

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****Writ Petition No. 9404 / 2016**

Jaysurya Ramalu Bhandare

...Petitioner**Versus**

1. The State of Maharashtra,
Through its Secretary
Social Welfare Department,
Mantralaya, Mumbai.
2. The Divisional Caste Scrutiny Committee no.2,
Aurangabad Division Latur,
Dist. Latur.
3. The Registrar,
University of Health Science,
Mhasrul, Dindori Road, Nashik (E).
4. Dean,
Government Medical College,
Aurangabad.

...Respondents

Mr. Ameya Sabnis h/f Mr. Estling S. Murge, Advocate for the Petitioner.
 Mr. S. R. Yadav Lonikar, AGP for Respondents/State.
 Mr. J. R. Patil, Advocate for Respondent No.3.

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

DATE : 31 AUGUST 2023.**FINAL ORDER [SHAILESH P. BRAHME, J.] :**

. Heard both the sides finally at the admission stage.

1. The petitioner is challenging the judgment and order dated 08.10.2015 passed by the Scrutiny Committee, invalidating the caste claim of Madgi scheduled tribe. He is relying on the documentary

evidence to support his claim which is not properly appreciated by the Committee.

2. The learned AGP supports impugned judgment and order. He submits that the Committee has rightly rejected the caste claim because no documentary evidence was produced by the petitioner prior to 1950. He would further submit that the school record produced by the petitioner was not cogent and satisfactory to make out a case for Madgi scheduled caste. He would submit that the petitioner failed to make out the case for caste status from the vigilance report and the personal hearing.

3. It is the case of the petitioner that the members of Madgi scheduled caste are not educated enough. The relatives of the petitioner are illiterate. Madgi community is isolated and economically and educationally backward. Except the father, no relative of the petitioner has taken education.

4. The learned Advocate for the petition has placed on record the documentary evidence which was before the Scrutiny Committee in support of his claim. It is useful to refer to the genealogy for appreciating the documentary evidence. Petitioner's father is Ramalu, his brother is Vishal and his cousin uncle is Adilu.

5. The school record of the petitioner and his brother disclose caste as Madgi. The school record of 1969 of petitioner's father which is at page no.30 shows caste as Madgi. The school leaving certificate of his father also disclose the same caste. The school record of the cousin uncle Adilu shows caste as Madgi.

6. Petitioner's father caste claim was also referred to the Scrutiny Committee. A vigilance enquiry was conducted in his father's matter. It was adopted in the present matter. The report dated 18.03.2014 is placed on record at page no.48. The school record of petitioner's father at page no.30 is found to be genuine.

7. It is not mandatory in each and every case that a claimant should have the documentary evidence of pre-independence period. The material on record is to be considered on preponderance of probabilities. Here is a case where there is no validity certificate issued in the family. In this circumstance, we do not approve the finding recorded by the Scrutiny Committee for not producing old record prior to 1950 before the Committee.

8. Nothing adverse can be inferred from the vigilance report submitted in the matter of the petitioner's father. The school record of his father is also old one having some probative value. The learned AGP has not brought any circumstance on record to indicate that despite having documentary evidence available, the same has not been placed on record.

9. It can be seen from the record that the petitioner's father and cousin uncle have taken education to some extent. There is no possibility to have any other school record. The petitioner has relied upon the law laid down by the Division Bench in the matter of **Mahesh Pralhadrao Lad Vs. State of Maharashtra and Others**, 2009(2) Mh.L.J. 90. Paragraph No.8 and 9 of the judgment are relevant as under :

“8. We may now refer to section 9 of the Act which reads as under :-

“9. Civil Court powers to Competent Authority, Appellate Authority, and Scrutiny Committee -

The Competent Authority, the Appellate Authority and the Scrutiny Committee shall, while holding an enquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copy thereof from any Court or office; and
- (e) issuing Commissions for the examination of witnesses or documents.

From the reading of section 9, it is clear that the Competent Authority while holding an enquiry can exercise the powers of the Civil Court trying a suit as set out therein. Section 9 would not have been required, if the Committee had to proceed based only on documents which were prior to the Constitution or the pre-Presidential Notification notifying the Scheduled Castes and Scheduled Tribes and for that matter the Notification in respect of other castes that the Legislature thinks fit. To confer power on the Committee under section 9 or considering the oral evidence, presumes or pre-supposes the recognition by the Legislature about the inability on the part of many an applicant before the committees to produce documentary evidence. We need not proceed to examine the reasons for the inability of such parties to produce documents. The very fact that the Tribes and Castes are notified as Scheduled Caste and Scheduled Tribes is a recognition of their backwardness social, and economic. This reasoning would also be made applicable to other castes, considering the mandate of the Legislature as envisaged in section 9. A Committee, therefore, while conducting the verification for the issuance of the Caste Validity Certificate apart has to consider the documentary evidence produced, the report of the Vigilance Officer if called for and other evidence

which the applicant may lead in terms of section 9, and finally adjudicate the matter as a quasi judicial body, unfettered with the strict Rules of evidence, but bearing in mind the principles of natural justice and fair play. Though the strict the Rules of evidence will not be applicable, the principles thereof in the matter of consideration of documentary evidence and oral evidence have to be borne in mind.

On a consideration of the judgments of the Supreme Court and of this Court it would be clear that documentary evidence public or private as also oral can be considered by the Committee irrespective of the period. The Committee while considering the evidence will be guided by the similar tests which the Civil Court applies in the appreciation of evidence. The tests of preponderance of evidence will have to be considered considering the provisions of section 15 of the Act which bars the jurisdiction of a Civil Court. The consequence of rejection of a claim either as to tribe or caste will not be confined to the applicant alone, but to the future generations. Courts and Tribunals, therefore, while conducting the enquiry must bear these aspects in mind.

9. It is, therefore, clear that there is no requirement either under the Act or the Rules or the Judgments of the Supreme Court or of this Court that documentary evidence other than pre-constitution, pre-Presidential Notification or State Notification notifying caste or nomadic tribe to be excluded from being considered when a Committee considers an application for verification of Tribe/Caste status for the purpose of issuing a validity certificate. The procedure under the Rules is to enable the Committee if it is satisfied based on the documentary evidence of the claim to proceed to issue the validity certificate without conducting the Vigilance enquiry or asking the applicant to lead other evidence. It is only in that event that the committee is not satisfied from the documentary evidence produced on record about the genuineness of the claim the Committee then can call for the report of the Vigilance Cell. If the Committee still is not satisfied based on the Vigilance Report of the status of the applicant, then being given a show cause notice, it will be open to such applicant to lead other evidence. The burden lies on the applicant to satisfy by evidence oral or documentary on the applicant being issued a show cause notice about his claim. In answer to the show cause notice the Applicant can submit his reply and also apply to lead further evidence as contemplated in terms of section 9 read with Rule 12 of the

Rules. This contention is, therefore, answered accordingly. We, therefore, hold that all documents whether post or pre-Constitution or Presidential or State Notifications can be considered as also oral evidence, treated in the form of affidavit evidence. It will always be open to the Committee to examine the deponent of such affidavits or get verified their statements."

10. The petitioner is also relying upon the judgment in the matter of **Rajanna Ganganna Rashalawar Vs. State of Maharashtra and Others**, reported in 2022(4) Mh.L.J., to buttress the submission of the petitioner is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that *ipso facto* does not call for the rejection of the claim. As laid down in paragraph no. 12 of the judgment, we also propose to extend the benefit of doubt in favour of the petitioner.

11. In view of the principles laid down as aforementioned, we find that the petitioner is entitled to receive validity certificate of Madgi scheduled tribe. The approach of the Scrutiny Committee is hyper technical and unreasonable in rejecting the caste claim of the petitioner. We find that the impugned judgment is unsustainable.

12. We, therefore, pass the following order.

ORDER

- (i) The writ petition is partly allowed.
- (ii) The impugned judgment and order dated 08.10.2015 passed by the Scrutiny Committee is quashed and set aside.

(iii) The Scrutiny Committee shall issue tribe validity certificate of Madgi scheduled tribe to the petitioner forthwith.

(iv) The petitioner shall not be entitled to claim equities.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]