

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

WRIT PETITION NO. 1632 OF 2020

Santosh Narayansing Chavhan,
aged about 24, Occ. Student, r/o
Taroda, Th. Motala,
Distt.Buldhana.

Petitioner

-Vs.-

1. Committee for Scrutiny of Tribe
Claims, Amravati Division,
Amravati through its Jt.Director.

2. The Maharashtra University of
Health Science, Wani Road,
Nasik, Through its Registrar.

Respondents

Mr.N.R.Saboo, counsel for the petitioner.

Ms.Kalyani Deshpande, A.G.P for respondent-1

**CORAM:ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 29th MARCH, 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 petitioner has invoked the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India to assail the order passed by the respondent on 15.06.2018 by which his tribe claim of belonging to “Naikda Scheduled Tribe” has been invalidated. The petitioner is also further seeking a direction against respondent to issue “Naikda Tribe” Validity Certificate to him and declare that he belongs to “Naikda Scheduled Tribe”.

4. The proposal for validation of caste claim of the petitioner was forwarded on 14.11.2021 to the respondent Scrutiny Committee at Amravati. In caste claim of the “Naikda Scheduled Tribe” he has submitted six documents. The extract of school entry register of his grandfather Baburao Chavan, who while taking admission on 27.10.1955 recorded to be “Naikda Caste”. The extract of Kotwal register entry recorded on 17.03.1947 as per information given by great grandfather

Dalsram Chavhan, who recorded caste entry of “Naikda Caste”. Apart from these documents, the school record of other blood relatives which shown entry of Naikda Caste.

5. The petitioner after having passed NET-UG 2003 Examination obtained admission to Health Science Course namely, MBBS. Since, the caste claim of the petitioner was pending, the petitioner earlier filed Writ Petition No.3673 of 2013 for direction to D.M.E.R to consider the claim of the petitioner for admission. In the said petition, the direction to respondent Committee to decide caste claim within eight months was given and during the pendency, the D.M.E.R granted admission to the petitioner. The respondent Committee vide show cause notice dated 21.10.2016, called upon him to submit his say by observing that Vigilance Cell Report submitted to the said office by Police Inspector U.S.Gaikwad and opinion of Research Officer observed

that custom, rituals in Vigilance Enquiry of petitioner does not tally with of “Naikda Scheduled Tribe”.

6. The petitioner submitted his say to the report of Vigilance Cell as well as remark of Research Officer. The petitioner in his written argument dated 13.02.2017 disputed relationship with person Dalya, Dalsha and made grievance regarding no supply of documents relied by Vigilance in it's report which refer person showing Wanjari Caste. Vide application dated 10.08.2017, petitioner prayed before Committee to examine and record statement of person named in written submission to whom caste validity has already granted by Scrutiny Committee. Without deciding the application dated 10.08.2017, the Caste Scrutiny Committee passed the order and invalidated the caste claim of the petitioner.

7. The petitioner has submitted that he had already completed one year internship on 08.08.2019 and as per certificate of internship, completion certificate issued by the Government Medical College and necessary University Internship completion certificate is awaited. The counsel for the petitioner has argued that the Committee has not seen the documentary evidence which support the caste claim of the petitioner. The Committee has erred in relying on the documents of stranger relying Datya, Daliya and Dalsha, the petitioner disputed relationship with these persons. In absence of any evidence to show any relation with those persons, the Committee adopted perverse approach in concluding that relative of petitioner are recorded by caste Wanjari and Chambhar Wanjari.

8. The petitioner further urged that the Committee has relied on the invalidation of the caste validity of one Swati Naik, who is not relative of the petitioner and

therefore, prayed to set aside the order passed by the Caste Scrutiny Committee.

9. The Committee has filed the reply and objected the petition considering that during the Vigilance Cell enquiry, statement was recorded by one Khushal Revsingh Jadhav on 16.05.2016 and he has specifically stated that in the entire village, no one from Naikwada community resides. Owing to the cause of enquiry, the genealogy submitted by the petitioner itself shows that the contra entries were procured by the vigilance cell in enquiry, who are admittedly not blood relatives of the petitioner. At Taroda tq. Motala as non government member enquired in the characteristic of Naikada caste in Buldhana district and submitted it's report.

10. The petitioner in support of his tribe claim submitted validity certificate of Ku.Swati Tarasing Naik.

In the matter of Ku.Swati Tarasing Naik she suppressed the adverse entry of her blood relative i.e. Wanjari. The caste claim of father of Ku. Swati Tarasing Naik was pending before Amravati Committee. In the vigilance enquiry of her father the adverse entry as Wanjari of great grandfather and uncle were procured. Therefore, in the light of the judgment **Sangita Sharad Kolse Vs. State of Maharashtra**, reported in **2006 (5) ALL MR 565**, show cause notice dated 05.11.2008 was issued by the then Amravati Committee to Ku.Swati Tarasingh Naik and by conducting hearing dated 20.04.2009 and taking into consideration the adverse entry of above factual position passed the order dated 24.04.2009 and cancelled the validity certificate issued to Ku.Swati Naik.

11. The Committee has observed that the Socio Cultural Affinity and information furnished by the petitioner recorded during hearing vigilance enquiry and the report submitted by the vigilance cell officer clearly

shows that the petitioner could not prove her socio cultural affinity with Naikada Scheduled Tribe. After examining all the documentary evidence and information given by the petitioner at the time of hearing and by providing ample hearing opportunity to the petitioner, the Committee has rightly invalidated the tribe claim of the petitioner against Naikada Scheduled Tribe on 15.06.2018 by present reasoned and detailed explanatory order. Hence, prayed to reject the petition.

12. The petitioner has submitted the documents in support of the caste Naikada, document No.7 and 9 are not disputed by the respondent. The document dated 17.03.1947 shows that the great grandfather of the petitioner was from Naikada caste. Though the documents were filed by the petitioner no reasoning was given for rejecting said documents which were given for the Naikada Caste. The documents on which the Committee relied are 9 to 13, which reflects the Wanjari

Caste. The petitioner has denied any relationship with said persons, upon which the vigilance has relied upon. The validity certificates of the blood relatives are filed by the petitioner on record.

13. The Committee has relied on the document of one Swati Naik. The relationship is denied by the petitioner and in the genealogical tree her name is not found. The claim was rejected on the ground of affinity. The law is very clear on said issue. The affinity test is not a litmus test and recently, the Hon'ble Apex Court has observed in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra** in **Civil Appeal No.2502 of 2022** that affinity test cannot be conclusive either way. On the ground of affinity test, the claim cannot be rejected. As the Caste Scrutiny Committee has not considered the documents of the year 1947 and 1950 and relied on the documents which the petitioner has denied the relationship. The order passed

by the scrutiny committee is required to be set aside by allowing the petition. The writ petition is allowed as per it's prayer clauses (i) and (ii), which reads thus:-

i) To quash and set aside order dated 15.06.2018 passed by Respondent Caste Certificate Scrutiny Committee, Amravati through its Director) annexed to the petition at Annexure G.

ii) To allow the writ petition and by appropriate order be pleased to direct the respondent Scrutiny Committee to declare the Nikda Tribe claim of the petitioner as valid.

14. Rule is made absolute in the above terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(ROHIT B. DEO)