

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

WRIT PETITION NO.4481 OF 2021

Deoram Vithoba Nandanwar, aged about 54 years,
Occup.Professor in Shri.Mathuradas Mohtata
College of Science, Umred Road, Nagpur, r/o plot
no.37,Bhande Plot, Umred, Road, Nagpur.

Petitioner

-Vs.-

1. The Scheduled Tribes Caste Certificate Scrutiny Committee, through its Member Secretary, Adiwasi Vikas Bhawan, Giripeth, Nagpur.
2. The Principal Shri.Mathuradas Mohata College of Science, Umred road, Nagpur.
3. ~~The Headmaster Chinteshwar Marathi Primary School, (Trimuty Nagar) i.e. N.M.C, School, Deshpande layout, Wardhaman Nagar, Nagpur-440008 (deleted as per Court's order dtd.19.04.2023)~~
4. Tahsildar and Executive Magistrate Arjuni Morgaon, District Gondia.

Respondents

AND

WRIT PETITION NO.4482 OF 2021

Madhukar Vithoba Nandanwar, aged about 51 years, Occup.Associate Professor, Bhivapur Mahavidyalaya Bhivapur, r/o Plot No. 24(b) Smruti Nagar, Umred Road, Dighori, Nagpur.

Petitioner

-Vs.-

1. The Scheduled Tribes Caste Certificate Scrutiny Committee, through its Member Secretary, Adiwasi Vikas Bhawan, Giripeth, Nagpur.
2. The Principal Bhivapur Mahavidyalaya Bhivapur, Bhivapur, Dist.Nagpur.
3. The Headmaster Chinteshwar Marathi Primary School, (Trimuty Nagar) i.e. N.M.C, School, Deshpande layout, Wardhaman Nagar, Nagpur-440008

4. Tahsildar and Executive Magistrate
Arjuni Morgaon, District Gondia.

Respondents

Mr.R.S.Parsodkar, counsel for the petitioners
Mr.A.S.Fulzele, Additional Government Pleader for respondent
No.1
Mr.S.M.Puranik, counsel for respondent Nos. 2 and 3.

**CORAM: A.S.CHANDURKAR AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 13th July, 2023

O R A L J U D G M E N T (Per : Vrushali V. Joshi, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The order dated 17.08.2021 issued by the Scheduled Tribe Caste Scrutiny Committee, Nagpur invalidating the caste certificate of the petitioners of 'Halba' Scheduled Tribe. The petitioners are recorded as 'Halba' (Koshti) in the Primary School leaving certificate dated 06.05.1974 subsequently, the correction in the caste as 'Halba' (Koshti) to 'Halba' is made by the prevailing Rules of School Code and allowed by Education Officer, Zilla Parishad, Bhandara vide letter dated 12.11.1981. The School Leaving Certificate also mentions the caste of the petitioners,as

‘Halba’. The petitioners brother Madhukar is also issued caste certificate of ‘Halba’ Scheduled Tribe on 24.04.1989. The grandfather of the petitioner Pundlik Pandurang is recorded as ‘Halba’ Scheduled Tribe on 17.03.1917 in School admission register of Chinteshwar Marathi Primary School, which is N.M.C School. The entry in the Dakhal Kharij Register of grandfather of the petitioners Pundlik Pandurang, entry No.4434 recording his caste as ‘Halba’ Scheduled Tribe.

4. The father of the petitioners Vithoba Pundlik since his family was actually doing the job of weaving, in the school admission entry under the column of occupation, the father of Vithoba is shown as ‘Koshti’. The petitioners have also obtained original Dakhal Kharij Register format entry. The records as regards the children of Pundlik i.e. Vithoba, Ganpat and Ghanshyam in respect of their occupation is ‘Koshti’ and the same is reflected because of mistaken writing in the school records. The petitioners have stated that in respect of ancestral Pundlik grandfather shows that they are ‘Halba’ Scheduled Tribe.

5. One Mr. Bhagwat Ghanshyam Wagh who maintains panji (Palm leaf inscription-Tadpatra) and called as Panjekar, who

is professional genealogist has systematically maintained pedigree tables in the community of 'Halbas'. The Hon'ble Apex Court in the case of *Sitaji and others Vs. Birendra Narain Chauhan and others* reported in *AIR 1954 SCC, 609* has upheld the evidential value as per 32(2), 32(6) of Indian Evidence Act, 1872 of such palm leaf inscription and genealogy. With the leaf manuscript, in which it is clearly mentioned that Kolhu, who is ancestor and is recorded as Halba. Kolhu has son Balu, Balu has son Wasudeo, Wasudeo has son Pandurang and Pandurang has son Pundlik and they are all Halbas.

6. The caste certificate of the petitioners are referred by respondent No.2 as per Government Resolution dated, 18.05.2013 to the respondent No.1 Caste Certificate Scrutiny Committee at Nagpur. On 25.07.2013 the respondent no.1 Committee referred the caste certificates of the petitioners to the Police Vigilance Cell for enquiry. The Police Vigilance Cell conducted the enquiry and submitted its report. As it is contrary to the judgment of the Supreme Court in Madhuri Patil's case, the petitioners submitted their details and exhaustive reply to the Police Vigilance Cell. The respondent No.1 Caste Certificate Scrutiny Committee decided the

caste claim of the petitioners on 17.08.2021 and invalidated the caste claim of both the petitioners.

7. The learned counsel for the petitioners has submitted that the petitioners grandfather Pundlik Pandurang is recorded as Halba on 17.03.1917. The admission Dakhal Kharaj register is observed to be doubtful and ignored which is clearly illegal, unsustainable in law.

8. Respondent No.1 has filed reply and opposed the writ petition stating that during the enquiry, Vigilance Cell has obtained school and revenue records in which the caste of the petitioners blood relatives has been found recorded as 'Koshti'. The father of the petitioners and uncle cousin brothers, cousin uncle, caste has been recorded as Koshti during the years 1943 to 1964 that is prior to post proclamation of Presidential Notification period the caste is found 'Koshti'. Therefore, these entries bear highest probative value of evidence, as the entries are recorded by the Government Officials in the course of their duties. The caste 'Koshti' is not enlisted in the list of Scheduled Tribes of Maharashtra.

9. The Vigilance Cell Report was against the claims of the petitioners. A complete copy of Vigilance Cell Report was sent to the petitioners along with show cause notice dated 28.07.2021 and they were called upon to appear before the Committee on 06.08.2021 along with all necessary documents and reply to the show cause notice. On 06.08.2021 both the applicants appeared before the Committee. The petitioners have submitted the copies of School and Service records in respect of their father, wherein the caste is found to be recorded as 'Koshti' during the years 1943 and 1957. The petitioner in Writ Petition No. 4482 of 2021 has also submitted same copies and the caste of the applicant mentioned as 'Halba Koshti' in the year 1974. In Secondary School admission register extract initially his caste is recorded as Halba Koshti, which was subsequently scored out and altered as 'Halba'. Near relatives from paternal side shows their entries 'Koshti' Caste, which is not enlisted in the list of Scheduled Tribes of Maharashtra.

10. The name of Pundlik Pandurang in the original school admission register of the years 1917-18, his name was found in last page. Said entry was found doubtful, therefore the enquiry officer has demanded the declaration register of Admission

Registration No.4434, promotion register, T.C. issuing entry register. The Headmaster stated that, said registers are not available in their School record. Therefore, the respondent had doubt about the document of the year 1917. During further enquiry the Enquiry Officer has obtained House record of the year 1951-1952, wherein the caste of the petitioners cousin grandfather Shri.Narayan Pandurang Nandanwar has been found recorded as 'Koshti'. It is expected from the petitioners for proving Socio-cultural affinity test, the petitioners must prove that, they and their family members are born and brought up in that society. It is essential to prove their biological affinity test also. All the above, information given by the petitioners does not match with the 'Halba' Scheduled Tribe. The respondent has further pointed out that the Halba Koshti', is the sub caste of 'Koshti' and is included in OBC category up to June, 1995, therefore, classified as SBC category.

11. The respondent relied on the judgment of The Hon'ble Apex Court in case of ***Raju Ramsingh Vasave Vs.Mahesh Deorao Bhiwapurkar*** reported in ***(2008) 9 SCC Page 54*** has observed in para 5 in detail and rejected the theory of sub-caste of 'Halbi' as 'Halba Koshti' and held that, there is no such caste as

‘Halba Koshti’. The Hon’ble Apex Court in the judgment dated 28.11.2000, *in Civil Appeal No. 2294 of 1986(State of Maharashtra Vs.Milind Sharad Katware)* reported in *(2001) 1SCC page, 4* held that ‘Halba Koshti’ cannot be treated as sub tribe of ‘Halba/Halbi’. The Hon’ble Apex Court in the case of *Madhuri Patil reported in AIR 1995 SC Page 94, Ravi Prakash Babulalsingh Parmar* reported in *AIR 2007 SC Page 295* and in the matter of *Sunil Murlidhar Thakur SLP No.4088/1999*, the applicability of affinity test is questioned in all these judgments. Because of validity of petitioners, the socio cultural affinity test as claimed caste in the present case. The caste entries of the petitioners father, the petitioners uncles, cousin brother, and cousin uncle and cousin grandfather are found recorded as ‘Koshti’. The respondent has given the names of 21 Nandanwar families, who took back their ‘Halba’ Scheduled Tribe claims of recorded as ‘Koshti’ as backward category. The real brothers of Deorao Vithoba Nandanwar and Maldhukar Vithoba Nandawar are real brother of Bhaurao Vithoba Nandanwar have obtained the validity certificate of ‘SBC’ which is suppressed by them. Hence prayed to dismiss the petition.

12. The caste claim of the 'Halba' of both the petitioners is invalidated on the ground that the documents initially were having entry of 'Koshti' and thereafter, the caste 'Halba' is mentioned. The document on which the petitioners relied is the document of the great grandfather of the petitioners Pundlik. Said document mentions caste as 'Halba'. That document is not considered as it was on the last page of the register. Only because, the entry of the admission register of Pundlik Pandurang dated 17.03.1917 is on the last page, therefore, the document is not considered. It is seen that the Headmaster, Municipal Corporation School Trimurtinagar has filed an affidavit in this Court stating that the petitioner's grandfather Pundlik was studying in the said school in 1917 and 1918. The petitioners have relied on the judgment of the Hon'ble Apex Court in the case of *Sayanna Vs. State of Maharashtra and others*, reported in (2009) 10 SCC 268, in which the Court has held that the Committee cannot invalidate the caste claims by assuming the claim is doubtful without examining the register and records. The finding of the expert's opinion and therefore, entire order of invalidation, ignoring the entry of the year 1917 admission extract of grandfather is illegal. The ancestral caste was given to grandfather, grandfather's caste is given to father and father's caste is given to the son.

When the grandfather's caste is recorded as 'Halba' on 17.03.2017 in the NMC Primary School, the said entry deserves acceptance. Merely because the caste of Vithoba is shown as 'Koshti' would not be material and of no consequence, because Vithoba would get the caste of his father Pundlik. The entire approach of the Committee in invalidating the caste certificate of the petitioner is unjust, causes grave injustice to the petitioners.

13. The Leaf Manuscript which is reliable as per the judgment of the Honble Apex Court, clearly mentions that 'Kolhu' who is ancestral and is recorded as 'Halba'. Kolhu has son Balu, Balu has son Wasudeo, Wasudeo has son Pandurang and Pandurang has son Pundlik and they all are Halbas, which tallies with the genealogical tree which is filed on record.

14. About affinity test, the recent judgment in the case of Maharashtra **Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra** reported in **2023 (2) Mh.L.J.785**, the Hon'ble Apex Court has observed that it is not a litmus test. The same cannot be the only basis for invalidating the tribe claim. With the passage of time all traits and customs cannot be expected to be followed. Considering the overall material on record, we

pass the following order:-

The order passed by the Scrutiny Committee on 17/08/2021 invalidating the petitioner's claim of belonging to 'Halba' Scheduled Tribe is set aside. It is declared that the petitioners have proved that they belong to 'Halba' Scheduled Tribe. The Scrutiny Committee shall within a period of four weeks from receipt of copy of this judgment issue validity certificate to the petitioners.

15. Rule is made absolute in the afore-stated terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(A.S.CHANDURKAR,J)