



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

WRIT PETITION NO.7032 OF 2023

Pravin s/o Satyawan Uikey, aged about
19 years, Occu. - Student, resident of
Khamtalao, at Post Borgaon (Davki),
Tahsil Deori, District Gondia.

... PETITIONER

VERSUS

1. The State of Maharashtra, through
its Secretary, Tribal Development
Department, Mantralaya, Mumbai –
400 032
2. Deputy Director ® and Member
Secretary, Scheduled Tribe Caste
Certificate Scrutiny Committee,
Gondia, District Gondia.

... RESPONDENTS.

Shri V.M. Kulsange, Advocate for the petitioner.
Shri B.M. Lonare, A.G.P., Advocate for the respondent nos.1 and
2.

CORAM : VINAY JOSHI AND SMT. M.S. JAWALKAR, JJ.
RESERVED ON : 01.07.2024.
PRONOUNCED ON : 05.07.2024.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **RULE.** Rule made returnable forthwith.

2. The matter is taken up for final disposal by consent of the parties.

3. The claim of the petitioner for “Gond” Scheduled Tribe, which is enlisted at Serial No.18 in the Constitution (Scheduled Tribes) Order, 1950 has been invalidated by the respondent No.2 – Caste Scrutiny Committee vide order dated 10.07.2023, which is the subject matter of challenge in this petition.

4. The petitioner has completed his primary schooling from the English Progressive School, Gondia, wherein the caste of the petitioner in the school admission register was recorded as “Gond”. The petitioner has completed his college education from the Junior College of Education, Gondia. The Sub Divisional Officer, Deori has issued a caste certificate to the petitioner showing that the petitioner belongs to “Gond”, which is recognized as ‘Scheduled Tribe’. The petitioner’s caste claim was forwarded by the Principal, Prerna International School, Nagpur to the Scrutiny Committee for verification and issuance of validity certificate. The Scrutiny Committee has examined the caste claim of the petitioner, however, the Scrutiny Committee was not satisfied about the documents tendered by the petitioner. The Scrutiny Committee rejected the petitioner’s caste claim mainly on the ground that the petitioner

though submitted validity of his father, it was issued without vigilance inquiry. Secondly, the petitioner's forefathers were not residing in the State of Maharashtra prior to 1950 as well as the petitioner failed in the affinity test.

5. The petitioner has assailed the impugned order by submitting that the petitioner has produced several documents of his forefather showing entry of "Gond" – Scheduled Tribe caste. Though the petitioner's forefathers were resident of Balaghat (State of Madhya Pradesh), however in the year 1959, the petitioner's grandfather has shifted to Gondia for the purpose of livelihood. The petitioner's father was educated in the State of Maharashtra as well as the petitioner was born in the State of Maharashtra. It is submitted that "Gond" is recognized as Scheduled Tribe in the State of Madhya Pradesh as well as in Maharashtra. The Scrutiny Committee has erred in discarding the prior validity issued in the name of petitioner's father. It is submitted that vigilance inquiry is not mandatory in each case. Only if the Scrutiny Committee is dissatisfied with the documents then vigilance inquiry is necessary. Moreover, it is submitted that affinity test cannot be treated as a litmus test. Lastly, it is the petitioner's contention that in view of the validation certificate issued to his father, the Scrutiny Committee

ought to have issued a validity.

6. The State resisted this petition by filing the reply affidavit. It is contended that the petitioner's family originally hails from Balaghat, which is in the State of Madhya Pradesh. The petitioner has not produced documentary evidence showing that they were residing in the State of Maharashtra prior to the year 1950. The validity issued in the name of petitioner's father was without vigilance inquiry and therefore, it cannot be relied.

7. The petitioner has produced various documents to support his caste claim. Some of the documents of the petitioner's forefather are pre-constitutional, which shows that they belongs to "Gond" caste. The petitioner has produced the documents of his grandfather, father, paternal aunt showing that there is an entry of "Gond" caste. The petitioner has heavily relied on the caste validity certificate issued in the name of his father. The Scrutiny Committee has discarded the said prior validity merely by stating that no vigilance inquiry was conducted in the said case. Perusal of Rule 12(2) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 of the Vigilance Cell was restricted. Only if the Scrutiny Committee is not satisfied with the material produced by the petitioner then the vigilance inquiry can be

ordered.

8. The petitioner has relied on the decision of the Supreme Court in case of *Mah. Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and ors. 2023 SCC OnLine SC 326*, to contend that Vigilance inquiry is necessary only if the Scrutiny Committee is dissatisfied with the caste claim. The Scrutiny Committee has not doubted about the genuineness of the documents tendered by the petitioner. There is no finding that the Scrutiny Committee was dissatisfied with the documents tendered by the petitioner in support of his caste claim. Therefore, the Scrutiny Committee erred in discarding prior validity for the reason of absence of vigilance inquiry.

9. The Government Resolution dated 22.08.2007 issued by the Social Justice and Special Assistance Department of the State of Maharashtra, provides instructions to the Scrutiny Committee that if the validity certificate is already issued by the proper authority in favour of the blood relative of a candidate, then in such cases, without asking for further proof in support of the claim, the validity certificate shall be issued.

10. In view of the aforesaid Government Resolution, if

validity certificate of the father or real uncle or any other blood relative of the applicant from paternal side is granted by the Scrutiny Committee then caste validity certificate has to be issued without asking for other documents or proof by considering that validity certificate as an important evidence. It is thus apparent that the validity certificate can be issued to a candidate if the validity certificate of blood relative is furnished. The said proposition is also laid down in the decision of this Court in the case of *Apoorva d/o Vinay Nichale .vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, 2010(6) Mh.L.J.401*.

11. The petitioner has produced the genealogical tree. The petitioner's relation with Satyawar (father) has not been disputed. Already Caste Scrutiny Committee has scrutinized the petitioner's father's claim and accepted by issuing caste validity. In the circumstance, it is not open for another Committee to refuse the petitioner's claim. The caste validity issued in the name of the petitioner's father has not been challenged. It would be anomalous situation when the father's claim for "Gond" Scheduled Tribe is validated whilst a son would not be treated as a "Gond" Scheduled Tribe.

12. In view of the above, the Scrutiny Committee ought to

have weighed the prior validities of blood relatives. The Committee has mainly discarded the petitioners caste claim by stating that the petitioner's forefather were resident of Balaghat (State of Madhya Pradesh). It is stated that the petitioner failed to establish that they were residing in the State of Maharashtra prior to the year 1950.

13. Learned Assistant Government Pleader relied on the decision in case of *Bir Singh .vs. Delhi Jal Board and ors. (2018) 10 SCC 312*, to contend that a person belonging to Scheduled Caste/Scheduled Tribe in one State cannot be deemed to be a Scheduled Caste/Scheduled Tribe in another State on his migration. In said case, the issue was about availing caste benefit in other State on migration for the purpose of an employment or education arose. The facts in hand are different as in both the States "Gond" has been notified as Scheduled Tribe. Moreover, Balaghat and Gondia was earlier part of C.P. and Berar Region. In such peculiar facts, merely because the petitioner's forefather were resident of other State prior to the year 1950, the petitioner's claim cannot be denied. The petitioner has produced documentary evidence to show that his grandfather was migrated in the State of Maharashtra in the year 1959 for livelihood. The petitioner's father educated at Gondia as well as the petitioner was born in the State of Maharashtra.

14. Learned Counsel for the petitioner heavily relied on the decision of the Supreme Court in case of *Sudhakar Vithal Kumbhare vs. State of Maharashtra and ors.* 2004 (4) Mh.L.J.784 and *Santosh s/o Singwa Padoti vs. Caste Scrutiny Committee, Nagpur and anr.* 2006(2) Mh.L.J. 825, wherein it is held that by virtue of Constitutional Scheduled Tribe Order, 1952, the Tribe “Gond” has been considered as a Scheduled Tribe in both the States i.e. in the State of Maharashtra as well as in the State of Madhya Pradesh, the petitioner is entitled to the status of Scheduled Tribe in the State of Maharashtra. Moreover, in cases of *Preeti Gopalrao Kamble vs. State of Maharashtra and ors.* 2013(2) Mh.L.J. 317, *Bharat s/o Bhimrao Malakwade vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur and anr.* 2013 (5) Mh.L.J. 946, *Sagar Bhupal Malage vs. Member/Chairman, Divisional Caste Scrutiny Committee No.2, Kolhapur and ors.* 2019 (3) Mh.L.J. 319 and *Prabhakar s/o Dnyanoba Shinde vs. State of Maharashtra and ors.* 2020 (3) Mh.L.J. 467 and in Writ Petition No.6836 of 2023 (*Prashant s/o Shamraoji Shende vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur and ors.*) decided on 14.12.2016 and Writ Petition No.5612 of 2018 (*Kushalkumar s/o Motilal Bhaisare vs. The President District Caste Certificate Scrutiny Committee, Gadchiroli and ors.*) decided on 15.07.2022 the same issue is dealt by this Court at various

Benches and it is held that such persons whose caste/tribe is recognized in both the States are entitled for the benefits of reservation.

15. As regards to the denial of the petitioners caste claim on the count of failure in affinity test it is well settled in case of ***Anand vs. Committee for Scrutiny and Verification of Tribe Claims (2012) 1 SCC 113*** that affinity test is not a litmus test. Recently, the Supreme Court in the decision in case of *Mah. Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra (supra)* has recorded the legal position that affinity test may not be recorded as a litmus test for establishing the link of the applicant with a Scheduled Tribe.

16. In view of the above, the Scrutiny Committee ought not to have rejected the petitioner's caste claim by discarding the prior validity issued to none other than to the petitioner's father. The Scrutiny Committee has ignored the documents of petitioner's forefather tendered in support of caste claim. Notably, the Scrutiny Committee has not doubted the genuineness of documents filed by the petitioner nor claimed that earlier caste validity was obtained by fraud. In the circumstances, the Scrutiny Committee ought to have granted caste validity by following the ratio laid down in case of *Apoorva d/o Vinay Nichale .vs. Divisional Caste Certificate Scrutiny*

Committee (Supra). In view of the above, the writ petition deserves to be allowed, hence the following order :

- (a) The Writ Petition is allowed.
 - (b) The impugned order passed by the respondent no.2 Scrutiny Committee dated 10.07.2023 invalidating the caste claim of the petitioner as belongs to “Gond” Scheduled Tribe, is quash and set aside.
 - (c) It is declared that the petitioner belongs to “Gond” Scheduled Tribe, which has entry No.18 in the list of Constitution (Scheduled Tribes) Order, 1950. The Respondent Scrutiny Committee shall issue validity certificate to the petitioner within a period of four weeks from the date of receipt of copy of this order.
17. Rule is made absolute in above terms. No costs.

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

(VINAY JOSHI, J.)

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