

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

WRIT PETITION 6978 OF 2018

Anmol Maroti Chaudhari,
(Aged about 22 years), Occupation Student -
1st year BAMS – AY 17-18-
education discontinued for want of validity
At Post Makkepalli, Tah. Chamorshi,
Gadchiroli 442 604.

.....PETITIONER

...V E R S U S...

1. District Caste Certificate Scrutiny
committee, Gadchiroli,
through its Member Secretary,
Campus Area, Gadchiroli 442 605

2. State of Maharashtra,
Department of Social Justice &
Special Assistance, through
its Secretary, 1st Floor, Annex Building,
Mantralaya, Madam Cama Road,
Mumbai 400 032

3. State of Maharashtra,
Medical Education & Drugs Department,
Through its Additional Chief Secretary,
9th Floor, G.T. Hospital Campus,
New Mantralaya, Lokmanya Tilak Road,
Mumbai 400 001

4. Bhausaheb Mulak Ayurved Mahavidyalaya,
thr its Principal, Nandanvan,
Nagpur- 440 009

5. Maharashtra University of Health Sciences,
Nashik, thr its Registrar, Dindori Road,
Mhasrul, Nashik 422 004

..RESPONDENTS

Mr. S.P. Khare, counsel for petitioner.
Mr. M.K. Pathan, AGP for respondents 1 to 3/State.
Mr. S. Ghube, counsel for respondent 5.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 19.04.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. With consent, heard finally.

3. The petitioner is assailing the order dated 20.6.2018, rendered by the respondent 1 – District Caste Certificate Scrutiny Committee, Gadchiroli (Scrutiny Committee) invalidating the caste certificate secured by the petitioner as “Zade” NT. The petitioner submitted nine documents and an affidavit spelling out genealogical tree for the Scrutiny Committee’s consideration. None of the documents submitted by the petitioner is anterior to the inclusion of the Zade caste in the Nomadic Tribe list.

4. The Scrutiny Committee directed a Vigilance Cell enquiry.

5. The findings of the Vigilance Cell are considered by the Scrutiny Committee thus:

(a) The Vigilance Cell verified the school certificate submitted by the petitioner. In the school record, the caste of the petitioner is recorded as Beldar. On the basis of an affidavit submitted by the father of the petitioner, the word “Beldar” is substituted by “Zade”.

(b) The next document considered by the Scrutiny Committee is the school record of the father of the petitioner. The Vigilance Cell found that at the entry 835, it is not the father of the petitioner who is named, the said entry pertains to one Meena Baburao Naitam – caste Gond. The entry of the father of the petitioner was found at serial 978 and the caste recorded is Kunbi. Significantly, the Vigilance Cell found that the Headmaster of the school stated that the certificate of the petitioner’s father is not issued by the school, and the same is fabricated.

c) The document 7/12 extract which pertains to the grandfather of the petitioner is ignored by the Scrutiny Committee since the document is posterior to 21.11.1961 which is the date on which “Zade” was included in the list.

(d) The record of rights extract pertaining to the grandfather of the petitioner is excluded from consideration, on the ground that the record does not make any reference to caste.

(e) The next document which is considered is the revenue map P-9 of the year 1946-47 which refers to the caste of the great grandfather of the petitioner as Zadya. The Vigilance Cell notes that since the documents on the basis of which Zadya is recorded are in torn condition, no further enquiry was possible.

(f) The Scrutiny Committee then tested the claim on the basis of affinity and held against the petitioner.

6. We have heard learned counsel Mr. S.P. Khare for the petitioner and learned AGP Mr. M.K. Pathan for the Scrutiny Committee and having considered the material on record threadbare with their able assistance, we have no hesitation in holding that the petitioner does not belong to the Zade-NT and the Scrutiny Committee did not commit any error in so holding.

7. It is well settled, and we may only refer to the Constitutional Bench decision of the Hon'ble Apex Court in *Nityanand Sharma and Another Vs. State of Bihar and Others, (AIR 1996 SCC 2306)* that while an enquiry is contemplated pre-presidential order, and indeed such an enquiry is expected, no further enquiry can be conducted after the Presidential Order is notified in order to ascertain whether the caste or tribe which is referred to as "B" is the caste or tribe included in the Presidential Order as "A".

8. It is not permissible for the Court to take recourse to an inquisitorial enquiry by referring to the publications or any other extrinsic evidence to ascertain whether a particular name is synonymous with the name which is mentioned in the Presidential Order. As articulated by the Hon'ble Apex Court wherever the Hon'ble President deemed it fit to include synonymous in the Presidential Order, the same has been done. Any inclusion or exclusion from the list in the Presidential Orders can be done not by the Court, but by the Parliament by framing an enactment as is envisaged under Article 341(2) or 342(2) as the case may be.

9. We are inclined to hold that similar approach will have to be adopted while interpreting or construing the entries in the list of Nomadic Tribe or Other Backward classes notified by the Government. Inasmuch as the entry with which we are concerned in the list of the Nomadic Tribe is "Zade". We would refrain from including or excluding from the list a tribe, and would rather leave the issue to the

Government to consider.

10. We note that there are entries of Kunbi and Zade-Kunbi which pertain to the paternal relatives of the petitioner. Learned counsel Mr. S.P. Khare is however, emphasizing the entry “Zadya” which according to him, was recorded in the revenue record pertaining to great grandfather of the petitioner in the year 1946-47. In our considered view, the said entry takes the claim of the petitioner no further. We have already articulated that the entry in the list must be read as it is and assuming that there is an entry “Zadya”, the same cannot be equated with Zade.

11. Mr. S.P. Khare would submit that it is averred in the petition that the father of the petitioner suffer from “mental problems” and is therefore, not in a position to explain the false school leaving record. Mr. S.P. Khare would further submit, that for want of proper advise, the petitioner did not seek an adjournment in the proceedings before the

Scrutiny Committee to take steps to correct and rectify the school record and the petitioner did not receive any advise to seek permission from the Scrutiny Committee to adduce additional or supporting evidence. It is then submitted that the petitioner is ready and willing to pay penalty or cost if an opportunity is given to lead further evidence and the matter is remanded to the Scrutiny Committee. Mr. S.P. Khare would finally submit that the Scrutiny Committee discussed the oral evidence in the form of the statements of the villagers which are recorded by the Vigilance Cell and for not recording reasons for discarding the 1946-47 document and for not accepting the earlier validities in the family. Mr. S.P. Khare would rely on the judgment dated 16.7.2018 in ***Writ Petition 3588/2018 (Suresh s/o. Sukhdeo Wankhede...vs.. District Caste Certificate Scrutiny Committee No. 2, Akola and others ("Suresh Wankhede")***.

12. Mr. S.P. Khare is relying on the decision in ***Suresh Wankhede*** in support of the submission that the petitioner did not get the opportunity mandated by Rule 17

sub-rule11(1) of the *Maharashtra Scheduled Castes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 ("Rules")*. We may extract the said rule verbatim.

Rule 17 Sub-rule 11(i) – In case of those cases which are referred to Vigilance Cell upon considering the ‘Report of Vigilance Cell’, if the Scrutiny Committee is not satisfied about the claim of the applicant, it shall call upon the applicant to prove his Caste claim, by discharging his burden, as contemplated under section 8 of the Act, by issuing a notice in FORM-25 coupled with copy of ‘Report of Vigilance Inquiry’;

13. We have scrutinized the averments in the petition and have noticed that in the entire petition, there is no ground raised much less ground for which factual foundation is laid, that there is breach of Rule 17 sub-rule11(i) much less any assertion that notice in FORM-25 coupled with copy of the report of the vigilance enquiry was not issued. To the contrary, we note from the order impugned that the petitioner was, as a fact, served with notice dated 7.4.2018 which was accompanied by copy of the Vigilance Cell report,

which the petitioner himself has placed on record.

By notice dated 7.4.2018, the petitioner was called upon to discharge the burden mandated by section 8 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste Certificate Act, 2000 (**“Act”**)). The petitioner responded to the notice dated 7.4.2018 vide reply dated 13.4.2018. It is not the case of the petitioner in the reply dated 13.4.2018, that he did not receive copy of the Vigilance Cell report. As a fact, the petitioner admitted that his father submitted an affidavit to the Headmaster on the basis of which the caste of the petitioner was changed from Beldar to Zade.

We further note that the petitioner did not express willingness to adduce evidence to discharge the burden of proving the caste claim.

14. In the factual matrix, the decision in ***Suresh Wankhede*** is of no assistance to the petitioner. In so far as

the submission that the validity in the family is not given weightage, the Scrutiny Committee has noted that the only validity certificate placed on record pertains to Mr. Bandu Doka Choudhary who the petitioner claims to be the son of cousin grandfather. The Scrutiny Committee has found that considering the distant relationship, and in the absence of the relevant documentary material, the claims of the petitioner shall have to be independently examined, with which approach, we find difficult to disagree.

15. On holistic consideration, we find that the conduct of the petitioner disentitles him from relief inasmuch as false and fabricated documents were pressed in service, and further that even *de hors* the said aspect, the Scrutiny Committee was justified in taking the view which it did.

16. The petition is dismissed.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

belkhede

Digitally Signed By:BELKHEDE
RAVINDRA SURESHRAO
P.A. to the Hon'ble Judge
Signing Date:23.05.2023 12:58