

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

**WRIT PETITION NO. 9293 OF 2023**

Komal Yashwant Dhabe,  
Age 26 years, Occ. Education,  
R/o. Rawla, Tq. Soegaon,  
District Aurangabad

... **Petitioner**

VERSUS

1) The State of Maharashtra  
Through the Secretary for  
Tribal Development Department  
Maharashtra State,  
Mantralaya, Mumbai.

2) The Scheduled Tribe Scrutiny  
Committee, Aurangabad Division,  
Aurangabad.  
Through its Secretary.

... **Respondents.**

...

Advocate for the Petitioner : Mr. V.D. Hon, Senior Advocate i/b Mr. A.V. Hon.  
A.G.P. for the Respondents/State : Mr. S.G. Sangale.

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

**DATE : 04.08.2023**

**PER COURT :**

By way of this 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 (hereinafter the Act) the petitioner is challenging the order passed by the respondent No. 2 which is a scheduled tribe -scrutiny committee constituted under Section 6 of the Act,

thereby confiscating and cancelling her tribe certificate as 'Naikada' scheduled tribe by resorting to Section 7(1) of the Act.

2. Though the committee has passed the impugned order only on 24<sup>th</sup> of last month, with the consent of the parties, the matter is taken up for final hearing since the petitioner who has already completed her M.B.B.S. is seeking to get admitted to the post graduation having appeared in NEET (PG) 2023 and the last date for uploading the documents as per the schedule is 6<sup>th</sup> of August.

3. The learned Senior Advocate Mr. Hon would submit that the whole approach of the committee is incorrect. It has proceeded with suspicion as if the petitioner and her family relations are up to some misrepresentation and fraud. The committee has ignored the oldest document of petitioner's great grandfather Dagdu Chandu of 1348 *Fasli* corresponding to 1938 A.D. wherein he has been described as 'Naikada'. He fairly concedes that though the petitioner had submitted a validity certificate and the affidavit of the validity holder one Ishwarsingh Raybhan Manja, the petitioner is not related to him by blood. However, he would further submit that there was another old document in the form of revenue record called '*Pahani Patrak*' wherein the petitioner's cousin grand fathers have been described as '*Naikada*'. This document is also a pre-constitutional entry and was sufficient for the committee to reach a conclusion in favour of the petitioner more so, when there was no dispute about the genealogy. Ignoring such old record, the committee has proceeded to discard the claim. It has relied upon several subsequent contrary entries ignoring the old favourable entries which have a greater probative value.

4. Mr. Hon would further submit that even the committee's observation referring to the recitals in the sale-deed executed by petitioner's father disowning the fact that he does not belong to any scheduled tribe has been misread by the committee. The sale-deed of the year 1980 referred to by the

committee in fact was not executed by the petitioner's father but he is a purchaser and therefore he was not the executant in the sense he was selling his property and was supposed to execute the sale-deed and subscribe to it. The observation and the conclusion of the committee is clearly perverse and arbitrary and the order be quashed and reversed.

5. The learned A.G.P would strongly support the conclusions drawn by the committee. He would submit that the committee has meticulously considered both the old records in the form of '*Pahani Patrak*' in the name of the great grand father Dagdu Chandu of 1348 *Fasli* and also the *Pahani Patrak* in the name of the petitioner's cousin grand father Chunnilal Dagdya and Ratilal Dagdya. It was noticed that both these entries were manipulated. The word '*Naikada*' was inserted subsequently in a different ink in the *Pahani Patrak* of 1348 *Fasli* and the names of Chunnilal and Ratilal were apparently inserted subsequently in a different ink and different handwriting in the other *Pahani Patrak*. The view taken by the committee is a plausible view and was sufficient to discard the petitioner's claim.

6. The learned A.G.P would further submit that on the contrary, there were several entries in the school and birth record of very many blood relations of the petitioner wherein they have been shown as belonging to '*Labhan*' caste which is completely different than '*Naikada*' scheduled tribe. He, therefore, submits that the plausible view taken by the committee on the appreciation of the material on the record may not be disturbed.

7. We have carefully considered the rival submissions and perused the papers including the original file made available by the scrutiny committee. Suffice for the purpose to begin with reiteration that the oldest entries would have a greater probative value as compared to the recent ones. Again, the entries made before Presidential Order notifying the scheduled caste and scheduled tribe would have the greatest probative value as compared to the entries made subsequent to the Presidential Orders.

8. Bearing in mind these propositions, if one examines the matter in hand threadbare, the claim of the petitioner hinges around the two old entries mentioned herein above namely the *Pahani Patrak* in the name of the petitioner's great grandfather Dagdu Chandu of 1348 Fasli describing him as '*Naikada*' and another *Pahani Patrak* in the name of petitioner's cousin grand fathers Chunnilal Dagdya and Ratilal Dagdya, both of which entries describe the incumbent/s as *Naikada*.

9. We, therefore, deem it appropriate to refer to these two pieces of evidence to ascertain how the committee has dealt with those. The committee has expressly observed that the officer of the vigilance cell had visited the Tahsil Office Bhokardan and had inspected revenue record of Survey No. 16 which stands in the name of Smt. Munnabai Javjemohan Lal wherein she was shown as '*Kastakar*'. However, the words '*Tarfe Dagdu Chandu Naikada*' (through Dagdu Chandu Naikada) was found to have been inserted in different handwriting and different ink. It contains coloured photo copies of the original register of *Pahani Patrak* obtained by the vigilance officer and available in the papers. It is conspicuous even to a naked eye that the original entry in respect of Survey No. 16 was in the name of Munnabai Javjemohan Lal. In the column of cultivation the original entry is '*Jatine*' meaning thereby that she was personally cultivating it. Below those entries where word '*Jatine*' is appearing word '*Tarfe Dagdu Chandu Naikada*' have been written subsequently and one can easily make out that it is in a different hand writing than the other writing in this row. If this is the state of affairs, no fault can be found with the committee in discarding this entry as manipulated one. We are of firm view that the observation and the conclusion of the committee in this regard is based on correct appreciation of the piece of evidence.

10. So far as the other old entry of Chunnilal and Ratilal is concerned, unlike the coloured photo copies were taken in respect of the aforementioned entry of Dagdu Chandu Naikada, the vigilance officer does

not seem to have taken pains in obtaining a coloured photo copy of the Pahani Patrak, which is the other piece of evidence so that one could examine the observations and conclusions of the committee regarding its genuineness. Only a photo copy which is in black and white has been obtained and we are unable to objectively assess the observation of the committee regarding even this entry being forged one. Even the photo copy available on the record does not mention it being a *Pahani Patrak* of the year 1956. In our considered view, it would have been better for the committee to have insisted for a coloured photo copy of the relevant page of that register. In fact, in such matters where the handwriting and the entries are doubtful it is always appropriate that the photo copies of few earlier pages and latter pages together with the first page of the relevant register are solicited to draw the inferences based on objective material more so when the genuineness of the entries is under cloud. This is merely a photo copy of one page of the concerned register wherein some matter seems to have been added subsequently while issuing the certified copy like heading and the year. The alleged entry at Sr. No. 47 being relied upon by the petitioner is in one of the columns which is at the extreme top and the whole entry and the writing therein is not even visible. The committee has made a drastic observation that the entries therein in the name of Chunnilal Dagdya and Ratilal Dagdya as '*Naikada Rakhwal*' being inserted subsequently. It will have to scrutinize minutely and this is not possible unless either the original register is examined by the committee or at least a clear coloured photo copies of not only the relevant page but atleast a page before and after that page and the first page of the register is obtained to ascertain the particulars of the individual columns.

11. It is to be borne in mind that it is not an adversarial litigation, the petitioner is claiming a social status and seeking to substantiate it by this old entry which if it turns out to be genuine it would be decisive having greater probative value than the subsequent adverse entries of the blood relations

showing them to be '*Labhan*'. Precisely for this reason, in our considered view, the matter needs to be remanded to the committee to undertake a fresh scrutiny in the light of the above observations instead of terminating the matter at this stage by subscribing to the conclusions of the committee.

12. In view of such limited purpose, we feel it appropriate that the matter is remanded to the committee for its decision in accordance with law afresh. It would extend even opportunity to the petitioner to substantiate her claim.

13. The Writ Petition is partly allowed. The impugned order is quashed and set aside. The matter is remanded back to the respondent No. 2-Scrutiny Committee for decision in accordance with law and in the light of the above mentioned observations. The Committee shall permit the petitioner to lead additional evidence. The committee, may resort to further vigilance enquiry if it deems fit.

14. The petitioner shall appear before the committee on 11.08.2023 and the committee shall finally decide the matter as expeditiously as possible and in any case within six months from today.

( SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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