



Judgment

wp7120.23

1

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

WRIT PETITION Nos. 7120 WITH 7661 OF 2023.

....

WRIT PETITION No. 7120 OF 2023.

Amol s/o Anantrao Sonparote,
Aged 19 years, Occupation
Service, resident of Raipura,
Achalpur City, Taluka Achalpur,
District Amravati.

...

PETITIONER.

VERSUS

The Scheduled Tribe Caste
Certificate Scrutiny Committee,
through its Principal Secretary
and Deputy Director, Sanna Building
Opposite Government Rest House,
Chaprashipura, Amravati.

...

RESPONDENT.

Mr. A. Deshpande, Advocate for the Petitioner.
Mr. N.R. Patil, A.G.P. for the Respondent.

WITH

Rgd.

WRIT PETITION No. 7661 OF 2023.

Smt. Tara d/o Ramrao Sonparote @
Tara w/o Ravikar Hunge,
Aged about 57 years, Occupation
Service, resident of Shivaji Nagar,
Bangaon, Taluka Amgaon,
District Gondia.

... **PETITIONER.**

VERSUS

The Scheduled Tribe Caste
Certificate Scrutiny Committee,
through its Member Secretary
and Deputy Director, Sanna Building
Opposite Government Rest House Camp,
Amravati – 444601.

2.The Principal/Secretary,
Bhawabhuti Mahavidyalaya, Amgaon,
Talug and District Gondia.

3.The Secretary,
Bhawaghuti Mahavidyalaya, Amgaon,
Talug and District Gondia.

4.The Joint Director,
Higher Education, Nagpur.

... **RESPONDENTS.**

Mr. A. Deshpande, Advocate for the Petitioner.
Mr. N.R. Patil, A.G.P. for Respondent Nos.1 and 4.
Mr.S. Rajurkar, Advocate h/f. Shri A. Parchure, Advocate for
Respondent Nos.2 and 3.

**CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.**

DATE : JULY 02, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Petitioner Amol in Writ Petition No.7120/2023 is cousin nephew of petitioner Smt.Tara in Writ Petition No.7661/2023. Since they belongs to the same family, for the sake of convenience both the matters are taken up for hearing and are disposed of by this common judgment. Rule. Rule is therefore made returnable forthwith and with consent of the learned Counsel present for the parties, the matters are taken up for final disposal. The parties have referred to the documents in Writ Petition No.7661/2023 during the course of submissions.

2. Petitioner – Smt. Tara Sonparote claims to be belonging to ‘Halbi Scheduled Tribe’, which is enlisted at Sr.No.19 in the Constitution (Scheduled Tribes) Order, 1950. In the year 1989, the petitioner came to be appointed as a Full Time Lecturer with the

Rgd.

respondent institution on the seat reserved for Scheduled Tribe category. Caste certificate issued in her favour by the Sub Divisional Officer as belonging to 'Halbi Scheduled Tribe' was forwarded to the respondent Scrutiny Committee for the purpose of scrutiny and verification in the year 2006. The tribe claim was pending for years together and in the year 2014, the Scrutiny Committee called upon the petitioner to submit her tribe claim in new format, which direction was duly complied with. The Scrutiny Committee after verification by the police vigilance cell, issued a show cause notice to the petitioner, which was duly replied. Being dissatisfied, the Committee vide its order dated 30.06.2021 invalidated the tribe claim of the petitioner.

3. Being aggrieved by the said decision, the petitioner approached this Court by filing Writ Petition No.2477/2021, in which this Court vide its order dated 17.02.2023, remanded the matter back to the Scrutiny Committee for fresh consideration. The Scrutiny Committee has again issued show cause notice to the petitioner on 06.07.2023, which has been replied on 28.08.2023.

Rgd.

However, being dissatisfied with the same, the respondent Committee has once again rejected the tribe claim of the petitioner by the impugned order dated 16.10.2023. So far as Writ Petition No.7120/2023 is concerned, the tribe claim of petitioner Amol was forwarded to the Scrutiny Committee for scrutiny and verification. It was similarly rejected by the impugned order dated 12.10.2022.

4. The learned Counsel appearing on behalf of petitioners while assailing the impugned orders would contend that petitioners have produced pre-constitutional documents, however, they have not been considered. The vigilance cell has procured some documents showing caste of petitioner's forefathers as 'Sali' or 'Koshti', however, according to petitioners they do not belong to their family. It is submitted that petitioners have explained the adverse documents by filing reply to the show cause notice, however, the said reply has not been considered by the Committee. Moreover, the Committee erred in invalidating the tribe claim of petitioners on failure of passing the affinity test, despite existence of pre-constitutional documents. It is submitted that petitioner has produced oldest document of the year

1909 of her Uncle Narayan showing 'Halbi' caste which ought to have been considered while adjudicating her tribe claim. Lastly, it is submitted that the Committee erred in giving undue importance to unrelated documents collected by the vigilance cell.

5. The learned A.G.P. has resisted the petitions by contending that the tribe claim of petitioner Amol was invalidated. The adverse documents bears entry of 'Sali' and 'Koshti' caste, and thus the claim is unfounded. The petitioner also failed to establish affinity test with 'Halbi' Scheduled tribe.

6. Petitioners have produced in all 26 documents of their forefathers showing entry of Halbi caste. Petitioners have relied on some pre-constitutional documents which are at Sr.Nos.6 to 9, 11 to 14, 16 to 18, referred in the impugned order. All these pre-constitutional documents relating to petitioner's father, uncle, grand father, great grand father bears entry of Halbi caste. Particularly, petitioners have relied on the documents at Sr.No.12 which is a school leaving certificate of petitioner's uncle Narayan dated

7

11.10.1909, showing entry of caste Halbi. The Committee has merely stated that the documents at Sr.No.9 of petitioner grandfather Bapu cannot be relied, as original was not made available on account of deterioration. However, the Committee has not doubted about the genuineness of other old pre-constitutional documents produced by petitioners.

7. The impugned order discloses that the vigilance cell has collected some old documents showing 'Sali' and 'Koshti' entries. Particularly the Committee has relied on the extract of the year 2011 of petitioner's uncle Narayan showing Sali caste. In this regard, the petitioner has filed copy of reply [page no.232 of the petition], by which it is explained that the adverse entries does not relate to their family members. Particularly it is stated that the entry pertaining to Narayan reveals that it does not relate to petitioners native place i.e. Raipura, but, it was not considered. It is explained that the adverse documents at Sr.Nos.2 and 3 of Narayan of the year 1929 and 1949 are birth extract showing male child born to Narayan. It is stated that Narayan had three sons Vinayak, Manohar and Anant, who were

Rgd.

born in the year 1937, 1939 and 1941 respectively. Moreover, it is explained that the third document of the year 1949 which is birth extract of a female child born to Narayan named Yesubai is incorrect, since Narayan has only daughter namely Venutai. In that context we have gone through the genealogy which supports this contention. It reveals that the petitioners have specifically explained the old entries, however, the said reply has not been considered by the Committee. It is also contended that though the caste claim of petitioner – Amol was rejected, however, the said rejection has been challenged before this Court by way of present petition.

8. Petitioners have produced oldest documents namely School leaving certificate of her uncle Narayan [page no.137 of the petition] showing caste Halbi. It was followed by several documents as referred above, which clearly demonstrates availability of pre-constitutional entries of Halbi caste. Pertinent to note that the oldest document is of the year 1909, of which genuineness has not been doubted. The vigilance cell report neither states that either

those documents are fabricated or they are false. The Committee ought to have weighed the oldest documents of which genuineness is not in question. The adverse documents have been specifically explained by petitioners.

9. In so far as, affinity test is concerned, learned Counsel for petitioners relied on the decision of Supreme Court in case of **Anand .vrs. Committee for Scrutiny and Verification of Tribe Claim and others – 2011[6] Mh.L.J. 919**, wherein, it is held as under :

“18. .. (i)

.. (ii) *While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that*

tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

10. In the case of **Maharashtra Adiwasī Thakur Jamat Swarakshan Samiti .vrs. The State of Maharashtra and others – 2023** [2] **Mh.L.J. 785**, the Constitution Bench of three Judges of the Hon'ble Supreme Court referred the judgment in the case of Anand (supra).

10. The learned Counsel also relied on Maharashtra Adiwasī Thakur Jamat Swarakshan Samiti (supra), wherein, it is held that : *“(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion*

for the conduct of affinity test will arise.

(b).....

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case.”

11. On close examination of documents it reveals that consistently there is record containing pre-constitutional entries of Halbi caste. The oldest document is of the year 1909, showing caste entry as ‘Halbi’, which has to be weighed. In view of above, the orders passed by the Caste Scrutiny Committee is unsustainable and is liable to be quashed and set aside. It needs to be mentioned that since the petitioner Amol [Writ Petition No.7120/2023] also belong the same family, for aforesaid reasons, rejection of his tribe claim by the respondent Committee on 12.10.2020 would not sustain. Hence, the following order.

ORDER

[a] Writ Petitions are allowed and disposed of.

[b] The impugned order in Writ Petition

Rgd.

No.7120/2023 passed by the respondent Scrutiny Committee dated 12.10.2020, is hereby quashed and set aside. It is declared that the petitioner Amol Sonparote belongs to 'Halbi Scheduled Tribe' and accordingly respondent Scrutiny Committee is directed to issue validity certificate in favour of the petitioner as belonging to Halbi Scheduled Tribe within a period of 4 weeks from the date of receipt of this order.

- [c] The impugned order in Writ Petition No.7661/2023 passed by the respondent Scrutiny Committee dated 16.10.2020, is hereby quashed and set aside. It is declared that the petitioner Smt. Tara Sonparote belongs to 'Halbi Scheduled Tribe' and accordingly respondent Scrutiny Committee is directed to issue validity certificate in favour of the petitioner as belonging to Halbi Scheduled Tribe within a period of 4 weeks from the date of receipt of this order.

- [d] Rule is made absolute in aforesaid terms with no order as to cost.

JUDGE

JUDGE