as Narayan Dadaji Koshti. His date of birth was shown as 18.10.1942. In the light of these two pre-constitutional documents the Scrutiny Committee sought the petitioner's explanation on 10.05.2016. The petitioner was informed that in view of these old entries, she could either continue to prosecute her claim of belonging to 'Halba' scheduled Tribe or could withdraw her claim. She was called upon to file her affidavit in that regard. Responding to this notice, the petitioner on 23.05.2016 submitted her reply to the Scrutiny Committee stating therein that as per the old documents it was clear that she belonged to 'Koshti' community and hence, she was withdrawing her claim of belonging to Halba Scheduled Tribe. She also stated that she had obtained caste certificate of belonging to 'Koshti' community from the Special Backward Class category as well as Other Backward Class category. She also submitted her affidavit on stamp paper of Rs.100/-. In that affidavit, she referred to the documents of her grandfather and her uncle with the entry 'Koshti' and hence she stated that she was withdrawing her tribe claim.

8. The Scrutiny Committee considered the petitioner's affidavit dated 11.05.2017 and in view of the clear stand taken by the petitioner therein did not deem it necessary to hear the petitioner in that regard. It decided to proceed on the basis of the said affidavit as well as the pre-constitutional documents with the entry 'Koshti'. We find that the Scrutiny Committee did not commit any error when it did not find it necessary to

hear the petitioner before passing the impugned order. After the petitioner submitted her claim alongwith pre-constitutional documents, she was put to notice that in view of those two documents her claim of belonging to 'Halba' Scheduled Tribe was not sustainable. She was therefore called upon to indicate as to whether she still desired to pursue her tribe claim or whether she desired to give it up. The petitioner consciously submitted her affidavit and stated that in view of the said old documents, it was clear that she did not belong to 'Halba' Scheduled Tribe. She therefore decided to give up her claim in that regard. It is thus clear that that after giving due notice to the petitioner and after the petitioner herself submitted her affidavit that she did not desire to pursue her tribe claim that the Scrutiny Committee passed the impugned order. Grant of any hearing in these facts would have been an empty formality and therefore it cannot be said that the impugned order was vitiated on the ground that it was passed without hearing the petitioner.

9. It was urged on behalf of the petitioner that the affidavit dated 11.05.2017 was submitted by the petitioner under misconception. We do not find from the material on record that this stand can be accepted. It is seen from the reply of the petitioner dated 23.05.2016 that the petitioner herself stated that after she received a communication from her employer to submit the validity certificate, she had herself obtained the caste certificate indicating that she belonged to 'Koshti' Special Backward Class/Other Backward Class category. This indicates that even prior to submission of the said affidavit dated 11.05.2017 the petitioner had executed affidavit on 20.05.2016 in which she had admitted that she belonged to 'Koshti'

community and that she was giving up her claim of belonging to 'Halba' Scheduled Tribe. It is thus clear from the two affidavits sworn by the petitioner on 20.05.2016 and 11.05.2017 that she had given up her tribe claim of belonging to 'Halba' Scheduled Tribe. The subsequent affidavit reiterates what has been stated in the earlier affidavit and hence it can hardly be said that the subsequent affidavit dated 11.05.2017 was tendered by her under misconception. Hence the stand of the petitioner cannot be accepted.

10. In these facts we do not deem it necessary to go into the aspect of invalidation of the petitioner's claim by an earlier order dated 18.01.1988 (28.03.1988) passed by the Scrutiny Committee at Pune. We are satisfied that the impugned order does not suffer from any illegality for being interfered with in writ jurisdiction. The ratio of the decisions relied upon by the learned counsel for the petitioner can hardly be disputed. However, in the facts of the present case when the petitioner on two occasions by executing affidavits clearly gave up her claim of belonging to 'Halba' Scheduled Tribe, we are not inclined to grant any relief to the petitioner.

Insofar as the initiation and conduct of disciplinary proceedings against the petitioner consequent upon invalidation of her tribe claim is concerned, it is found that the said action is as a consequence of the order passed by the scrutiny Committee on 26.05.2017. The employer is justified in contending that the Central Administrative Tribunal would have the jurisdiction to entertain any grievance of the petitioner in that regard. Since an alternate remedy is available to the petitioner, we decline to examine the

challenge to the issuance of memorandum of charges to the petitioner.

10. Hence for aforesaid reasons, the order passed by the Scrutiny Committee dated 26.05.2017 is confirmed. The writ petition stands dismissed leaving the parties to bear their own costs.

It is however clarified that the challenge raised by the petitioner to the disciplinary proceedings initiated by the Bharat Sanchar Nigam Limited (BSNL) has not been examined on merits and the petitioner is free to invoke appropriate jurisdiction for challenging the same in accordance with law. All questions in that regard are kept open.

Pending civil applications are also disposed of.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar.