



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

WRIT PETITION NO. 4457/2023

Kalpana d/o Keshavrao Barapatre,
Aged about 49 yrs., Occ. Service,
R/o. Sarmaspura, Achalpur,
Tq. Achalpur, Dist. Amravati.

...PETITIONER

VERSUS

1. The Schedule Tribe Caste Certificate Scrutiny Committee, through its Member Secretary and Deputy Director, Sanna Building, Opp. Govt. Rest House, Camp Amravati – 444 601.
2. Maharashtra State Electricity Distribution Company Ltd., through its Managing Director, Prakashgarh, Bandra (East), Mumbai.
3. Maharashtra State Power Distribution Company Divisional Office at Achalpur, through its Executive Engineer, CCOM, Achalpur, District Amravati.

.....RESPONDENTS

Mr. Ashwin Desphande, Advocate for petitioner.
Mr. V. A. Thakare, Asst. Government Pleader for respondent No.1.
Mr. A.D. Mohgaonkar, Advocate for respondent No.3.

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

DATE : 11.07.2024

ORAL JUDGMENT : (PER: VINAY JOSHI, J.)

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

2. The petitioner's caste claim for "Halbi" Scheduled Tribes which is enlisted at Serial No. 19 in the Constitution (Scheduled Tribes) Order, 1950 has been rejected by the respondent No.1 Committee vide order dated 20.06.2023 which is subject matter of challenge.

3. It is petitioner's contention that though petitioner has produced several documents including pre-constitutional entries showing "Halbi" caste, the Committee has not considered the same. The petitioner contended that merely on the basis of isolated adverse entry of "Sali" caste of the year 1949, the Committee rejected the caste claim. It is submitted that one adverse entry procured by the Vigilance Cell pertaining to the maternal grand-mother does not have bearing. According to the petitioner, reliance cannot be placed on the rejection of caste claim of her real brother since the said rejection was on account of the decision of the Supreme Court in case of **Milind**

Katware Vs. State of Maharashtra, 2001(1) Mh.L.J.1. explaining the status of the Scheduled Tribe.

4. The petitioner has produced in all 34 documents in support of his caste claim which are enlisted at Serial No. 1 to 34 in the impugned order. Particular emphasis is led on the documents at Sr. No. 4, 5, 6, 7, 8, 10, 24 and 34 which are pre-constitutional documents pertaining to the entry of “Halbi” caste. With the assistance of both side, we have examined those documents. The oldest document is a school leaving certificate of petitioner’s grand-father Jairam (page 90) dated 16.10.1903 having entry of “Halbi” caste. Likewise, there is extract of Dakhal Kharij Register of Jairam of the same date bearing entry of Halbi caste. The petitioner has produced Dakhal Karij Register extract of his father Keshao dated 18.07.1941 and Dakhal Kharij Register extract of his cousin grand-father dated 01.04.1922. He has produced school living certificate of his cousin grand-father Mahadeo 03.11.1920 and a school living certificate of real uncle dated 02.07.1946. We have examined these pre-constitution documents of the family members which bears entry of “Halbi” caste.

5. The Committee examined petitioner's caste claim through Police Vigilance Cell. The Committee has not doubted the genuineness of these old pre-constitutional documents. In the said background, we have examined the material placed before us. The Committee has stated that during vigilance inquiry, some adverse entries were found which are enlisted at Sr. No. 1 to 4 in para 7 of the order. First documents is a death extract of one Gupti dated 21.04.1920 having entry of "Koshti" caste. However, the said document being from the maternal side of petitioner, it cannot be considered. The learned counsel appearing for petitioner has rightly attracted our attention to Section 2(f) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 which specifies that the term "relatives", means a relative from paternal side. The second entry dated 10.07.1949 pertains to the cousin grand-father Mahadeo of "Sali" caste. The adverse entry of the year 1979 has been collected to which more weightage cannot be given on the background of various old documents produced on record.

6. Though the petitioner has denied the adverse entry dated 10.07.1949, however the worth is to be tested on the basis of rest of the documents. It is settled law that the oldest documents should be given a primacy. As noted above, there are pre-constitutional entries of “Halbi” caste in the document of the year 1903, 1922, 1941, 1946 which are at Sr. No. 4 to 8, 10, 24 and 34 as referred in the impugned order. On such background, it would be unjust to wash out the petitioner’s caste claim on the basis of isolated adverse entry. The Committee also considered the rejection of the caste claim of petitioners real brother Prashant. It appears that initially validity certificate was issued to Prashant, however by virtue of the Supreme Court decision Milind Katware (*supra*), the said claim was invalidated.

7. The Committee has also rejected the petitioner’s caste claim on the basis of failure in affinity test. 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.”

8. The petitioner has produced old documents right from the year 1903 of which the genuineness has not been doubted. In the wake of said position, the isolated adverse entry to our mind is not

potential to discard all constitutional series of old documents showing the entry of “Halbi” caste. As referred above, the oldest document is of the year 1903 to which the primacy is to be given. Careful examination denote that continuous, entries of “Halbi” caste are found on various documents right from the year 1903 onward.

9. In view of above, the Committee ought not to have rejected those documents and thus, the impugned order is unsustainable. In view of that, we pass the following order:-

(I) Petition is allowed. We hereby quash and set aside the impugned order 20.06.2023 passed by the respondent No.1, Committee.

(II) We hereby declare that the petitioner has duly established that she belongs to “Halbi” Scheduled Tribe which is enlisted at Serial No. 19 in the Constitution (Scheduled Tribes) Order, 1950

(III) Respondent No.1 Committee is directed to issue caste validity certificate to the petitioner of “Halbi” Scheduled

Tribe within four weeks from the date of communication of this order.

(IV) Petition stands disposed of in above terms.

(SMT. M. S. JAWALKAR, J.)

(VINAY JOSHI, J.)

Gohane