

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6222 OF 2023

Aditya s/o Shivkumar Totawad ... **PETITIONER**

VERSUS

1. The State of Maharashtra,
through Principal Secretary,
Tribal Development Department,
Mantralaya Mumbai.
2. The Schedule Tribe Certificate
Verification Committee, Kinwat
Headquarter Aurangabad
Near CIDCO Bus Stand, Aurangabad
Dist. Aurangabad
through its Deputy Director (Research)
and Member Secretary

... **RESPONDENTS**

...

Advocate for Petitioner: Mr. V.D. Sapkal, Senior advocate i/b. Mr. C.R. Thorat
AGP for respondent : Mr. P.S. Patil

...

**CORAM : MANGESH S. PATIL AND
SHAILESH P BRAHME, JJ.**

Reserved on 07.07.2023

Pronounced on : 31.07.2023

JUDGMENT (MANGESH S. PATIL, J.) :

This is a petition under Article 226 of the Constitution of India read with Section 7(2) of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (herein after the Act), wherein, the petitioner is challenging the order passed by the respondent No.2 – Scheduled Tribe Certificate Verification Committee (herein after the Committee) constituted under Section 6 of the Act, wherein, the tribe

certificate of the petitioner as “Mannervarlu” scheduled tribe has been confiscated and cancelled under Section 7 (1) of the Act.

2. The learned Senior advocate Mr. Sapkal for the petitioner would submit that the petitioner is the first person from the family seeking the benefit of reservation. None of his relatives have secured any validity certificate. He belongs to “Mannervarlu” scheduled tribe. School record was produce before the Committee. It was also collected during vigilance inquiry and was available to be looked into by the Committee. There was no interpolation or overwriting. None was noticed during vigilance inquiry. The favourable entries from the school record of the blood relatives have been discarded for no valid reason, whereas, contrary school record of the persons who do not stand in any relation with the petitioner have been accepted to discard the petitioner’s claim. Some human error in the school record committed by the concerned staff of the school while making entries in the school register could not have been made capital of. This Court in the matter of **Sanjay Haribhau Munnur Vs. The State of Maharashtra and others; Writ Petition No.3223/2002** decided on 13.09.2017 has considered the aspect in describing the tribe “Mannervarlu”. In that case the school record referred to the name of the tribe as “Munnervarlu” instead of “Mannervarlu”. The latter being tribe duly recognized by the presidential order, this Court had treated use of word “Munnervarlu” which is an unrecognized caste or tribe as “Mannervarlu”. Therefore the inference drawn by the Committee in the present matter merely because some school

record of the blood relations used description as मुनेरवलू (Munervarlu), मुन्नेरवलू (Munnervarlu), मूनूरवारलू (Munurvarlu) मन्नेर-वारलू (Manner-varlu) and मनूरवार (Manurvar) could not have been used as adverse entries. There were few other entries of the blood relations correctly describing the tribe as “Mannervarlu”. The inference drawn by the Committee is therefore perverse and arbitrary.

3. Mr. Sapkal would further submit that in spite of the decision in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.**; 2023 SCC Online SC 326 the Committee has applied the affinity test which approach is unsustainable in law and is arbitrary. Mr. Sapkal would submit that there was no concrete reason for the Committee to discard the claim by drawing inference based on conjectures and the petition be allowed.

4. Learned AGP Mr. P.S. Patil would strongly oppose the petition. He would remind us that this Court though has been conferred with the powers under Article 226 of the Constitution read with Section 7(2) of the Act to examine the legality of the orders passed by the Committees constituted under Section 6, it is not a provision of appeal or this is not an appellate forum. If the inferences drawn by the Committee are duly supported by reasonable and plausible appreciation of the evidence on the record, this Court cannot undertake a fresh scrutiny. He would submit that taking into consideration several inconsistent entries in the school record of the petitioner and his blood relatives, the Committee has drawn the

inference that these documents were not reliable. A vigilance inquiry was conducted. Even if the school record of the persons mentioned in the impugned order about whom there is absolutely no material to show that they are petitioner's blood relatives from paternal side and therefore are ignored, still, the school record of the persons who admittedly, are petitioner's blood relatives is also not consistent and therefore convincing. There are entries like 'मन्नेरवार्लू (Mannervarlu), मनेवारलू (Manevarlu) and मुनुरवारलू (Munurvarlu)'.

5. Mr. Patil would then submit that though area restriction can no longer be used the affinity test has not been out rightly discarded in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (supra), even though its scope is limited. The burden was on the petitioner by virtue of Section 8 of the Act to prove that he belonged to "Mannervarlu" scheduled tribe. The evidence led by him was not sufficient to convince the Committee and in the process the Committee has also ascertained if at least he gets through the affinity test. He having failed in that no fault can be found with the impugned order in refuting the petitioner's claim.

6. We have carefully considered the rival submissions and perused the papers. We need not elaborate but it would be sufficient to bear in mind the fact that the orders passed by the Committee can only be challenged before this Court in view of provision of Section 7(2) of the Act read with Article 226 of the Constitution of India. There is no provision of any appeal against the order of the Committee and obviously this Court has inherent

limitations in exercising the powers under Article 226 which are not synonymous with the powers of an appellate Court.

7. Again by virtue of Section 8 of the Act the burden to prove that the person claiming to be of a particular caste or tribe is on him and the Committee is only supposed to objectively scrutinize the evidence led by him. As explained in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (supra) only if the documents produced by the claimant are not believable/reliable, that the Scrutiny Committee is supposed to undertake an inquiry through the vigilance cell constituted under Rule 10 of the Rules framed under the Act. With this prelude let us examine the sustainability of the order, objectively.

8. Admittedly, none of the blood relations of the petitioner is possessed with a validity certificate and naturally heavy burden lies on him to substantiate his claim. He has been relying upon the entries in the school record of several individuals who are his blood relatives from paternal side, apart from his own school record. Obviously his reliance has been on the school record which is of recent origin, of last few decades but post presidential order which naturally has inherent limitations as far as probative value is concerned for the simple reason that there is every possibility of persons objectively taking precaution to make entries in the school record of a particular caste or tribe being alive about the policy of reservation.

9. However, any manipulation in the school record even if it is of a

period after the presidential order would bring in an element of suspicion about the claim being put up. We are making these observations for the reason that such manipulations have surfaced in the school record of some of the petitioner's blood relations as discussed by the Committee in detail.

10. True it is that the Committee has erred in referring to the school record of some individuals and drawing some inference even without there being any concrete material before it that these individuals were blood relatives of the petitioner from the paternal side. Certainly, therefore, that aspect of the reasoning resorted to by the Committee in referring to the School record of such unrelated persons is not sustainable in law. However, it is a matter of record that the school record is of the individuals who are admittedly petitioner's blood relations from the paternal side. The Committee has referred to it and according to it such entries were not reliable and convincing enough to substantiate petitioner's claim. The following chart will have to be looked into to appreciate the reasoning of the Committee :

Sr. No.	Name of School	Admission No.	Name of Students	Relation with the applicant	Entry of Caste	Date of admission	Remark
1.	Z.P. Primary School Sangvi Center Kosmet Tq. Kinwat Dist. Nanded	2/Jirn 2	Ms. Ratnamala Sitaram Totawad	Aunt	मुनेरवलू Munervarlu	15.07.1978	
2.	Z.P. Primary School Sangvi Center Kosmet Tq. Kinwat Dist. Nanded	15/63	Ms. Sunita Sitaram Totawad	Aunt	मुनेरवलू Munervarlu	18.06.1981	

3.	Z.P. Primary School Sangvi Center Kosmet Tq. Kinwat Dist. Nanded	40/89	Shivkumar Sitaram Totawad	Father	मन्नेरवारलू Mannervarlu	02.07.1984	
4.	Z.P. Primary School Sangvi Center Kosmet Tq. Kinwat Dist. Nanded	52	Vijaykumar Sitaram Totawad	Uncle	मनेरवारलू Manervarlu	14.07.1986	
5.	Z.P. Primary School Sangvi Center Kosmet Tq. Kinwat Dist. Nanded	68	Ms. Shambala Dilip Totawad	Cousin Aunt	मूनूरवारलू Munurvarlu	14.05.1990	'लू' (lu) half portion of 'Ukar' is on the line

11. The Committee has observed that there are manipulations in the school record which are not in accordance with the provisions of clause 26.4 of the Secondary School Code which mandates correction of the record with the order of the Education Officer but there is none. In our considered view the conduct in carrying out such manipulation is an attempt of fraud on the Constitution which cannot be taken lightly. Merely having incorrect entries in the school record is one thing and making an attempt to manipulate it by resorting to forgery is another thing. Precisely for this reason, we have personally gone through the photocopies of the school record made available to us from the original file of the Scrutiny Committee. We could notice that in respect of Sunita Sitaram Totawad who is petitioner's paternal aunt *ex facie* entry in the caste column which was originally 'मुनेर' (Muner) appears to have been manipulated as 'मुनेरवारलू' (Munnervarlu). In respect of petitioner's father Shivkumar, the original entry in the caste column of the school record apparently reads as 'मन्नेर'

(Manner) and the letters 'वारलू' (Varlu) have been inserted subsequently. In respect of Lata Diliprao Totawad, cousin paternal aunt, in the caste column of the school record against the original entry as 'मन्नेरवार' (Mannervar) letter 'लू' (lu) has been added subsequently. In respect of another cousin paternal aunt Anuradha Diliprao Totawad, the original entry in the caste column was 'मन्नेर' (Manner) and letters 'वारलू' (Varlu) have been added in the line below. Even in respect of another cousin paternal aunt Shambala Dilip Totawad letter 'लू' (lu) has been added to the original entry of 'मूनूरवार' (Munurvar). None of these corrections bear any endorsement regarding corrections having been sanctioned by the Education Officer. Therefore, one cannot take exception to the inference drawn by the Committee that an attempt has been made to manipulate the school record to suit the obvious purpose.

12. True it is that in the matter of **Sanjay Haribhau Munnur** (supra) we had observed that the entry in the record as 'Munnervarlu' could be accepted as an error and in all probability must have been intended to be 'Mannervarlu' since no tribe by name 'Munnervarlu' finds place in the presidential order. However, in the matter in hand the aforementioned entries are synonymous with some recognized scheduled castes and scheduled tribes having some similarity in the spellings like 'Manne' in Section 3 of the First Scheduled, Part-X, entry No.48 and 'Mannewar' in Section 4 II Scheduled, Part – IX, Entry No.18 published by Government of India under the Constitution (Scheduled Tribes) Order, 1950. Besides there

are OBCs by name entry 247 of Munnerwar, Munnurwar, Munnur, Telgu Munnur, Munnurwar Telgu and Munnurwad from Central list of OBCs published on 10.09.1993.

13. Therefore, the petitioner is not entitled to derive the benefit of the line of reasoning we adopted in the matter of **Sanjay Haribhau Munnur** (supra).

14. Since the documentary evidence produce before the Committee as we have found was not indeed sufficient and reliable to convince the Committee, it was imperative that at least the petitioner should have been able to stand to the affinity test. Though it cannot be a litmus test as has been laid down in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (supra), its efficacy has not been out rightly rejected, as can be seen from paragraph No.21 of the order of the Supreme Court. The petitioner also could not get through the affinity test as has been correctly indicated in the vigilance report and as has been found by the Committee in the impugned order.

15. True it is that the Committee could not have resorted to area restriction since that has been removed in the year 1976 as has been held in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.; (1994) 1 SCC 359**. However, that is not the case with the affinity test which still has some limited scope as a parameter to be considered in an appropriate case.

16. We do not find the order of the Committee to be either perverse

or arbitrary so that this Court can cause interference in exercise of the powers under Article 226 of the Constitution.

17. The writ petition is dismissed.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)