

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

WRIT PETITION NO.3356 OF 2022

Nihar s/o Sharadchandra Dhurde,
Aged about 18 years, Occupation – Student,
R/o. Flat No.7, Sai Taj Regency,
Vikas Nagar, Wardha Road,
Nagpur - 15

...PETITIONER

VERSUS

1. State of Maharashtra,
through its Secretary,
Department of Social Justice and
Special Assistance,
Mantralaya, Mumbai-32
2. Research Officer and Secretary,
District Caste Certificate Scrutiny
Committee, Dr. Babasaheb Ambedkar
Social Justice Bhavan,
2nd Floor, Wing 'B',
Shraddhanand Peth, Nagpur

...RESPONDENTS

Shri A.M. Balpande, Advocate for the petitioner.
Ms N.P. Mehta, A.G.P. for the respondents/State.

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

RESERVED ON : AUGUST 25, 2022.

PRONOUNCED ON : SEPTEMBER 07, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties at length.

2. **RULE.** Rule made returnable forthwith.

3. The petitioner has challenged the order of respondent No.2-District Caste Certificate Scrutiny Committee, Nagpur invalidating the caste/tribe claim of the petitioner.

4. The petitioner is a student pursuing his studies belong and claims to 'Bari' caste which is recognised as Other Backward Class at serial No.13 under the Government Resolution dated 13/10/1967. The petitioner has obtained caste certificate showing 'Bari' caste issued by Sub-Divisional Officer, Nagpur on 16/12/2021. The caste certificate of the petitioner was forwarded for verification. Before the Scrutiny Committee the petitioner had relied on various documents including validity certificate issued to his blood relatives i.e. his cousin brother and uncle. The petitioner had replied to the said show cause notice on 05/04/2022 and explained the documents on which he relied upon. The Caste Scrutiny Committee had not considered the same and invalidated the claim of the petitioner by passing order on 13/05/2022. By this

petition, the petitioner has challenged the said order before this Court.

5. As per the contention of the petitioner, he belongs to 'Bari' community which is recognised as Other Backward Class as per the Government Resolution dated 13/10/1967 at serial No.13. He had also relied on the family tree which was submitted before the Vigilance Committee. As per the said family tree, Laxman Sakharam Dhurde is his great grandfather who had four sons namely Shamrao, Purushottam, Moreshwar and Subhash. Shamrao Laxman Dhurde is his real grandfather who had four sons by name Vijay, Sharadchandra, Ramesh and Ajay. The petitioner is the son of Sharadchandra Shamrao Dhurde. He produced on record School Leaving Certificate of his cousin grandfather Moreshwar Laxman Dhurde who was admitted in the school in New English High School, Main Branch, Nagpur for the period from 29/05/1961 to 31/03/1964. The birth date of his cousin grandfather Moreshwar was recorded as 08/03/1945 and caste was recorded as 'Bari'. He further relied upon the caste validity certificate issued to his cousin brother Siddhant Deepak Dhurde and cousin uncle Deepak Moreshwar Dhurde issued by the Caste Scrutiny Committee, Nagpur. As per the contention of the petitioner initially district Chindwara was the part of C.P. and Berar, Nagpur. Subsequently district Chindwara became the part of Madhya Pradesh. Respondent No.2 arrived at a conclusion

Corrections
carried out as per
Hon'ble Court's
order dated
15/09/2022

that the present petitioner is a migrant from the State of Madhya Pradesh in view of the birth of his father and grandfather who were employed in the Chindwara district. In fact, his father and grandfather were born in district Chindwara. The grandfather of the petitioner was employed in Chindwara and, therefore, during the course of employment his father was born over there but his ancestors were the residents of district Nagpur, State of Maharashtra. He further submitted that the Committee came to the conclusion on the basis of the school leaving certificate issued by Kanhan Uchatar Madhyamik Vidyalaya, Lodhikheda, Taluka Saunsar, District Chindwara so also the school leaving certificate issued by the College to the father of the petitioner and it held that the petitioner was a migrant in the State of Maharashtra. He further contended that the caste claim mentioned in the school leaving certificate of the petitioner's father is 'Bari' which comes under the Other Backward Class category in the State of Madhya Pradesh. The said caste is also enlisted in the State of Maharashtra at serial No.13 in the Other Backward Class category. He further contended that Chindwara and Nagpur districts were the parts of C.P. and Berar Provinces before the re-organisation of the State. After re-organisation of the States, Chindwara became the part of Madhya Pradesh and Nagpur became the part of Maharashtra State. Thus, looking to the same the ancestors of the petitioner were the residents of Nagpur and,

therefore, the observation of the Committee that the petitioner is a migrant, is illegal and the order passed by the Committee invalidating the claim of the petitioner on the basis of said ground is illegal and liable to be set aside. The conclusion of respondent no.2 that the petitioner is a migrant is totally unjust, illogical and liable to be set aside.

6. Respondent Nos.1 and 2 opposed the contention of the petitioner by filing their reply on record. As per the contention of the respondent under Rule 5 of the Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (hereinafter referred to as 'the Rules of 2012' in short), if the applicant or his father or grandfather or great grandfather or relative was not an ordinary resident of any place within the area of jurisdiction of that Competent Authority, temporary residence of applicant for the purpose of service, employment, education or confinement in jail etc. within such area would not confer jurisdiction on that Competent Authority to issue the Caste Certificate. It is further the contention of the respondent that as per Rule 6 of the Rules of 2012 it is necessary for the petitioner to obtain the Caste Certificate in Form-10. The petitioner had incorrectly obtained the Caste Certificate from the Nagpur District, State of Maharashtra. It

is contended by the State that the order passed by the Caste Scrutiny Committee is justified and legal one and no interference is called for.

7. Heard Shri A.M. Balpande, learned Counsel for the petitioner. He submitted that the petitioner is the resident of Nagpur and belongs to 'Bari' community. To support the contention, he relied on the family tree which was submitted before the Caste Scrutiny Committee. As per the submission of the learned Counsel, the grandfather of the petitioner was serving at Chindwara and, therefore, School Leaving Certificate of his father showing that he had taken the education at Chindwara. He invited the attention towards the school leaving certificate issued to his cousin grandfather Moreshwar Laxman Dhurde which shows that his cousin grandfather was admitted in New English High School, Main Branch, Nagpur during the period from 29/05/1961 to 31/03/1964 and birth date of his cousin grandfather was recorded as 08/03/1945 and caste was recorded as 'Barai'. It is further submitted that on the basis of said documents, the same Committee that is the District Caste Scrutiny Committee, Nagpur issued the Caste Validity Certificate to his cousin uncle Deepak Dhurde and cousin brother Siddhant Deepak Dhurde. He submitted that the Caste Certificate was issued to his blood relatives on the basis of same documents. The Caste Scrutiny Committee illegally rejected his claim by

disbelieving the same documents. In support of his contention, he relied upon *Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and ors. 2010 (6) Mh.L.J. 401* wherein it is held that where the caste claim of an applicant has been scrutinized and accepted and one Committee has given a finding about the validity of the caste, another Committee ought not to refuse the same status to his/her blood relative who applies. It is further held that if the relationship by blood is established or not doubted and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent by the Committee testing the same evidence and making the same conclusion unless of course the Committee finds on the basis of evidence that the validity of the certificate of such relation has been obtained by fraud.

8. Learned Counsel further submitted that the caste claim of the petitioner was further invalidated on the ground that the School Leaving Certificate issued by the school of grandfather by name Shamrao was issued by Shashakiya Bunyadi Madhamik School, Mohgaon, Tq. Saunsar, District Chindwara which is a part of Madhya Pradesh. In fact, Chindwara and Nagpur districts were the part of C.P. and Berar Provinces before the recognition of the State. After recognition of the States, Chindwara become the part of Madhya Pradesh and Nagpur become the

part of Maharashtra state. It is further added that the ancestors of the petitioner are the residents of Nagpur and, therefore, Nagpur and Chindwara being the part of C.P. and Berar provinces and in both the States the caste 'Bari' is recognised as Other Backward Class, hence, the observation of the Committee that the petitioner is a migrant is illogical and liable to be set aside. He further submitted that even if it is accepted that the petitioner was migrant then also the petitioner is entitled for the validity certificate in the light of the fact that prior to recognition of the States, Chindwara and Nagpur were recognised as part of C.P. and Berar Provinces. In support of his contention he relied upon *Sudhakar Vithal Kumbhare Vs. State of Maharashtra and ors. 2004 (4) Mh.L.J. 784* and *Santosh s/o Singwa Padoti Vs. Caste Scrutiny Committee, Nagpur and anr. 2006(2) Mh.L.J. 825*, wherein it is held that by virtue of Constitutional Scheduled Tribe Order, 1952, the Tribe "Gond" has been considered as a Scheduled Tribe in both the States i.e. in the State of Maharashtra as well as in the State of Madhya Pradesh, the petitioner is entitled to the status of Scheduled Tribe in the State of Maharashtra. He further relied upon *Preeti Gopalrao Kamble Vs. State of Maharashtra and ors. 2013(2) Mh.L.J. 317*, *Bharat s/o Bhimrao Malakwade Vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur and anr. 2013 (5) Mh.L.J. 946*, *Sagar Bhupal Malage Vs. Member/Chairman, Divisional Caste Scrutiny Committee No.2, Kolhapur*

and ors. 2019(3) Mh.L.J. 319 and Prabhakar s/o Dnyanoba Shinde Vs. State of Maharashtra and ors. 2020(3) Mh.L.J. 467 and in Writ Petition No.6836 of 2013 (Prashant s/o Shamraoji Shende Vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur and ors.) decided on 14/12/2016 and Writ Petition No.5612 of 2018 (Kushalkumar s/o Motilal Bhaisare Vs. The President District Caste Certificate Scrutiny Committee, Gadchiroli and ors.) decided on 15/07/2022 and submitted that the same issue is dealt by this Court at various Benches and it is held that such persons whose caste/tribe is recognised in both the States are entitled for the benefits of reservation. He submitted that on the basis of the similar documents his cousin uncle and cousin brother received the Caste Validity Certificate, therefore, the order passed by the Caste Scrutiny Committee is illogical and liable to be set aside.

9. On the other hand, Ms N.P. Mehta, learned Assistant Government Pleader canvassed that the order passed by the Scrutiny Committee is justified and legal one. She referred Rules 5 and 6 of the Rules of 2012. She further submitted that for the caste 'Bari' which is recognised as Other Backward Class, the deemed date is 13/10/1967. The claimant is desirous of availing the benefits of reservation of Other Backward Class on the basis of the documents showing his original residence and, therefore, he has to submit documents prior to deemed

date i.e. 13/10/1967. The petitioner had not produced a single document and, therefore, the order passed by the Scrutiny Committee is justified and no interference is called for. In support of her contention she relied upon ***Bir Singh Vs. Delhi Jal Board and ors. (2018) 10 SCC 312*** wherein Hon'ble Apex Court held that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. She submitted that as the petitioner is a migrant he is not entitled for the Caste Validity Certificate from State of Maharashtra and, therefore, no interference is called for.

10. After hearing both the sides admittedly, in the present case, the petitioner who is pursuing his studies approached the Caste Scrutiny Committee for obtaining verification of his caste. He relied upon the family tree. The family tree shows that Laxman Sakharam Dhurde was his great grandfather who was having four sons namely Shamrao, Purushottam, Moreshwar and Subhash. The petitioner is the grandson of Shamrao. It is not disputed that the petitioner's cousin uncle Deepak Moreshwar Dhurde and son of Deepak Dhurde i.e. Siddhant Dhurde received the Caste Validity Certificate from the Caste Scrutiny Committee, Nagpur i.e. the same Committee. The family tree on which the petitioner relied upon is not disputed. The petitioner relied upon the

School Leaving Certificate of his cousin grandfather which shows that his cousin grandfather Moreshwar was admitted in the school i.e. New English High School, Main Branch, Nagpur from 29/05/1961 to 31/03/1964. His birth date was recorded as 08/03/1945 and caste was recorded as 'Barai'.

11. It is vehemently submitted by the learned Assistant Government Pleader that the petitioner ought to have submitted the documents prior to the deemed date which is 13/10/1967. The School Leaving Certificate of cousin grandfather Moreshwar Laxman Dhurde is prior to the deemed date 13/10/1967. It was for the period from 29/05/1961 to 31/03/1964. Admittedly, the School Leaving Certificate of the grandfather of the petitioner Shamrao Laxman for the period from 01/04/1951 to 31/03/1952 appears to be issued by Shashkiya Buniyadi Madhyamik Shala, Mohgaon, Saunsar, Madhya Pradesh. The School Leaving Certificate of father of the petitioner Sharadchandra Dhurde is also issued by Kanhan Uchatar Madhyamik Vidyalaya, Saunsar, Chindwara. Said fact is explained by the petitioner that the grandfather and father of the petitioner were serving in Chindwara, Madhya Pradesh and, therefore, these certificates are there. Admittedly, the grandfather of the petitioner namely Shamrao Dhurde was admitted in the school in Madhya Pradesh. At the same time the document on record shows that

another son of Laxman namely Moreshwar i.e. the brother of Shamrao was admitted in school at Nagpur for the period from 29/05/1961 to 31/03/1964 which is after 01/04/1951 to 31/03/1952. It is also sufficient to show that prior to the deemed date 13/10/1967 the cousin grandfather of the petitioner was admitted in school i.e. at New English High School, Main Branch, Nagpur. This document is sufficient to show that the petitioner's ancestors were residing in Nagpur prior to deemed date i.e. 13/10/1967. The documents of the petitioner's ancestors shows that the petitioner's ancestors were residing at Nagpur.

12. The Caste Scrutiny Committee had ignored the documents. Even for the sake of consideration, it is held that the petitioner's ancestors were migrants then also the list which was issued in the light of Government Notification dated 13/10/1967 wherein 'Bari' caste was recognised as Other Backward Class at serial No.13 and the list issued in respect of State of Madhya Pradesh also shows that at serial No.5 the caste 'Barai' is shown as Other Backward Class. The list of Other Backward Class in respect of Maharashtra State also shows that 'Barai' is included as Other Backward Class at serial No.13. Bari/Barai are shown in the Other Backward Class lists of both States. The various decisions on which the petitioner had relied upon have held that such persons whose caste/tribe is recognised in both the States are entitled for the

benefits of reservation. In the case of Bharat (supra) wherein it is held that after reorganization of the State, Chindwara became the part of Madhya Pradesh and Nagpur became the part of Maharashtra State, both areas were earlier part of C.P. and Berar Region. This peculiar facts are considered by the Hon'ble Apex Court in the case of Sudhakar (supra) wherein it is held that such persons whose caste/tribe is recognised in both the States are entitled for the benefits of reservation. The petitioner has placed on record the list of Scheduled Caste Order shows that the caste 'Barai' is recognised as Other Backward Class in Madhya Pradesh as well as in Maharashtra. Even if it is held that the forefathers of the petitioner were not residents of Maharashtra and were residents of Chindwara then also in the light of the judgment of the Hon'ble Apex Court the petitioner is entitled for Caste Validity Certificate. Though learned Assistant Government Pleader relied upon the judgment of the Hon'ble Apex Court in the case of Bir Singh (supra), it appears that the issue involved in the petition before the Hon'ble Apex Court was "Whether a policy in furtherance of the enabling provision contend in Article 16(4) of the Constitution could extend the benefits conferred on Scheduled Caste and Scheduled Tribe enumerated in the Presidential Orders framed/issued under Articles 341 and 342 of the Constitution in respect of a State/Union Territory upon migrant Scheduled Caste or Scheduled Tribe persons from another State/Union

Territory?” In para Nos.33 and 34 of the said judgment it is crystal clear that the issue which was discussed by the Hon’ble Apex Court was that if a member of the Scheduled Caste or Scheduled Tribe who had migrated to another State is to be given the benefit of reservation it will amount to depriving a member of a Scheduled Caste/Scheduled Tribe of Maharashtra by reducing the reservation ear marked for them. Therefore, Hon’ble Apex Court had in para No.34 held that it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. In the present case, the issue before us is regarding the verification of the petitioner’s caste, therefore, this decision on which learned Assistant Government Pleader is relied upon is not helpful.

13. The Caste Scrutiny Committee further observed in the order that the petitioner had not proved his place of residence as Nagpur prior to the deemed date. It is already observed that the School Leaving Certificate on which the petitioner had relied upon shows that the cousin grandfather of the petitioner had taken education in Nagpur prior to the deemed date of 13/10/1967. The Caste Scrutiny Committee arrived at a conclusion that the petitioner is a migrant on the basis of the documents like the School Leaving Certificate of his father and grandfather. The

Scrutiny Committee has not assigned any reason why the ordinary place of residence as claimed by the petitioner would go against him. In fact, the document on record shows that real grandfather of the petitioner i.e. Shamrao was admitted in the school at Mohgaon, Saunsar for the period from 01/04/1951 to 31/03/1952. The school admission period of cousin grandfather of the petitioner namely Moreshwar Laxman Dhurde is 21/05/1961 to 30/03/1964 and school admission period of the father of the petitioner is 24/07/1978 to 30/04/1984. The petitioner had explained in his reply that his grandfather serving in Madhya Pradesh and, therefore, the School Leaving Certificate is showing the school admission period on his father at Chindwara. He explained that his father was transferred at Chindwara while in service and, therefore, they were residing over there. Moreover, the Caste Scrutiny Committee had ignored the fact that on the basis of same documents cousin uncle of the petitioner Deepak Moreshwar Dhurde and cousin brother Siddhant Deepak Dhurde had obtained the Caste Validity Certificate. In the light of the judgment of Apoorva Nichale (supra) when blood relatives were issued the Caste Validity Certificate and said Caste Validity Certificate was issued after scrutiny then the Committee ought not to have refused the same status to his/her blood relatives who applies. This Court also in Writ Petition No.5549/2011 (*Vijay s/o Vitthalrao Suryawanshi Vs. The Committee for Scrutiny and Verification of Tribe Claims, Nagpur and*

anr.) decided on 16/09/2019 held that the ordinary place of residence cannot be considered to be a sole determinative factor for deciding the correctness or otherwise of the caste or tribe claim and several other factors are also necessary.

14. The Caste Scrutiny Committee had ignored the documents which shows that the petitioner's forefathers were residents of Nagpur prior to the deemed date. The observations of the Hon'ble Apex Court in the case of Sudhakar (supra) are applicable in the present case. In the light of the same the order passed by the Caste Scrutiny Committee is erroneous and liable to be set aside. There is ample material on record to show that the petitioner is a resident of Maharashtra and belongs to 'Bari' community, therefore, writ petition deserves to be allowed.

15. We, therefore, pass the following order :

- (a) The writ petition is allowed.
- (b) The order passed by the Caste Scrutiny Committee on 13/05/2022 invalidating the caste claim of the petitioner as belonging to 'Bari' Other Backward Class is set aside.
- (c) It is declared that the petitioner belongs to 'Bari' Other Backward Class which is entry No.13 in the list of Other Backward Class in the State of Maharashtra.

(d) The Caste Scrutiny Committee shall issue Validity Certificate to the petitioner within a period of eight weeks from the date of receipt of copy of this judgment.

16. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

**Divya*