

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1054 Writ Petition No. 8894 / 2023

Netaji s/o Manikrao Choudhary,
Age 55, Occu. Service,
R/o Ashirvad Nivas, Vedant Nagar,
Malegaon Road, Tardoa (Kh), Nanded,
Tq. & Dist. Nanded.

...Petitioner

Versus

1. The State of Maharashtra,
Through it's Secretary
Tribal Development Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Caste Certificate
Scrutiny Committee Kinwat,
Through its Dy. Director (R),
At Aurangabad.

4. The Chief Executive Officer,
Zilla Parishad Jalna,
Dist. Jalna.

...Respondents

AND

1055 Writ Petition No. 8932 / 2023

1. Prachi d/o Netaji Choudhary,
Age 25 Years, Occu. Education,
2. Piyush s/o Netaji Choudhary,
Age 23 years, Occ. Education,

Both R/o Ashirvad Nivas, Vedant Nagar,
Malegaon Road, Tardoa (Kh), Nanded,
Tq. & Dist. Nanded.

...Petitioners

Versus

1. The State of Maharashtra,
Through it's Secretary
Tribal Development Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Caste Certificate
Scrutiny Committee Kinwat,
Through its Dy. Director (R),
At Aurangabad.

...Respondents

Mr. S.M. Vibhute, Advocate for the Petitioners in both petitions.
Mr. A.S. Shinde, AGP for Respondents/State in both petitions.

Mr. P. P. Dama, Advocate for Respondent No.3 in
Writ Petition No.8894/2023

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

DATE : 26 JULY 2023.

FINAL ORDER [PER : SHAILESH P. BRAHME, J.] :

. Heard both the sides and the matter is taken for final disposal
at the admission stage, considering the urgency.

1. Petitioner-Netaji in Writ Petition No.8894/2023 is the father of
both petitioners namely Prachi and Piyush in Writ Petition
No.8932/2023. Their caste claim were decided by the common
judgment and order dated 04.07.2023 by the Scrutiny Committee.
There is common record. Therefore both the petitions are being
decided by this common judgment and order.

2. The petitioners are challenging common judgment and order
dated 04.07.2023 passed by the Scrutiny Committee, invalidating
caste claim and confiscating tribe certificate of scheduled tribe

Rajgond in a proceeding under Section 6 of the Maharashtra Scheduled Caste, 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.23 of 2001'). The petitioners are relying upon validity certificate of Vijay Maroti Choudhari, vigilance report, reply to the report, genealogy, order passed by the High Court in Writ Petition No.10388/2017 and the affidavits. According to the petitioners, the Scrutiny Committee ought to have granted validity certificate in view of validity given to their blood relatives of paternal side Vijay.

3. The learned Counsel for the petitioners would rely upon the judgment in Writ Petition No.10388/2017 in the matter of Ashish Bhagwan Choudhari Vs. State of Maharashtra and Others, to buttress that 'telang' is not a caste but a surname and the Scrutiny Committee illegally treated the entries of 'telang' as contrary. The propositions stated in paragraph no.6 of that judgment cannot be doubted. The findings recorded by the Scrutiny Committee in respect of the entry of 'Telang' may not be correct in view of ratio of the judgment. But that itself may not take the matter further to held that the impugned order is perverse and unsustainable. He would further rely upon the entries in the school record of the petitioners showing Hindu Rajgond as caste. He would submit that the Scrutiny Committee committed patent illegality and perversity in rejecting the caste claim.

4. The learned AGP opposes the matter by producing original files of Netaji, Prachi, Piyush and Vijay (validity holder). It is contended

that the forgery and manipulation in the school entries is apparent. He submits that it is a case of brazen fraud dis-entitling the petitioners from the discretionary relief in the present matter.

5. The impugned judgment and order records following findings :

(i) The entries of the school record of petitioners, uncle, cousin in the table mentioned in paragraph no.2 of impugned judgment are of the period 1978 to 2013 and deliberately the caste was recorded as Rajgond.

(ii) Considering the data available with the Scrutiny Committee, it is possible that the petitioners belong to 'gond telang' which is non-tribal, but they are trying to take advantage as Rajgond.

(iii) The interpolations have been noticed during the course of vigilance enquiry of the school record of Balaji Ganpatrao Choudhari, Netaji Manikrao Choudhari, Shanta Devidas Choudhari, Shaloka Manikrao Choudhari, who are closely recorded to the petitioners. The changes in their school record were effected without following due procedure of law.

(iv) The revenue record of Tulsiram and Madhav is incompatible.

(v) There is no pre-independence record.

(vi) Geographical place of residence of gond scheduled tribe and the present place of residence of the petitioners is inconsistent.

(vii) In case of school record summarized in table of paragraph no.2 pertaining to serial no.2 to 11, 16, 35 to 38, 42, 43 and 45, no caste is mentioned which could have supported the petitioners.

(viii) Service record of the petitioner-Netaji, is not useful to decide caste status.

(ix) The validity certificate and the affidavit of Anand Balaji Katewad cannot be relied upon being maternal side relative.

(x) The validity certificate of Vijay is untrustworthy being procured by suppressing material facts and genealogy.

(xi) The affinity test is recorded against the petitioners because petitioners could not establish anthropological and ethnological linkage with the scheduled tribe in question.

6. We have carefully considered the submissions canvassed by the parties. With the assistance of learned AGP, we have gone through the original files.

7. The vigilance officer collected information regarding school record of close relatives of the petitioners purportedly showing Rajgond as a caste. The Scrutiny Committee found manipulation in the school record of Balaji Ganpatrao Choudhari, Netaji Manikrao Choudhari, Shanta Devidas Choudhari, Shaloka Manikrao Choudhari. Considering the genealogy placed on record by the petitioners and the genealogy disclosed in the original files, the above referred persons are close relatives and one of the entry pertains to that of petitioner-Netaji himself. The photocopies from the original files show clear cut interpolation and manipulation as follows :

(i) In case of Balaji Gangaptrao Choudhari, word 'telang' is scored off and before it Rajgond is written.

(ii) In case of Shanta Devidas Choudhari, similar type of interpolation and scribbling as above is noticed.

(iii) In case of Netaji Manikrao Choudhari, word 'telang' is scored off and in the next line, Rajgond is inserted, which is unusual considering other entries on the same page. There is no endorsement of due procedure having been followed to effect the changes.

(iv) In case of Shaloka Manikrao Choudhari, the changes as noted above (in case of Netaji) are seen.

8. Apart from these above interpolations from the same files, there are few more entries of two more relatives namely Suresh Gunvantrao Choudhari and Anusaya Govind Choudhari. In both entries, word 'telang' is scored off and Rajgond is inserted in the next line, unusually. Interestingly petitioner-Netaji himself has tendered a genealogy with his signature during the course of enquiry before the Scrutiny Committee. Anusaya is figuring in the genealogy.

9. For effecting any changes in the school record, a procedure is contemplated under Rule 26.4 of the Secondary School Code. After permission of the competent authority, the changes can be effected. Such lawfully effected changes would always bear endorsement with a particular date of effecting change. The original record does not reflect that due procedure was followed and the changes were effected. An unequivocal conclusion can be drawn from the above discussion that there is manipulation and forgery in the school record with dishonest intention to grab the benefits of the social status.

10. While going through the original record, learned AGP also points out that the validity holder, Vijay is not in a relative of the petitioners. The genealogy produced by the petitioner-Netaji is shown to us from the file of Prachi. The genealogy does not match with the genealogy produced by the petitioners alongwith the writ petitions. We are also shown original file of Vijay Maroti Choudhari. We are shown two relevant documents from his file namely affidavit of Gangadhar Shankarrao Telang and a genealogy. The said genealogy was considered while granting validity to Vijay. It is totally inconsistent with the genealogy referred to above. Therefore a reasonable suspicion is created regarding the relationship of the petitioners with Vijay. Vijay is shown as grandson of Kashiram Huseni Telang. However the genealogies of the petitioners show Vijay as grandson of Tulsiram Santram. This is an apparent and disturbing inconsistency which cannot be overlooked.

11. The learned AGP demonstrates the ex-facie interpolation and forgeries in number of entries. The relationship with Vijay is also suspicious. While exercising discretionary jurisdiction under Article 226, we cannot overlook this glaring aspect of the matter and cannot rely upon the validity certificate of Vijay. The validity certificate of Vijay does not appear to be obtained by following due procedure of law. Under these circumstances, we find that there is fraud played by the petitioners in staking their claim to the scheduled tribe in question. The Scrutiny Committee noticed the mischief and rightly rejected the caste claims. The Scrutiny Committee has arrived at plausible and reasonable conclusion after considering all the facets of the matters.

12. The findings recorded by the Scrutiny Committee regarding non-availability of the pre-independence record and the place of residence of the petitioners and their ancestors may not be correct. But because of our findings recorded earlier regarding interpolation and rank forgeries, the rest of the findings of the Scrutiny Committee are of little significance.

13. Pertinently it is noticed from the entries of the close relatives of the petitioners, which are at serial nos. 7 to 11, 16, 35 to 38, 42, 43 and 45 of table appearing in paragraph no.2 of the impugned judgment, no caste is mentioned in the record. In ordinary course of business, the caste would always be mentioned in the birth register. It is surprising how there is no caste mentioned in the document. This is one of the contributing circumstances to doubt the caste claim of the petitioners.

14. We have noticed that the manipulations at multiple places in record. It is a case of brazen fraud on constitution. Fraud vitiates everything. We hold that to prevent illegality and fraud being perpetuated the matters are liable to be dismissed.

15. We do not find that the Scrutiny Committee has committed any illegality or perversity by passing impugned judgment and order.

16. Both the writ petitions are dismissed.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]