

(2021) 12 BOM CK 0081
In the Bombay High Court
Case No : Writ Petition No. 5279 Of 2021

Aaryan S/O Sanjay Kakade

APPELLANT

Vs

Schedule Tribe Caste Certificate Scrutiny Committee And
Others

RESPONDENT

Date of Decision : 15-12-2021

Acts Referred:

Citation : (2021) 12 BOM CK 0081

Hon'ble Judges : Sunil B. Shukre, J; Anil L. Pansare, J

Bench : Division Bench

Advocate : M.G. Bhangade, Ashwin Deshpande, K.L. Dharmadhikari, N.A. Gaikwad

Final Decision : Allowed

Judgement

S.B. Shukre, J

1. Heard. Rule. Rule made returnable forthwith. The matter is heard finally by the consent of the learned counsel for the parties.

2. The petitioner claims to be belonging to Halbi Scheduled Tribe but, his claim has been rejected by the respondent No.1 after due verification by following the procedure prescribed under 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 (for short, "the Act of 2000" hereinafter) read with the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (for short, "the Rules of 2003, hereinafter).

3. Shri Bhangde, learned Senior Advocate submits that there were two pre-constitutional documents of the date of 03.02.1935, a school leaving certificate standing in the name of Narayan Kisan - Halbi, a great grandfather of the petitioner and of the date of 01.02.1940 a purchase deed of land, standing in the name of Kisan Babuji Halbi the great grandfather of the petitioner which without

any iota of doubt and unequivocally would show that forefathers of the petitioner were Halbi but, learned Senior Advocate further submits, on the that specious ground that the other revenue record obtained by the Vigilance Officer which in fact was birth and death register maintained by the Municipal Corporation, for the month of May, 2019 showing that the caste of the great grandfather of the petitioner was "Bunkari" rejected the claim of the petitioner.

4. Learned Senior Advocate submits that "Bunkari", is not a caste nor a category which is shown to be 'OBC' as per the Government Resolution dated 30.01.2014 and still, the Scrutiny Committee erroneously mentioned in the impugned order that "Bunkari" has been shown to be a caste belonging to 'Other Backward Classes at Serial No.251 in the order of the State of Maharashtra. He further submits that "Bunkari" is referable to the profession of weaving, as held by this Court in the case of Anand Vs. Committee for Scrutiny of and Verification of Tribe Claims and others, reported in 2011 (6) of Mh.L.J. 919, wherein, the other co-ordinate Bench of this Court has found, based upon the Gazetteer of Amravati District and the Authority of R.V. Russell on Tribes and Castes of Central Provinces of India, that the Halbas/Halbies, migrated from certain parts of Maharashtra including Ellichpur and Anjangaon Surji areas of Amravati, have taken to the profession of weaving and as such merely because "Koshti" is written in some of their documents, same cannot be a ground for discarding the documentary evidence of pre-constitutional era. He thus submits that the impugned order suffers from serious illegalities and deserves to be quashed and set aside and necessary directions issued in the matter.

5. Shri Dharamadhikari, learned AGP appearing for respondent No.1 submits that when the Municipal record shows that the caste was "Bunkari", it is difficult to take such description of the status of person as only a referring to the profession of weaving and it is quite possible that it can also be considered to be a caste especially when the castes such as "Winkar" and "Bunkar" have been included in the category of OBC as per the Government Resolution dated 30.01.2014. According to him, no fault can be found with the reasoning adopted by the scrutiny Committee. He also points out that even though a tribe validity certificate has been issued to the father of the petitioner by following the judgment of this Court dated 13.12.2012 rendered in Writ Petition No.1340/2002, same having been challenged before the Apex Court could not be made a ground for upsetting the impugned order. Therefore, in such a case, he submits, if this petition is to be allowed and any direction is to be issued to the Scrutiny Committee, it may be in the nature of validity being issued subject to outcome of the SLP.

6. Shri Gaikwad, learned Counsel for the respondent No.3 submits that the last date for physical submission of the documents at institutional level has been extended to 21st December, 2021 and so he submits that an appropriate order may be passed by this Court.

7. Upon going through the impugned order and also the documents, in particular

those dated 03.02.1935 and 01.02.1940 standing in the name of Narayan Kisan, the grandfather of the petitioner and Kisan Babuji the great grandfather of the petitioner, we are convinced that these documents reasonably establish the claim of the petitioner as he belonging to Halbi Scheduled Tribe. The entries of the year 1935 and 1940 in standing in the name of Narayan Kisan and in the name of Kisan Babuji, in our view, provide evidence of sterling quality and these entries being of the pre-constitutional period do have a high probative value as compared to the other documents which have been appreciated by the Scrutiny Committee. In fact, other documents, which are of the post-constitutional period, particularly those of the year 1978, 1979, 1986, 2012, 2009 and 2018 also consistently show that the persons in whose name these documents have been issued belong to Halbi Community. Some of the documents are issued to the petitioner himself and the other documents have been issued to blood relatives of the petitioner. These entries being consistent with the entries taken in the pre-constitutional documents, in our opinion, only support the claim of the petitioner made in this petition.

8. Of course, there is an extract of birth and death register maintained by the Municipal Council which has been obtained during the course of the Vigilance Committee, which is of the period of May, 1919. This extract of the register contains an entry in the name of Kisan Babuji "Bunkar". It is on the basis of this entry that the Scrutiny Committee has concluded that the other two pre-constitutional entries could not be believed. In our view, such reasoning of these Scrutiny Committee is erroneous. This entry only shows that "Kisan Babuji" was "Bunkari". Now, if we consider the entries appearing at Serial No.251 of the Government Resolution dated 30.01.2014, we would find that the entry which is in the name of "Bunkar" has been shown to be the sub-caste of "Vinkar". There is a world of difference between "Bunkari" and "Bunkar". Now, it is well settled law that entries in the Constitutional Order providing for caste/tribe based reservations must be read as they are, without adding anything thereto or subtracting anything there from (see State of Maharashtra Vs. Milind Sharad Katware, reported in (2001) 1 SCC 4). Therefore, the word "Bunkar" cannot be considered to be included in the category of OBCs as per the Government Resolution dated 30.01.2014. If "Bunkar" does not appear to be of the same status as OBC, it has to be understood as referring to nothing but profession of weaving, on the lines stated in a case of Anand (Supra) by the co-ordinate Bench of this Court. Therefore, the May 1919 entry cannot be said to be running contrary to the documents of 1935 and 1940, which unequivocally show that the forefathers of the petitioner were Halbi.

9. As regards, the tribe validity certificate issued to the father of the petitioner following the judgment and order of this Court dated 13.12.2012 delivered in Writ Petition No.1340/2002, which has been challenged before the Apex Court and which is pending for consideration of the Supreme Court in which no stay has been granted, we would clarify that we have not relied upon the validity certificate granted to the father of the petitioner, for the reason that the validity

is under scrutiny of the Hon'ble Supreme Court. But so far as, other entries are concerned, we would say that these entries have been found by us as of sterling quality, having no doubt whatsoever about them and therefore, we have accepted these entries as providing clinching evidence in support of the claim of the petitioner. In this view of the matter, we find that the impugned order cannot be sustained in the eye of law.

10. The writ petition is allowed. The impugned order is quashed and set aside. We direct the respondent No.1-Scrutiny Committee to issue provisional tribe validity certificate to the petitioner as he belonging to Halbi Scheduled Tribe subject to the outcome of SLP (C) No.11717/2013 latest by 17/12/2021. We direct respondent No.3 to accept the online form of the petitioner without scanned copy of the validity certificate as there is some time to go before same is actually issued by respondent no.1. However, this is subject to the condition that the petitioner shall submit original validity certificate at the institutional level on or before the cut off date of 21/12/2021.

11. Rule is made absolute in the aforesaid terms accordingly. No costs.

12. Steno copy of this judgment is granted.