

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

WRIT PETITION NO.11974 OF 2021

Sarvesh s/o Govind Jethewar
Age : 21 years, Occu: Student
R/o. Daheli, Taluka Kinwat,
Dist. Nanded

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai
2. The Schedule Tribe Certificate
Scrutiny Committee, Aurangabad
through its Member Secretary
3. The State Common Entrance Cell,
Maharashtra State,
through its Senior Director,
8th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort,
Mumbai – 400 001

... **RESPONDENT**

...

Advocate for Petitioner : Mr. S.R. Barlinge
AGP for respondent Nos.1 and 2 : Mr. A.S. Shinde
Advocate for respondent No.3 : Mr. S.G. Karlekar

...

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

Reserved on 10.07.2023

Pronounced on : 26.07.2023

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondent Nos.1 and 2, learned advocate Mr. Karlekar waives service for respondent No.3. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is challenging the order passed by the respondent No.2 – Scrutiny Committee in a proceeding under Section 7 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 (the Act) thereby discarding his claim as belonging to “Mannervarlu” scheduled tribe and seizing and cancelling the certificate issued to him by the competent authority.

3. Learned advocate Mr. Barlinge for the petitioner would take us through the papers and would submit that a genuine claim of the petitioner has been discarded by the Committee for no valid reason. There were no contrary entries. The school record of some individuals who are not related to him by blood have been relied upon. Some error in mentioning the name of the petitioner’s blood relatives has been heavily relied upon to jump to the conclusion that his claim was false. The committee has illegally applied the test regarding migration and has also unnecessarily invoked affinity test 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**. Though the committee has observed that some forgery was found in respect of the school record and the FIR was lodged, till date there is no charge-sheet at least to the knowledge of the petitioner.

4. Mr. Barlinge would then submit that merely because the petitioner was unable to produce any old record his claim could not have

been rejected. If his ancestors had not been to any school, he was obviously unable to produce any pre-constitutional school record. Whatever record could be produced and was recoverable by the vigilance was sufficient to draw inference of petitioner's being a scheduled tribe.

5. He would lastly submit that the contrary entries in the school record which describe the caste which in fact does not exist could not have been treated as a contrary entry.

6. Per contra, the learned AGP supports the order. He submits that no illegality is committed by the committee. By virtue of Section 8 of the Act, burden was on the petitioner to prove that he belonged to "Mannervarlu" scheduled tribe which he miserably failed. The school record of the blood relations describes the caste which cannot be treated as "Mannervarlu". He would then submit that the available record did not substantiate the petitioner's claim and in the absence of any evidence the committee had no option but to reject it.

7. The learned AGP would then submit that there was a serious allegation about the school record having been mutilated and forged by the petitioner's father. The FIR was lodged and crime was also registered. In any case, the documents on the record were not sufficient for the committee to rely upon. A vigilance inquiry was conducted, opportunity was extended to the petitioner to respond to the report. His reply has been taken into consideration and the affinity test was required to be applied which the petitioner failed to clear. There is no perversity or arbitrariness and the

petition be dismissed.

8. We have carefully considered the rival submissions and perused the papers.

9. At the outset, it is necessary to note that inability of a person to produce old school record to substantiate the tribe claim cannot be the ground for dismissing it for the simple reason that if the forefathers had not been to any school, an individual may not be able to produce the old record. We are making this observation because the petitioner was able only to produce the school record of his blood relations which are of the recent origin i.e. 1979 onwards.

10. Be that as it may, the committee has considered the school record of the petitioner's blood relations. Conspicuously, the committee also sought to rely upon some school record of individuals who according to him were not related to him by blood. But more importantly, in response to the vigilance report the petitioner denied that one Mohandas Sambanna was a member of his family. But in the affidavit, filed by him he expressly admitted that Mohandas was born to one Devtabai with whom his grandfather had some illicit relations. His grandfather had accepted not only Mohandas but his other brothers Ganpat Sambanna and Ramrao Sambanna as his children in accordance with the decision taken at the caste panchayat. The fact remains that Mohandas is related to the petitioner by blood and is being treated for all these years as such. Pertinently, affidavits of one Gangaram Narayan Karanjewar aged 90 years, Ganesh Kanhaji

Kachre aged 95 years from the same village were annexed by the petitioner with his reply to the vigilance report. Though these affidavits read that due to illicit relations between the petitioner's grandfather and that lady, the former had allowed his name to be used against these children as a father, in our considered view, since the caste comes from father and when the petitioner's grandfather had permitted the children to use his name obviously, it will have to be taken as the caste of petitioner's grandfather and it was correctly included in the school record of these children.

11. As can be seen, in the school record of Mohandas Sambanna the caste was shown as "Munurwar". There cannot be any dispute that "Munurvar" is a distinct caste and "Mannervarlu" is a scheduled tribe. Keeping aside the fact that merely because a crime is registered against the petitioner's father for alleged manipulation and forgery in the school record no inference is to be drawn for the time being, the fact remains that the school record of Mohandas expressly described him as "Munurvar" and is certainly a contrary entry which has been resorted to by the committee while discarding the petitioner's claim and in our considered view, rightly.

12. True it is that the petitioner in response to the vigilance report expressly denied his relationship with few persons whose school record has been referred to by the committee. Indeed, in the absence of any other evidence to demonstrate that these persons were the blood relations of the petitioner the stand of the committee to refer to it is clearly perverse and arbitrary.

13. However the fact remains that the burden is on the petitioner to establish his claim. The school record of Mohandas Sambanna reads that he was “Munurvar”. His grandfather was treating Mohandas as his son and therefore he would stand as petitioner’s paternal uncle, whose school record described him as “Munurvar” and not “Mannervarlu”. Pertinently, even the school record of the year 1979 of other relatives being relied upon by the petitioner is not emphatic to describe these other blood relations Shankar Sambanna and Sunnanda Sambanna who are paternal uncle and paternal aunt as “Munerwarlu”. When no such caste or tribe with such a nomenclature is recognized by law, Mr. Barlinge would seek to draw inference that such description could be a human error and should have been ignored.

14. We do appreciate the submission of Mr. Barlinge that it could be a human error when there is no legally recognized tribe or caste styled as “Munerwarlu”. However conversely, accepting this to be a human error, equally, it could not have been used to infer that what was really meant while recording the entry was “Mannervarlu”, more so when there are several caste from other backward category with a similarity in the name viz. Munnervar, Munnurvar, Munnur, Telgu Munnur, Munnurvar Telgu, Munnurkapu and Munnurwad. Therefore, even these entries could not have been relied upon by the scrutiny and could not have treated them to be in favour of the petitioner. We do not find any perversity or arbitrariness in the scrutiny committee, refusing to treat these entries as “Mannervarlu”.

15. In view of such a peculiar state of affairs, there was absolutely no evidence before the committee to substantiate the petitioner's claim as belonging to “Mannervarlu”.

16. Though the affinity taste is not a litmus test and has a limited application as has been laid down in the Matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.; 2023 SCC Online SC 326**, the petitioner even failed in that.

17. There is no substance in the petition. It is dismissed.

18. Rule is discharged.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)