

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11326 OF 2022

1) Anuja d/o Shivling Damayyaware,
Age 20 years, Occ. Education.

2) Aditya s/o Shivling Damayyaware,
Age 18 years, Occ. Education,
both r/o. Sagroli Tq. Biloli, Dist.
Nanded.

... **Petitioners**

VERSUS

1) State Common Entrance Test Cell,
Maharashtra, Mumbai.
2) Scheduled Tribe Certificate Scrutiny
Committee, Kinwat Dist. Nanded
(having its Headquarter) at
Aurangabad, through its
Member Secretary.

... **Respondents**

...

Advocate for the Petitioners : Mr. Mahesh S. Deshmukh.
Advocate for the Respondent No. 1 : Mr. M.D. Narwadkar
A.G.P for the Respondent No. 2 : Mrs. M.A. Deshpande.

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

RESERVED ON : **03.07.2023**
PRONOUNCED ON : **14.07.2023**

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

Heard. Rule. Rule is made returnable forthwith. The learned A.G.P. waives service of the Rule. At the request of the parties, the matter is heard finally at the stage of admission.

2. The petitioners who are the siblings *inter se* are challenging the judgment and order of the respondent No. 2- Scheduled Tribe Certificate

Scrutiny Committee Kinwat headquartered at Aurangabad (hereinafter 'committee') constituted under 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') whereby it has refused to issue validity certificates to them of 'Mannervarlu' scheduled tribe.

3. Perusal of the impugned order reveals that the committee has refused to grant validity certificates for following reasons :

(a) The Shikhmi register which is a revenue record of the year 1952 relied upon by the petitioners is not reliable.

(b) The favourable entries from the school record of the blood relations of the petitioners recording their tribe as 'Mannervarlu' were of recent origin, between 1979 to 1920 and were made with an ulterior motive to overcome several contrary entries.

(c) It was revealed during the vigilance enquiry that there were school record of seven individuals of the blood relations recorded between 1967 to 1976 mentioning their tribe as 'Munurwad' which is a special backward class, unlike the tribe 'Mannervarlu' which is a nomadic tribe and ethnicity of both these sects is distinct.

(d) The petitioners also could not get through the affinity test.

(e) In view of the provisions of Section 36 and 36A of the Maharashtra Land Revenue Code, 1966, there being no entry in the revenue record of the petitioners' forefathers

which otherwise ought to have been if really they were belonging to some tribe. Absence of such entry is indicative of they being non tribal land holders.

4. Learned advocate Mr. Deshmukh for the petitioners would submit that it is a third round of the matter reaching this Court. Already the petitioners were before this Court against the order of the self-same committee refusing to issue validity certificate. In Writ Petition No 2685/2022 by the order dated 14.03.2022 the matter was remanded to the committee for considering the old revenue record in the form of Shikhmi register of 1952. After having the recourse to the expert opinion regarding the doubtful entry, the impugned order has been passed. However, the inference drawn by the committee cannot be said to be consistent with the view expressed by the handwriting expert. No overwriting or alteration in the Shikhmi register was noticed. There was no reason for the committee to discard the old revenue record. The reasoning resorted to by it is perverse and arbitrary. So far as the genuineness of the entry is concerned nobody has expressed doubt about it except the committee. The register had come from the proper custody i.e. Tahsil office. It expressly refers to and describes the great grandfather of the petitioners as 'Mannervarlu'. This being the oldest entry carries greatest probative value and no amount of subsequent entries can displace/rebut it.

5. Mr. Deshmukh would submit that though there are seven entries of the blood relations in the school record referring them as 'Munurwad', there are several other entries in respect of few other blood relations as 'Mannervarlu'. It is not a mathematical calculation as to how many entries are favourable and how many contrary. Overall material that was available before the committee was indicative of and was sufficient to substantiate the petitioners' claim.

6. Mr. Deshmukh would then submit that even the observations of the

committee to place reliance on the affinity test is no longer sustainable in the light of the recent decision of the Supreme Court in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326**. By passage of time and tribes being integrated and brought into the main stream, no inference can be drawn merely because during vigilance enquiry the petitioners family members failed to strictly vouch about the traits and customs.

7. Per contra, Mrs. Deshpande learned A.G.P would submit that the committee has inspected the original Shikhmi register and has precisely noted that the entry being relied upon by the petitioners and expressly quoted in the impugned order is in Urdu and the handwriting and the ink in respect of that entry in the name of the petitioners great grandfather referring to him as 'Mannervarlu' is an entry which does not match with the rest of the handwritten contents which is either in Devnagari or in Urdu. This was the exceptional entry appearing in that register against the name of the petitioners' great grandfather. Since it is a matter of inference to be drawn, the committee has rightly entertained doubt about its insertion at a later point of time with an ulterior motive. This Court not being an appellate court can not exercise the powers so that the evidence collected by the committee could be reappreciated independently. The committee having taken a plausible view on the appreciation of the material, this Court in exercise of the powers under Article 226 of the Constitution of India cannot upset it.

8. Mrs. Deshpande would then submit that though it is not a matter of mathematical calculation for the purpose of weighing the number of favourable entries against the number of contrary entries, except the doubtful old entry in Shikhmi register, the subsequent seven older entries in the school record were contrary wherein the petitioners' blood relations were described as 'Munurwad' which is a special backward class. These entries were of the period between 1966 and 1978 of near blood relations

from the paternal side whereas the subsequent favourable entries in the school record as 'Mannervarlu' were of the period between 1979 and 2022. Obviously the older entries consistently showing the school record of the blood relations as 'Munurwad' would prevail over and weigh more than the subsequent favourable entries.

9. Mrs. Deshpande would then submit that if really the petitioners belong to a scheduled tribe, the revenue record ought to have reflected that status in view of the provisions of Section 36 of the Maharashtra Land Revenue Code.

10. Lastly, Mrs. Deshpande would submit that the decision in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)** does not outrightly and in all the matters discard the recourse to an affinity test. In an appropriate case, a recourse to affinity test can be taken. The petitioners have miserably failed to stand up to that test and the decision under challenge cannot be upset.

11. We have carefully considered the rival submissions and perused the papers including the original file of the committee. We shall begin by laying an emphasis on the point of law. By virtue of the provisions of Section 8 of the Act the burden is on the person to prove that he belongs to a particular scheduled caste or scheduled tribe. Though a strict proof is not necessary he should be able to establish his claim on preponderance of probabilities. Therefore, it is not for the committee to seek the evidence but for the claimants to lead evidence to substantiate their claims. As has been laid down in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)** the claimants have to first produce the documents. If the committee entertains a doubt about such record it is supposed to have a report of the vigilance under Section 12. The claimants are entitled to reply to the report when its copy is served to them and may thereafter lead evidence to substantiate the claim. Bearing in mind such state of law let us

advert to the facts and evidence.

12. Admittedly, the petitioner sought to rely upon the Shikhmi register of the year 1953. The original record was called from the concerned office of Tahsildar. It is entry No. 241 of 13.02.1351 Fasali (1941 A.D.). The committee raised a doubt about genuineness of this entry for the reason that though this entry was made with a date 13.02.1351 Fasali (1941 A.D.) it was found in a register of the year 1953 A.D. The rest of the entries in that register were in blue ink whereas the doubtful entry was in Urdu script and with a ball pen and in dark ink. The committee also permitted the petitioners' advocate to examine the Urdu teacher who translated that original entry. It was also referred to the handwriting expert which opined :

“Video spectral comparator observation of the Exhibit reveals that ink of written matter of question site ‘Ex1 Q1’, ‘Ex2 Q2’ (urdu language script) and ink of written at question site ‘Ex3 Q3’ (Marathi language Script) do not tally among themselves, however no any overwriting, fiber disturbance and alterations’ observed in all question sites”.

Based on such opinion and for aforementioned reasons the committee entertained a serious doubt about its acceptability.

13. We have personally gone through the coloured photo copies of the Shikhmi register and particularly the pages including the page containing the entry of the great grandfather of the petitioners, about transcription of which there is no dispute and reads as under :

मिसल नं. २४१

१३.०२.५१ फ

मयत पटेदार मुसमी भूपन्ना शिवन्ना दमयावार

ने सर्व क्र. ४२१ एकूण २२/३५ नु मालगुजारी

४१/ रुपये हकदारचे मुले मुसमी शिवन्ना नरसय्या

मन्नेरवारलू ला बरोबर हिसा शिक्मी मंजूरी आहे.

सही/-

14. The committee has entertained a doubt about its acceptability on the ground that the entry is stated to be of 1351 Fasali, (the committee has erroneously referred to as 13.02.1952 Fasali when it ought to have been 13.02.1351 Fasali), but the register is of the year 1953 A.D. The entry of some previous year is recorded. It is a circumstance which according to us is a plausible circumstance to substantiate the inference being drawn by the committee. If it is a register of 1953 A.D. the appearance of the entry purportedly recorded in 1941 which is corresponding to 1351 Fasali, even if the committee wrongly mentions it to be of 1952 A.D. is indeed a circumstance which can create a doubt as being entertained by the committee. It is not a matter as to if the contents of this entry are factually correct or otherwise. However, the committee entertains a doubt about it having been incorporated in the normal course of event of passing of the order. In our view, the reasons for which the committee entertains a doubt are based on a plausible appreciation of the circumstances.

15. True it is that this Shikhmi register contains the entries in the main columns, both in Devnagari as well as Urdu script. It is also true that the disputed entry is also in Urdu. However, *ex facie* even to a naked eye we have noticed that these entries in Marathi and the rest of the entries in Urdu and the disputed entry in the margin which clearly appears an odd entry are in different inks. If this is an additional reason for the committee to entertain a doubt, in our opinion it cannot be legally questioned. It is a matter of inference to be drawn on the basis of material available to the committee.

16. This Court while exercising the powers under article 226 of the Constitution of India cannot exercise the powers of an appellate Court to undertake a fresh scrutiny of the evidence. We can only examine as to if the view taken by the committee is based on a plausible appreciation of material. In our considered view, the reasons for the committee to not rely upon this entry in the Shikhmi register is based on a plausible appreciation

of the facts, circumstances and the evidence that was before it. We only record the above observations to examine if the inference can be said to be perverse or arbitrary. In our view it is not.

17. This leaves us with rest of the circumstances. Admittedly, the school record of the petitioners' blood relatives from the paternal side, incorporated in the impugned order, for the period between 1967 and 1976 consistently mentioned them to be belonging to 'Munurwad' which is a special backward class, whereas only the entries in the school record of the blood relations for the subsequent years 1979 onwards refer to them as 'Mannervarlu'. Though it is not a matter of mathematical calculation, when there are several contrary older entries of 'Munurwad', their probative value would certainly be more than the favourable entries of 'Mannervarlu' for the subsequent period.

18. In fact this could be another reason for the committee to entertain a doubt about the favourable entry in the Shikhmi register. Even if the committee has not mentioned it in so many words, indeed it is a matter to entertain a doubt. If the great grandfather of the petitioners was being treated by the society as 'Mannervarlu' and even the revenue record reflected this fact in 1941 A.D. there should not have been any reason or occasion for the school record of the blood relations which is *inter alia* of the real paternal uncle of the petitioners to show him to be 'Munurwad'.

19. Pertinently, in case of Kumari Damyyawar Padminbai Hanmalu stated to be the cousin sister of grand father, the initial entry in the school record as 'Salewar' was scored off and replaced by 'Munurwad'. This entry is of 13.06.1967. Meaning thereby that the entry 'Salewar' was objectively replaced by 'Munurwad' which would indicate assertion of the fact of pupil Padminbai being 'Munurwad' and not 'Mannervarlu'.

20. Giving a leeway to the petitioners in respect of absence of entry in the revenue record of the family describing them to be belonging to tribe in

view of provision of Section 36 and 36A of the Maharashtra Land Revenue Code and also giving them a leeway and concession from the affinity test in view of the observations in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)**, the aforementioned facts, circumstances and evidence referred to and relied upon by the committee for discarding the petitioners' claim is clearly based on a plausible appreciation of evidence. By no stretch of imagination can it be said to be perverse or arbitrary, in the absence of which this Court in exercise of powers under Article 226 of the Constitution of India find it difficult to cause interference in the impugned order. It is a matter of appreciation of evidence. The committee, in our considered view, has appreciated it in the proper perspective and has reached a plausible conclusion.

21. There is no merit in the Writ Petition. It is dismissed.

22. Rule is discharged.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-