

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

WRIT PETITION NO. 7610 OF 2009

Rajmati d/o Bapurao Mane,
@ Sau. Mamta w/o Vikas Devsarkar,
Age 29 years, Occ. Agril & Social Work
R/o. At present Ekamba, Post Shiranjani,
Tq. Himayatnagar, Dist. Nanded.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra,
Through : The Secretary,
Social Welfare Department
Mantralaya, Mumbai.
- 2) The Divisional Caste Certificate
Scrutiny Committee,
Committee No. 2,
Through it's Chairman/Member,
Secretary, Aurangabad Division,
Latur.
- 3) Smt. Savita w/o Laxman Jadhav,
Age 32 years, Occ. Agriculture,
R/o. Warwadi, Post Pota (Bk),
Tq. Himayatnagar, Dist. Nanded.

... **Respondents**

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Advocate for the Petitioner : Mr. R. N. Dhorde, Senior Advocate, i/b Mr. V.R. Dhorde.

A.G.P for Respondent Nos. 1 and 2 : Mr. S.B. Yawalkar

Advocate for Respondent No. 3 : Mr. Sanjay Kumar Chavan

CORAM	:	MANGESH S. PATIL AND S.G. CHAPALGAONKAR, JJ.
RESERVED ON	:	25.01.2023
PRONOUNCED ON	:	03.03.2023

JUDGMENT : (PER : MANGESH S. PATIL, J.)

The petitioner is impugning the order of the Caste Scrutiny

Committee No. 2 Aurangabad Division, Latur (respondent No. 2) dated 06.11.2009 by which it has invalidated the caste certificate issued to her as 'Kunbi (OBC)' under the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (VimuktaJatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (hereinafter 'Act XXIII of 2001').

2. Learned senior advocate Mr. Dhorde would submit that the committee has discarded petitioner's claim in a slipshod manner and with a prejudiced approach. It has not assigned sound and cogent reasons for discarding the pre-independence documents substantiating her claim as 'Kunbi' but has readily accepted the ones produced by the respondent No. 3, who was questioning it. He would submit that ignoring the law laid down in the matter of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee and others; 2010(6) Mh.L.J. 401** the scrutiny committee has illegally refused to rely upon the validity certificates issued in favour of her relatives. The old record produced by the respondent No. 3 was not objectively scrutinized and has been readily accepted and used against the petitioner. No sufficient opportunity was extended to the petitioner to lead additional evidence or to call the witnesses for recording testimonies simply by observing that at some earlier point of time she had refused that opportunity and also on the ground that the decision was to be taken within the time stipulated by the High Court. This has resulted in grave miscarriage of justice. She has been deprived of an opportunity to lead evidence.

3. Mr. Dhorde would then submit that the whole exercise of undertaking scrutiny of the petitioner's certificate by the Aurangabad Committee/respondent No. 2 is *void ab initio*. The caste certificate was issued by the competent authority at Pusad which was within the territorial limits of Amravati Division and any scrutiny about its validity ought to have been conducted by Amravati Committee and not by the Aurangabad Committee-respondent No.2. As per the government notification dated

14.09.2007 when different committees were constituted for defined territories, the Aurangabad Committee/respondent no. 2 did not have jurisdiction. Besides, as per the notification dated 14.09.2007 the composition of the Scrutiny Committee itself was void inasmuch as it was not presided over by the Additional Commissioner (Revenue). According to Mr. Dhorde in view of such composition, the matter would go to the root of the jurisdiction and even for this reason the decision of the Scrutiny Committee is null and void.

4. Per contra, the learned A.G.P. would support the order and the inference drawn by the Scrutiny Committee. He would submit that there were number of contrary entries which the petitioner failed to rebut. She failed to prove the genealogy. Merely filing affidavit of validity holder was not sufficient to dislodge the contrary entries.

5. As far as jurisdiction is concerned the learned A.G.P. would submit that the respondent No. 2-Scrutiny Committee has been constituted by a Social Welfare Department and not by the Tribal Department. The Tribal Department of the State had framed rules under the Act XXIII of 2001. No such rules were framed by the Social Justice Department which for the first time framed the Rules on 31.08.2012. Since the petitioner's claim as belonging to 'Kunbi (OBC)' falls under the Social Justice Department, the rules framed by the Tribal Department were not applicable. Even the scrutiny of the petitioner's claim earlier was done by the same committee. This Court in Writ Petition No. 5456/2008 had remanded the matter for decision afresh since the earlier order was an unreasoned order. He would submit that verification of the caste certificates under the Social Justice Department were being undertaken in accordance with the guidelines laid down by the Supreme Court in the matter of *Kumari Madhuri Patil Vs. Additional Commissioner; (1994) 6 SCC 241* till the rules were framed on 31.08.2012. He would, therefore, submit that the question of territorial jurisdiction of respondent No. 2-Committee, therefore, would not survive.

6. As far as composition of the respondent No. 2-Committee is concerned, the learned A.G.P. would submit that though by virtue of the notification dated 14.09.2007 a Caste Scrutiny Committee was supposed to be presided over by an Additional Commissioner (Revenue), a subsequent notification dated 14.07.2008 delegated such powers to the Additional Collectors (Selection Grade). Since the respondent No. 2-Committee was presided over by an officer of that rank, even the objection regarding its composition is not legally tenable.

7. Learned advocate for the respondent No. 3 obviously supported the conclusion of the respondent No. 2-Committee. He would submit that in order to rely upon the validities issued in favour of few individuals presupposes that the petitioner establishes blood relation with the validity holders which she has miserably failed. He would submit that this Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over the decision taken by the respondent No. 2-committee. The conclusions based on reasonable appreciation of material available before it cannot be disturbed. The committee has objectively demonstrated as to how there are contrary entries which are sufficient to refute petitioner's claim. It has also demonstrated reasonably the reason for not relying upon the entries submitted by her for want of proof regarding the blood relation. Additionally, though the respondent no. 2-Committee has not referred to a circumstance, even it is a fact that the petitioner's husband and his brothers' record demonstrate that they are 'Maratha' whereas the petitioner claims to be 'Kunbi (OBC)' and it is not her case about having solemnized an inter caste marriage. Even this circumstance would belie her claim of being 'Kunbi (OBC)'.

8. We have carefully considered the rival submissions and perused the record and even the decisions cited at Bar.

9. The committee in its impugned order has expressly observed that

the petitioner's claim comes under the Social Justice Department which did not have its rules framed under the Act of XXIII of 2001. Only the claims under the Tribal Department were having such rules. The scrutiny of the claims under the Social Justice Department, like the petitioner, were being considered in accordance with the guidelines in the matter of **Madhuri Patil (supra)**. This stand of the respondent No. 2-Committee in the impugned order could not be assailed by the petitioner. Nothing has been demonstrated to rebut this stand. It is aptly clear that separate rules governing the cases of *inter alia* OBC's have been considered under the guidelines of **Madhuri Patil (supra)** case, prior to framing of the rules namely Maharashtra Scheduled Castes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 framed under Section 18(1) of the Act XXIII of 2001. In view of such position in law, the submission of Mr. Dhorde that the respondent No. 2-Committee had no jurisdiction is not sustainable.

10. As far as objection regarding composition of the respondent No. 2-Committee is concerned, though by virtue of government notification dated 14.09.2007 the committees were supposed to be presided over by the Additional Commissioner (Revenue), considering the workload, as indicated in the subsequent government notification dated 14.07.2008, the powers were delegated to preside over the committee to the Additional Collectors (Selection Grade). *Ex facie*, respondent no. 2-Committee was headed by an officer of that rank and therefore even this objection needs to be refuted.

11. Now coming to the merits, as has been rightly submitted by the learned A.G.P., and the learned advocate for the respondent No. 3, though Act of XXIII of 2001 enables a person aggrieved by the decision of the Caste Scrutiny Committee to challenge its order before this Court, it is trite that this Court cannot sit in appeal while undertaking scrutiny regarding legality or otherwise of the order passed by the Scrutiny Committees. In other

words, right of appeal has not been provided by the statute. Consequently, the scrutiny to be undertaken by this Court is limited in ascertaining as to if the conclusions drawn by the respondent no. 2-Committee are borne out from the material that was available before it.

12. As can be noticed, the committee has elaborately considered all the material produced before it by both the sides. At the outset, it is necessary to note that there is no dispute about the fact that the petitioner's paternal side hails from Chatari Tq. Umerkhed Dist. Yavatmal, whereas, her matrimonial home situates at Shiranjani Tq. Himayatnagar District Nanded.

13. While appreciating the material that was produced by both the sides the committee noticed that the petitioner had miserably failed to establish the genealogy. It has pointed out that the genealogy submitted by the petitioner during earlier enquiry in the affidavit of one Smita Ramrao Mane who is also a validity holder did not mention that her great grandfather Krushnaji was also known as Devba which fact she improvised while submitting a fresh genealogy during the current enquiry, wherein she named him as Krushnaji @ Devba.

14. It was also noticed that improvising from the earlier lapse, she has shown that she is having in all four paternal uncles when earlier she had merely stated that only Bayaji was her paternal uncle. It was also noticed that for this reason the committee has refused to accept the pre-independence record showing that at least in some such record, there is an entry regarding 'Kunbi' disclosing that her paternal ancestors were in fact 'Kunbi'. For the very same reason the committee has also refused to grant any benefit to the petitioner on the basis of validities of similar claims issued in favour of few individuals. Though in the normal course, since it was not an adversarial litigation, the petitioner could have been extended an opportunity of lodging further evidence but the committee refused to grant her such permission firstly because at earlier point of the enquiry she had

expressed that she was not intending to lead any evidence and that the High Court had directed the respondent No. 2-Committee to take the decision within a stipulated time. But then, it is not that the decision of the committee is based on this circumstance alone.

15. As can be noticed, the committee also considered the revenue record in respect of agricultural lands which the petitioner had miserably failed to rebut and additionally was not able to produce a similar revenue record to demonstrate that the lands were inherited from the common ancestor so as to substantiate the genealogy which she intended to establish. She could have easily demonstrated to substantiate the genealogy submitted by her that the lands owned by the original common ancestor Mukinda were inherited by her great grandfather Krushnaji @ Devba which in turn were inherited by her grand father and in due course by her father and paternal uncles simultaneously. She did not do so.

16. As against which, the respondent No. 3 could produce on record the revenue record showing that different land were standing in the name of petitioner's father and her paternal uncles namely Gat Nos. 140, 141, 142, 144, 145, 177 and 667. As against this the committee has also referred to various mutation entries no. 1795, 314, 244, 1129, 1128 which were even verified by the Vigilance Cell and found to be genuine and showing that the lands Survey Nos. 194, 145, 145/1, 151, 151/5, 152 were belonging to one Yadav Mukinda, Abaji Mukinda, Ravji Mukinda which individuals are conspicuously absent in the genealogy furnished by the petitioner. Wherein though she has demonstrated Yadav Mukinda as brother of her great grandfather, the genealogy conspicuously omit to show names Abaji Mukinda and Ravji Mukinda as brothers of Yadav Mukinda.

17. It is, therefore, apparent that on the one hand the petitioner has not been able to produce the revenue record showing her father having inherited some agricultural land from common ancestor Mukinda and her

great grandfather Krushnaji was also known as Devba, she was also unable to rebut even the contrary revenue record in respect of the family in respect of whom these mutation entries have taken place namely Yadav Mukinda and his brothers.

18. Again, the committee has also referred to several contrary entries in respect of the petitioner's grandfather Maruti Devba and even her paternal uncles wherein consistently in the birth record and the school record their caste has been shown as 'Maratha'. The birth record of her grand father Maruti Devba dated 02.04.1945 of village Chatari Tq.Umerkhed Dist. Yavatmal mentions his caste as 'Maratha'. The school record of her paternal uncles Bhaurao, Bayaji, Devrao from the Zilla Parishad School Chatari wherein they were admitted on 07.04.1948, 17.06.1954, 14.06.1950 respectively mentioned their caste as 'Maratha'. Even the committee has referred to a similar school record of petitioner's father who was also admitted in that very same school on 01.07.1957 mentioning his caste as 'Maratha' albeit according to the petitioner her father was illiterate. Even discarding this certificate, the contrary entries in the birth of petitioner's grand father and school record of her real paternal uncles has been relied upon by the committee to discard her claim. Over and above, the committee has also demonstrated that even while petitioner's real brother Gajanan was being admitted to the same school on 01.07.1981, his caste was shown as 'Maratha'.

19. If such was the material before the Scrutiny Committee, in our considered view, the inference drawn by it was certainly based on the reasonable appreciation of the material and therefore a plausible one.

20. True it is that the petitioner was also relying upon an unregistered document styled as 'sale' dated 31.12.1968 to demonstrate that her great grandfather was stated to be 'Kunbi', but the committee has simply brushed it aside on the ground that it was an unregistered document. But then, by

virtue of Section 49 of the Registration Act, even an unregistered document is admissible in evidence for collateral purposes and cannot be outrightly declined to be looked into. But then, apart from the fact that it was not duly proved, it is dated 31.12.1968 that is after coming into force of the presidential order relating to the other backward classes which came into force in the year 1967. Besides, even if it is accepted that that document could be looked into, it did not have the potential of dislodging the strong contrary evidence that was available before the respondent No. 2-Committee of the period prior to this document seeing the light of day.

21. Taking an overall view and the reasoning given by the scrutiny committee, we do not find that its conclusion is either perverse, arbitrary or capricious.

22. The Writ Petition is dismissed.

23. The Rule is discharged.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

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