

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

WRIT PETITION NO.920 OF 2021

Asra Fatema d/o Zakir Ali Ahmed
Age 20 years,
Occupation – Student,
R/o. Ahmed house, Habib Nagar No.1,
Walgaon Road, Amravati,
Taluka & District Amravati

...PETITIONER

VERSUS

1. State of Maharashtra,
through Secretary Tribal Development
Department, Mantralaya,
Mumbai - 400032
2. The District Caste Certificate Scrutiny
Committee, Amravati through
its Secretary and Chairpersons,
Taluka and District Amravati

...RESPONDENTS

Shri S.S. Dhengale, Advocate for the petitioner.
Mrs. S.S. Jachak, Assistant Government Pleader for the
respondents/State.

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

RESERVED ON : OCTOBER 06, 2022.

PRONOUNCED ON : OCTOBER 13, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

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

3. The petitioner is a student pursuing her further education. She claimed to be 'Chapparband' (De-notified tribe). As per the contention of the petitioner she is studying in B.E. (Civil) final year. Her caste claim was referred for verification. She submitted various documents to substantiate her claim to be 'Chapparband'. The Caste Scrutiny Committee referred the same to the Vigilance Committee for necessary enquiry. The Vigilance Committee submitted its report on 08/07/2019. As per the contention of the petitioner, the Vigilance Committee had not expressed any negative opinion. However, after receipt of report, the Caste Scrutiny Committee issued notice on 07/08/2019 and called the petitioner to remain present on 20/08/2019. Accordingly, the petitioner had filed detailed reply on 20/08/2019 but the Scrutiny Committee rejected the claim of the petitioner by assigning reason that the petitioner had failed to prove that she belongs to 'Chapparband'. It is further the contention of the petitioner that before the Caste Scrutiny Committee she relied on the pre-independence entries i.e. extract of Dakhal Kharij register which shows that as per her grandfather's school leaving certificate, birth date is recorded as 01/07/1933. He was admitted in the Municipal School, Amravati for the

period from 20/08/1949 to 04/04/1950. In the school he was recorded as 'Chapparband'. She further submitted that the validity certificate was issued to her paternal uncle by name Ashfaq Ahmed. Her father and her brother were also recorded as 'Chapparband' and the caste certificates were issued to them by the Sub-Divisional Officer but the Committee had rejected the caste claim of the petitioner by assigning reason that the caste validity certificate issued to Ashfaq Ahmed prior to the decision of the Hon'ble Apex Court in the case of Kumari Madhuri Patil and anr. Vs. Additional Commissioner, Tribal Development and ors. (1994) 6 SCC 241. Therefore, the said decision cannot be taken into consideration.

4. Being aggrieved with the said order passed by the Caste Scrutiny Committee, the petitioner had filed this petition on the ground that the Caste Scrutiny Committee had not considered the detailed reply by which the petitioner had explained the issues raised by the Caste Scrutiny Committee in the show cause notice. The Caste Scrutiny Committee also assigned reason that there is scoring in the Dakhal Kharij register regarding the caste of her grandfather. However, there is no evidence to show that who had made such interpolation in the said Dakhal Kharij register. Thus, the order passed by the Caste Scrutiny Committee is arbitrary, illegal and liable to be set aside.

5. In response to the notice, respondents opposed the petition on the ground that there is a scoring in the Dakhal Kharij register of the grandfather of the petitioner. interpolation is made in the Dakhal Kharij register by mentioning his caste as 'Chapparband'. There is no other evidence to show that the petitioner belongs to 'Chapparband' (De-notified tribe), therefore, the order passed by the Caste Scrutiny Committee is justified one.

6. Heard Shri S.S. Dhengale, learned Counsel for the petitioner. He submitted that the Caste Scrutiny Committee had not considered the previous validity issued to the paternal uncle of the petitioner. Moreover, there is no evidence to show that who had made that alleged interpolation. The statement of the Head Mistress is vague one. She is not the author of the document. The petitioner had explained all the circumstances. The school leaving certificate of the grandfather of the petitioner namely Sheikh Ahmed Sheikh Papa issued by the Municipal School, Amravati shows birth date was recorded as 01/07/1933. He was admitted in the school on 20/08/1949 and at the time of admission his caste was recorded as 'Chapparband'. The entry regarding the caste of the petitioner's grandfather is of pre-independence which had probative value but the Scrutiny Committee had not considered the same and by assigning reason that validity issued to the paternal uncle was prior to

the judgment of Madhuri Patil. Merely because the validity was issued previously to the judgment of the Hon'ble Apex Court did not make it illegal document. Said validity was not challenged by the respondents neither it was cancelled, therefore, it has to be taken into consideration.

7. In support of his contention he relied upon ***Ku. Nayan d/o Bhaskar Chouke Vs. The Scheduled Tribes Caste Scrutiny Committee, Nagpur in Writ Petition No.491/2019***, wherein it is held that the validity granted to the father and real brother of the petitioner was without conduct of vigilance enquiry but the question that the Scrutiny Committee should have ask to itself before rejecting those validities as to whether or not the Scrutiny Committee which granted those validity earlier was satisfied on the basis of the documentary evidence produced that there was no further need for conduct of any vigilance enquiry. But even asking this question and making any attempt to answer it, the Scrutiny Committee straight way rejected the validities and refused to accept those validity certificates as sufficient proof of the social status of the petitioner. He further relied upon the decision in ***Writ Petition No.309/2021 (Ku. Pallavi d/o Rajendra Dardemal Vs. The Vice-Chairman/Member Secretary, S.T. Caste Certificate Scrutiny Committee, Nagpur & ors.) dated 20/07/2022*** wherein this Court has referred the decision on ***Gitesh s/o. Narendra Ghormare vs. Scheduled Tribe***

Certificate Scrutiny Committee Nagpur and others 2018(4) Mh.L.J. 933

and held that the validity granted in the family was not considered as a valid proof of the caste or the tribe claim for the reason that the validity granted earlier was not after the conduct of the Vigilance enquiry. This Court by referring the provisions made in Rule 12(2) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 held that it is the discretion of the Scrutiny Committee, whether the claim is to be forwarded to the Vigilance Cell for conducting school (home) and other enquiry or not. On the basis of this decision he submitted that the order passed by the Scrutiny Committee is illegal, arbitrary and liable to be set aside.

8. On the other hand Mrs. S.S. Jachak, learned Assistant Government Pleader submitted that the record on which the petitioner relied upon is the pre-independence entry regarding the caste of her grandfather. But the Committee had collected the extract of Dakhal Kharij register which shows that the entry regarding the caste in the Dakhal Kharij register in front of the name of the grandfather of the petitioner is in another ink and there is scoring. Thus, the document is doubtful, therefore, the Caste Scrutiny Committee called the Head Mistress of the Municipal School, Amravati and recorded her statement. Therefore, the order passed by the Caste Scrutiny Committee is justified one and no interference is called for.

9. After hearing both the parties at length and after perusing the record maintained by the Scrutiny Committee apparently shows that the petitioner mainly relied upon the pre-independence document i.e. the school leaving certificate issued by the Municipal School of her grandfather showing that her grandfather Shaikh Ahmed Shaikh Papa was born on 01/07/1933 and was admitted in the Municipal School, Amravati from 20/08/1949 to 04/04/1950. At the relevant time, the caste of her grandfather was recorded as 'Chapparband'. The petitioner also relied upon her school leaving certificate wherein she was recorded as 'Chapparband'. Her father was also recorded as 'Chapparband'. The Sub-Divisional Officer had issued caste certificate to her family members showing that they belong to 'Chapparband' de-notified tribe. She had also produced family tree during the Vigilance enquiry which shows that Shaikh Ahmed Shaikh Papa was her grandfather who had four sons and one daughter namely Zakir Ali Ahmed, Ashfaq Ahmed, Mazhar Iqbal, Jafar Iqbal and Shabnam firdos. The petitioner is the daughter of Zakir Ali Ahmed. The caste/tribe validity was issued to Ashfaq Ahmed by the Scrutiny Committee in 1992. The only reason assigned by the Caste Scrutiny Committee that said validity was issued to the paternal uncle of the petitioner namely Ashfaque Ahmed prior to the decision of the Hon'ble Apex Court in the case of Madhuri Patil. The Caste Scrutiny

Committee came to the conclusion that the petitioner could not prove her affinity as well as her caste. The Committee has also observed that there is a scoring in the Dakhal Kharij register in front of the name of her grandfather as it shows that the caste of her grandfather was recorded in blue ink whereas other entries in the Dakhal Kharij register are in a black ink. Thus, it is held by the Committee that there is interpolation in the Dakhal Kharij register and the document on which the petitioner relied upon is doubtful and accordingly the validity certificate was not issued to her.

10. The findings recorded by the Caste Scrutiny Committee only on the ground that there is interpolation in the Dakhal Kharij register in respect of entry of the caste of the grandfather of the petitioner. The report of the Vigilance Committee is also on record which shows that during vigilance, Vigilance Committee had collected the school record of the petitioner, her father, her siblings as well as her grandfather. The Vigilance Committee also recorded that they have recorded the statements of the neighbors wherein the petitioner is residing as well as her native place Walgaon, District Amravati and it reveals to them that the petitioner and her forefathers belong to 'Chapparband'. Thus, the Vigilance Committee nowhere recorded contrary findings. There is no reference in Vigilance report in respect of the scoring in Dakhal Kharij

register in respect of the entry of grandfather of the petitioner. The Scrutiny Committee had observed that the petitioner relied upon the school leaving certificate of her grandfather, therefore, the Committee had called original Dakhal Kharij register. Said register was written in the Urdu language. The Head Mistress by name Parvin Bano Kabir Raheman Qureshi had translated the same in the Marathi language before the Committee. It reveals to the Committee that in respect to the entry of the grandfather of the petitioner, the caste entry was recorded in a different ink and, therefore, said document is doubtful. On the ground that the validity issued to the paternal uncle was prior to the decision of Madhuri Patil and there is scoring in Dakhal Kharij register regarding the caste entry of the grandfather of the petitioner, the Caste Scrutiny Committee rejected the claim of the petitioner.

11. Learned Counsel for the petitioner relied upon two decisions of this Court i.e. Ku. Nayan d/o Bhaskar Chouke (supra) and Ku. Pallavi d/o Rajendra Dardemal (supra). Learned Counsel referred paragraph No.10 of the judgment of Ku. Pallavi d/o Rajendra Dardemal (supra) and submitted that this Court in the case of Gitesh s/o. Narendra Ghormare (supra) wherein it is held by this Court that in paragraph Nos.30 and 31.

“30. It is urged before us that while issuing the caste validity certificates in the names of the father and other

blood relatives of the petitioner, the Police Vigilance Cell enquiry was not conducted. Rule 12(2) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 being relevant, is reproduced below :

“12. Procedure to be followed by Scrutiny Committee.

(2) If the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant the Scrutiny Committee shall forward the applications to the Vigilance Cell for conducting the school, home and other enquiry.”

It is the discretion of the Scrutiny Committee whether the claim is to be forwarded to the Vigilance Cell for conducting school, home and other enquiry. If the Scrutiny Committee is not satisfied with the documentary evidence produced, then only it can forward the documents to the Vigilance Cell. But if the Committee records its satisfaction on the basis of documentary evidence produced and issues a validity certificate, it cannot question its correctness, legality or binding nature or finality attached to it under sub-section (2) of Section 7 of the Maharashtra Scheduled Castes, 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 (Maharashtra Act No.XXIII of 2001) on the ground that the Police Vigilance Cell enquiry was not conducted. The Committee, in our view, was wrong in ignoring the caste validity certificates issued in the name of the father of the petitioner validating his claim for ‘Mana Scheduled Tribe’.

31. *This question has been dealt with by the Division Bench of this Court in the case of Apoorva d/o Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee No.1 and others, reported in 2010(6) Mh.L.J. 401. Para 7 of the said decision being relevant, is reproduced below :*

“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.”

The relevant portion in para 9 of the said decision is also reproduced below :

“9. ... In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the petitioner.”

It is not the finding of the Committee that the father of the petitioner obtained the caste validity certificate by playing a fraud or that the grant of certificate was without jurisdiction. On the contrary, the certificates indicate that the same are issued in view of the decision of the Apex Court in Civil Appeal No.5270 of 2004. A merely different view on the same facts in a subsequent case of blood relative would not entitle the Committee to reject the claim. If the Committee is permitted to alter or change its view repeatedly, it would create an anomalous situation that each of the blood relatives would be of different caste/tribe and finality attached would become redundant. In our view, therefore, the Committee

ought to have validated the certificate in favour of the petitioner.”

12. In the present case also the Caste Scrutiny Committee had not considered the earlier validity granted to the family members. The validity was granted to the real uncle of the petitioner. Dealing with the validity issued to the uncle of the petitioner, the Caste Scrutiny Committee observed that it was issued prior to the decision of Madhuri Patil. In the judgment of Madhuri Patil also the entries in the school register preceding the Constitution do furnish great probative value to the declaration of the status of the caste is held. By the said judgment, the Hon'ble Apex Court issued the guidelines for the issuance of social status certificate, their scrutiny and their approval. Said judgment nowhere states that the validity certificate issued prior to the judgment were invalid. Therefore, the reason assigned by the Caste Scrutiny Committee appears to be unreasonable one.

13. The Division Bench of this Court in the case of ***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 by this Court that in paragraph No. 7 :

“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.”

It is further held by the Division Bench that the Committee by expressing a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to the validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment. A merely different view on the same facts could not entitle the committee dealing with the subsequent caste claim to reject it.

14. Here in the present case, the validity certificate was issued to the real uncle of the petitioner. It is nowhere the contention of the Committee that the earlier caste certificate is obtained by fraud or is granted without jurisdiction. As there is no observation that the earlier caste validity certificate is vitiated by fraud or without jurisdiction, the Committee cannot refuse to grant certificate to the petitioner. As observed above, in the present case, the Committee nowhere observed

that the uncle of the petitioner had obtained caste validity certificate by playing fraud or that grant of certificate was without jurisdiction. On the contrary, it is evident that the validity certificate granted to the real uncle was on the basis of the school leaving certificate of grandfather of the petitioner on which the petitioner is also relied upon.

15. The other reason assigned by the Scrutiny Committee is that there is interpolation in the Dakhal Kharij register in respect of the caste of the grandfather of the petitioner. The Committee had obtained the original Dakhal Kharij register and observed that the entry regarding the caste in front of the name of the grandfather of the petitioner is in a different ink whereas other entries are in a different ink, therefore, the document on which the petitioner relied upon became doubtful. The Scrutiny Committee had recorded the statement of the Head Mistress who is not the author of the document. Admittedly, the grandfather of the petitioner is not alive. Author or custodian of the document was not examined by the Caste Scrutiny Committee. It only reveals to the Committee that the caste of the grandfather of the petitioner was written in a different ink. In *Sayanna Vs. State of Maharashtra and ors. (2009) 10 SCC 268* wherein it is held that in the Vigilance report it is recorded that in school records word 'lu' was subsequently added. Held this by itself does not indicate interpolation in school record. The Vigilance

report not based on any credible evidence. The decision of the Scrutiny Committee to cancel and confiscate the caste certificate based on irrelevant considerations and non-consideration of relevant considerations hence liable to be set aside. It is held by the Hon'ble Apex Court that it is difficult to understand as to on which basis the Scrutiny Committee came to the conclusion that the word 'lu' was interpolated in the register of the school. More particularly when it was not so opined by the Police Inspector who had conducted the enquiry. Whether interpolation by addition has taken place can be stated by a handwriting expert or by comparison of admitted letters of a person with this disputed one. It is an admitted position that the Scrutiny Committee had never attempted to get an Expert's opinion nor itself had compared the disputed letters with admitted one of the appellant. Under the circumstances, the finding recorded by the Scrutiny Committee that the word 'lu' was interpolated will have to be regarded as not based on any credible evidence.

16. Here in the present case also though the Scrutiny Committee relied upon the Dakhal Kharij register and the statement of the Head Mistress which shows that the entry regarding the caste of the grandfather of the petitioner was recorded in a different ink. However, the author of the document was not examined by the Caste Scrutiny

Committee to ascertain the facts. Moreover, custodian of the said document or any expert was not examined, therefore, the observation of the Caste Scrutiny Committee appears to be not based on any credible evidence. The petitioner had explained the circumstances. Admittedly the school record was lying with the school authorities and the petitioner had no opportunity whatsoever to tamper with the same. Therefore, the observation of the Caste Scrutiny Committee while rejecting the claim of the petitioner is illegal. The Vigilance Committee had not observed regarding the interpolation. The Vigilance report shows that from the statements of the neighbors and the family members show that the petitioner and her forefathers belong to 'Chhapparband'. Thus, the documents on which the petitioner had relied on and the validity issued to the family members is sufficient to held that the petitioner belongs to 'Chhapparband'. As already observed that the contention of the Caste Scrutiny Committee that the petitioner had failed to prove the caste claim and the documents which had interpolated is not substantiated by any credible evidence. The entry in the name of her grandfather which is of pre-independence era shows that he was recorded as 'Chhapparband'. The sum and substance of the entire material on record shows that the entry in the name of the grandfather has great probative value and is sufficient to show that the petitioner belongs to 'Chhapparband' tribe. Therefore, the order passed by the Caste Scrutiny

Committee is illegal, illogical and liable to be set aside. Hence, writ petition deserves to be allowed. In the result, we proceed to pass the following order :

- (a) The writ petition is allowed.
- (b) The Order dated 20/08/2019 passed by the Scheduled Tribe Caste Scrutiny Committee, Amravati is hereby quashed and set aside.
- (c) It is declared that the petitioner namely Asra Fatema d/o Zakir Ali Ahmed belongs to 'Chhaparband' (de-notified tribe).
- (d) The Caste Scrutiny Committee shall issue the validity certificate to the petitioner within a period of six weeks from the receipt of copy of this judgment.

17. 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*