

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3523 of 2023

Ku.Arundhati Ravindra Kalmegh,
Age about 19 years, Occupation-Student (Candidate-aspirant
for admission to Medical Science Courses),
R/o At Plot No.144, Sant Tajeshwar Nagar,
Hudkeshwar, Nagpur, Dist. Nagpur-440034
(Mobile No.7387922987,
Email Id:arundhati.kal@gmail.com) **PETITIONER**

..V E R S U S..

The Joint Commissioner cum Vice-Chairman,
The Scheduled Tribe Certificate Scrutiny Committee,
Giri Peth, Nagpur-440 010
tcscnagpur@gmail.com ..**RESPONDENT**

Shri S. P. Khare, Advocate with Shri N.D.Jambhule, Advocate for petitioner.
Shri A.S.Fulzele, Additional Government Pleader for respondent.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
DATE :- 9th AUGUST, 2023

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

Since the petitioner seeks to pursue further education, the writ petition is taken up for final disposal with the consent of the parties.

2. The petitioner has challenged the order dated 16.05.2023 passed by the Scrutiny Committee, Nagpur invalidating the petitioner's claim of

belonging to 'Mana' Scheduled Tribe. Inter-alia, it is the case of the petitioner that her two blood relatives namely Lalit Wasudeorao Kalmegh and Suyog Rajiv Kalmegh have been issued validity certificates by the very same Scrutiny Committee, Nagpur. The earlier order of invalidation passed by the said Scrutiny Committee was the subject matter of challenge in Writ Petition No.7424 of 2022 (*Arundhati Ravindra Kalmegh vs. The Joint Commissioner cum Vice-Chairman, The Scheduled Tribe Certificate Scrutiny Committee, Nagpur*) and by the judgment dated 23.12.2022 the proceedings were remanded to the Scrutiny Committee to consider the effect of grant of validity certificate to the petitioner's cousin brother - Suyog. Since that validity certificate had not been placed before the Scrutiny Committee, the said direction was issued. Pursuant thereto the Scrutiny Committee reconsidered the matter alongwith the said validity certificates issued to Lalit and Suyog. The Scrutiny Committee has observed that there was no vigilance enquiry in the case of Lalit and hence the validity certificate as issued was without following the procedure prescribed. As regards the validity certificate of Suyog, it has been stated that document of 1934 pertaining to Laxman Ragho with the entry 'Kunbi' had not been considered therein. Said Suyog had admitted that he was agreeing with the said entry and on that basis the Scrutiny Committee observed that the said validity certificate also could not be relied. In view of entry 'Kunbi' in the 1934 document, the petitioner's claim was invalidated.

3. Shri S. P. Khare, learned counsel for the petitioner invited attention to the order dated 26.06.2007 passed by the Scrutiny Committee, Nagpur, to indicate that since the Scrutiny Committee was satisfied with the documents submitted by Lalit his claim was upheld. In view of Rule 12 (2) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (for short, the Rules of 2003), the validity certificate could not be doubted. He further submitted that one of the members of the Scrutiny Committee that passed the order dated 26.06.2007 in the case of Lalit was also a part of the present Scrutiny Committee as its Vice-Chairman and was party to the order impugned herein. There was no reason for the Scrutiny Committee to disregard the earlier order in these circumstances. As regards, the grant of validity certificate to Suyog, it is submitted that a vigilance enquiry was held in the said matter and thereafter the Scrutiny Committee on 13.03.2020 passed an order upholding the claim of Suyog and directing issuance of validity certificate. Here too, he pointed out that one of the members of the Scrutiny Committee that passed the said order was also the member of the Scrutiny Committee that has passed the impugned order.

As regards the entry of 1934, the same was disputed by the petitioner. He invited attention to the statement of Tukaram s/o Laxman Ragho that was recorded by the Vigilance Cell on 25.05.2022 which indicated that when Laxman Ragho, the father of Tukaram expired in the year 1998 his age was 87 years. As per the documents collected by the

Vigilance Cell, the school admission register at entry No.2596 showed the date of birth of Laxman Ragho as 01.07.1927 with the entry 'Kunbi'. He therefore submitted that if the age of Laxman Ragho was 87 years when he expired in 1998 his date of birth could not be 01.07.1927 that was relied upon by the Scrutiny Committee. It was thus submitted that since all other entries relied upon by the petitioner had the entry 'Mana', the claim of the petitioner ought to have been upheld by the Scrutiny Committee. The oldest entry relied upon was of the year 1941 and 1947. The learned counsel placed reliance on the decisions in *Anand vs. Committee for Scrutiny and Verification of Tribe Claims and others* [2011(6) Mh.L.J. 919], *Santosh s/o Patiram Gaikwad vs. State of Maharashtra and others* [2020(2) Mh.L.J. 143], *Writ Petition No.2523 of 2009* (Ku.Priya d/o Purshottam Nagore vs. The Caste Scrutiny Committee, Nagpur and ors) decided on 29.03.2010, *Writ Petition No. 5481 of 2018* (Manisha d/o Pundlik Dadmal vs. The Vice-Chairman/Member Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee and ors) decided on 30.08.2018, *Writ Petition No.356 of 2022* (Ku.Manisha M.Gadmada Vs. The Scheduled Tribe Certificate Scrutiny Committee, Amravati and ors.) decided on 24.01.2022 and the judgment of the Hon'ble Supreme Court in **Special Leave to Appeal (Civil) No. 23081/2010** (*Anita A.Gaikwad..vs. State of Maharashtra and ors.*) decided on 16.04.2013 in support of his contentions.

4. Shri A.S.Fulzele, learned Additional Government Pleader opposed the aforesaid submissions and supported the order passed by the Scrutiny Committee. It was pointed out that since Suyog had accepted the entry of 1934 with the word 'Kunbi', the petitioner could not rely upon that validity certificate. The Scrutiny Committee was also justified in observing that validity certificate to Lalit had been granted without vigilance enquiry. Since the claim of the petitioner had been rejected after considering the entire material, no interference with the impugned order was called for.

5. We have heard the learned counsel for the parties and we have perused the record of the Scrutiny Committee. The petitioner's relationship with Lalit and Suyog has been indicated in the family tree and it is clear therefrom that they are blood relatives of the petitioner. The Scrutiny Committee on 26.06.2007 while granting validity certificate to Lalit passed the following order:

"The case of Shri Lalit Wasudeorao Kalmegh (hereinafter referred to as an "applicant") has been referred to the Scrutiny Committee by the Tahsildar, Narkhed, Dist.Nagpur vide letter dated 27/02/07 for verification of his Tribe claim as belonging to Mana, Scheduled Tribe.

The Scrutiny Committee verified the proposal submitted by the applicant. The applicant has submitted requisite information in Form "E" as per Rule 11(1) and documents thereto as mentioned in Part IV-B along with his original caste certificate in support of his tribe claim.

The Scrutiny Committee has perused the information and documents submitted by the applicant and have appreciated the same. The applicant has established his affinity and ethnic linkage towards the people belonging to Mana, Scheduled Tribe community.

The Scrutiny Committee is fully satisfied after verifying the documents and proofs produced by the applicant in support of his tribe claim. The Scrutiny Committee has come to the conclusion that the tribe claimed by the applicant is genuine one and therefore, as per Maharashtra Act No.XXIII of 2001 and Rule 12(2), the said case has not been handed over to the Police Vigilance Cell of the Scrutiny Committee for detailed School and home enquiry and the Scrutiny Committee decided to give decision on merit.

The Scrutiny Committee has come to the conclusion that the documents placed on record are sufficient to prove applicant's tribe claim towards Mana Scheduled Tribe.

After considering the entire evidence on record, we, the Members of the Scrutiny Committee unanimously have come to the conclusion that the claim of the applicant, Shri Lalit Wasudeorao Kalmegh as belonging to Mana, Scheduled Tribe is established and proved. Therefore the caste certificate bearing R.C.No.1150/MRC-81/88-89, dated 10/07/89 issued by Executive Magistrate, Narkhed, Dist. Nagpur is held valid as per Hon'ble Supreme Court's decision in C.A.No.5270/2004. The validity of tribe certificate be issued accordingly to the applicant."

6. The said order clearly indicates that the Scrutiny Committee perused all documents as submitted and appreciated the same. It thereafter held that Lalit had established his affinity and ethnic linkage with 'Mana' community. On that basis, validity certificate came to be issued. In this regard, it is necessary to refer to Rule 12(2) of the Rules of 2003. It is only

in a case where the Scrutiny Committee is not satisfied with the documents produced that the claim can be referred for vigilance enquiry. Since the Scrutiny Committee itself was satisfied with the documents as submitted, it proceeded to issue the validity certificate. Pertinently, one of the members of the Scrutiny Committee that issued validity certificate to Lalit was also a member of the Scrutiny Committee that passed the impugned order in the capacity as its Vice-Chairman. It is surprising to note that despite having recorded its satisfaction in the order dated 26.06.2007, the Scrutiny Committee has chosen to disregard that validity certificate.

7. As regards the validity certificate issued to Suyog, the same is also pursuant to a detailed order passed by the Scrutiny Committee on 13.03.2020. Again, one of the members of the Scrutiny Committee was also a part of the Scrutiny Committee that passed the impugned order. That member was the Member Secretary of the Scrutiny Committee that passed the order dated 16.05.2023. The documents of 1941 and 1947 with the entry 'Mana' were considered therein.

8. The reasons assigned by the Scrutiny Committee for disregarding these two validity certificates is an entry of 1934 stated to be of Laxman Ragho, the great great-grandfather of the petitioner. Perusal of that entry indicates that Laxman s/o Ragho was shown to be born on 01.07.1927 and he was admitted in school on 01.07.1934. The school record has the entry

‘Kunbi’. In the reply filed by the petitioner she has disputed her relationship with Laxman Ragho. The Vigilance Cell has recorded the statement of Tukaram @ Ramesh s/o Laxman Ragho on 25.05.2022. He has stated that his father Laxman expired in 1998 when his age was 87 years. On perusal of this statement recorded by the Vigilance Cell itself, it becomes clear that the document of 1934 relied upon by the Scrutiny Committee cannot be linked to said Laxman Ragho. If said Laxman Ragho was born on 01.07.1927, he would not have attained the age of 87 years in 1998. Moreover, there is no basis whatsoever to link this document with the family of the petitioner. In this regard, useful reference can be made to the observations made in para 19 of the judgment of the Hon’ble Supreme Court in *Anand* (supra). The same reads thus:

“19. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim.”

9. Since the Scrutiny Committee was satisfied that the documents produced by Lalit and Suyog which are also relied upon by the petitioner, it goes without saying that those validity certificates ought to have been given due weightage while deciding the petitioner’s claim. Besides the document

of 1934, there is no other material to doubt the claim of the petitioner. The entries of the year 1941 and 1947 support her claim. In the light of the decision of this Court in *Apoorva Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others* [2010 (6) Mh.L.J. 401], the petitioner is entitled to take benefit of the validity certificates issued to Lalit and Suyog.

10. For reasons aforesaid, the order passed by the Scrutiny Committee, Nagpur, on 16.05.2023 is set aside. It is declared that the petitioner has proved that she belongs to 'Mana' Scheduled Tribe. The Scrutiny Committee shall within a period of three weeks issue validity certificate to the petitioner. Till the validity certificate is received and as the petitioner is required to submit the validity certificate today at the Institute where she has secured admission, the petitioner can rely upon copy of this order to indicate that her claim of belonging to 'Mana' Scheduled Tribe has been upheld.

Rule is made absolute in aforesaid terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar..