

(2023) 08 BOM CK 0040
In the Bombay High Court
Case No : Writ Petition No. 7815 Of 20 22

Gaurav

APPELLANT

Vs

Vice-Chairman And Others

RESPONDENT

Date of Decision : 15-08-2023

Acts Referred:

Maharashtra Scheduled Caste, 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 — Section 7

Citation : (2023) 08 BOM CK 0040

Hon'ble Judges : Avinash G. Gharote, J M.W. Chandwani, J

Bench : Division Bench

Advocate : Preeti Rane, Nitin Rao, P.D. Meghe, N.S. Khubhalkar

Final Decision : Allowed

Judgement

1. The matter is taken up today on the urgent request of the learned counsel for the petitioner on the ground that the petitioner has applied for the engineering course and the time for submission of the validity, the benefit of which, the petitioner desires to have, was 3:00 p.m. on 16/08/2023, on account of which, the matter has been taken up today for urgent hearing. Though now we have been informed that the time for submission of the validity has been extended till 5:00 p.m. of 17/08/2023, and we could have passed an interim order, however, in view of what has been held in Dilip Vitthal Bambale and others Vs. Vinit Kumar Motiram Totlade and others Civil Appeal Nos.11234-48 of 2017 decided on 06/09/2017 where the passing of interim order in such matters has been disapproved and since we have heard the matter, we are proceeding to decide the same with the consent of the respective learned counsels for the parties.

2. Rule. Rule made returnable forthwith. Heard Mrs. Rane, learned counsel for the petitioner; Mr. Rao, learned Assistant Government Pleader for the respondent no.1; Mr. Meghe, learned counsel for respondent no.2 and Mr. Khubalkar, learned counsel for the respondent no.3.

3. The petition questions the decision of the Caste Scrutiny Committee, Nagpur dated 10/11/2022 (pg.198) whereby the certificate issued to the petitioner by the competent authority dated 18/09/2018 of belonging to Mana Scheduled Tribe has been cancelled by the committee by holding that the petitioner does not belong to the said tribe.

4. Mrs. Rane, learned counsel for the petitioner contends that the father of the petitioner Pradeep Wagh has already been issued a validity certificate by the same Committee on 22/06/2019 (pg.30). Not only this, the uncle of the petitioner, namely Nishakant Laxman Wagh has been issued a validity certificate on 09/02/2010 (pg.59) and so also the first cousins of the petitioner, namely, Harshal Nishikant Wagh has been issued a caste validity certificate on 15/11/2018 (pg.122); Chaitanya Nishikant Wagh on 02/02/2019 (pg.82); Ankita Vinod Wagh on 25/04/2019 (pg.83). It is further contended that in the case of Harshal Nishikant Wagh, there was a vigilance enquiry conducted (pg.61) and based upon the same entries and documents, which are extant in the present petition, the validity certificate has been granted to him on 10/11/2018 (pg.122). She also submits that earlier in point of time Vrushali Vinod Wagh has also been granted validity by the Committee on 26/10/2009 (pg.220); Vidya Laxmanrao Wagh, the paternal aunt of the petitioner, was also granted the validity by the committee on 28/01/2009 (pg.219); Vaibhav Vinod Wagh the first cousin of the petitioner was also granted validity on 21/10/2009 (pg.220). It is, therefore, submitted that it was not permissible, for the Committee, to question the validity granted to these persons and by not relying upon them to hold that the petitioner did not belong to the Mana Scheduled Tribe, specifically so, when the inter se relationship is not disputed.

5. Mr. Rao, learned Assistant Government Pleader for the respondent no.1/ Committee justifies the impugned decision of the Committee contending that the certificates granted to Vidya, Vrushali, Nishikant, Vaibhav were without a vigilance cell enquiry and therefore, have rightly not been relied upon by the Committee. He further submits that the certificate issued in favour of the father of the petitioner, namely, Pradip Wagh is also without vigilance cell enquiry and on this ground also the refusal to rely on the same by the Committee is justified. He therefore supports the impugned decision of the Committee. It is also contended that there are contra entries as considered by the Committee, for which he invites our attention to the entry for the year 1928 in the school register of Mahadeo Kashinath the common ancestor and the subsequent entries in the tax assessment of Kashinath Bapu Wagh, Bala Bapu Wagh for the assessment years 1941-42 to 1953-54, the great grandfather and the cousin great grandfather of the petitioner respectively. Reliance is also placed upon the school record of Bhaskar Kashinath, the real grandfather of the petitioner, which depicts the entry of Mane in the year 1942 to 1955. He, therefore, submits that since there were contra entries, the decision of the Committee is justified.

6. Mr. Meghe and Mr. Khubalkar, learned counsels for the respondent nos.2 and 3

respectively have nothing to say in the matter.

7. It is not in dispute that the father of the petitioner, namely, Pradeep Wagh has been granted a validity certificate by the same Scrutiny Committee on 22/06/2019 (pg.30). It is also not in dispute that the first cousins of the petitioner, namely Harshal, Chaitanya and Ankita have also been granted validity certificate by the Committee, as indicated above. It is also not in dispute that Vidya, Vaibhav and Vrushali, the cousins of the petitioner, whose relationship is not disputed, as is indicated from the genealogical tree prepared by the vigilance cell (pg.143) have also been granted validity certificates. What is material to note is that while granting validity certificate to Ku. Vidya Laxmanrao Wagh, Shri Vaibhav Vinod Wagh and Ku. Vrushali Vinod Wagh, the Scrutiny Committee has rendered a finding that the tribe claim made by the applicants based upon the documents submitted by them was genuine and therefore as per the Maharashtra Act No.23/2001 and Rule 12 (2) the case has not been handed over to the police vigilance cell of the Scrutiny Committee for conducting the school and home enquiry and the scrutiny Committee has given decision on merit, whereupon based upon the entries made in the documents, the scrutiny Committee has granted the validity certificate. It is also necessary to note that based upon the same documents, which were before the Scrutiny Committee the first cousin of the petitioner, namely, Harshal Nishikant Wagh has after a vigilance enquiry the report of which is at page 61 also been granted a validity certificate by the Committee on 15/11/2018 (pg.122). It is thus apparent that where found necessary a vigilance enquiry has been conducted and the claim in respect of the first cousin of the petitioner has been found to be genuine. In Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others 2023 SCC OnLine SC 326 the Hon'ble Apex Court has held that only when the Scrutiny Committee after holding enquiry is not satisfied with the material produced by the applicant, the case can be referred to the vigilance cell. In the instant case, as pointed out above, a vigilance enquiry was conducted on the same set of documents and the entries made therein in respect of Harshal Nishikant Wagh and being satisfied with the claim the Scrutiny Committee vide the decision dated 15/11/2018 (pg.122) has granted a validity certificate to the said first cousin of the petitioner. That being the position, when as many as seven persons from the same genealogical tree (pg.143) have been granted validity certificates by the same Committee, there was no reason whatsoever for the Committee to doubt the veracity of the claim made by the petitioner. The finding rendered by the Committee that the certificates issued to Vidya, Vaibhav, Vrushali and Nishikant, in absence of the vigilance cell enquiry could not be relied upon, is clearly untenable in law, in view of what has been said by the Hon'ble Apex Court in Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra) [para 38 (a)].

8. That takes us to the plea that there are contra entries in the vigilance cell report. It is an undisputed fact that the original entry of 01/02/1922 of Mahadeo Kashinath, was of Mana (pg.55). There is contra entry of Mani in the school entry

register, of 24/02/1922 (pg.147). In Priya Pramod Gajbe Vs. The State of Maharashtra and others Civil Appeal No.7117/2019 decided on 11/07/2023 by the Hon'ble Apex Court it has been held that the earliest entry, should be given credence. In that case the earliest entry was 10/03/1924 showing the caste as Mana while another document of 14/04/1926 showed the caste as Mani. It was an admitted position, there that there was no caste named as Mani and therefore, it was held that there was a possibility of some mistake in writing when the caste was written. The instant case is not dissimilar to the position as considered in Priya Pramod Gajbe (supra), inasmuch as in the school entry register the entry dated 24/02/1928 is also of Mani and therefore, what has been said in Priya Pramod Gajbe (supra) regarding the nature of the entry would equally apply to the present petition.

9. Since the validity certificates had been granted to the first cousins, uncle and father of the petitioner as indicated above, based upon the same set of documents and entries made therein, the learned Scrutiny Committee could not have commented upon them and discarded them, unless the procedure as prescribed in Section 7 of the Maharashtra Scheduled Caste, 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, was adopted, resulting in the consequence indicated therein. However, till such time, these validity certificates stand, they will continue to hold the field and bind even the Scrutiny Committee.

10. A very peculiar position has arisen in the present matter inasmuch as the father of the petitioner, namely, Pradeep Wagh holds the caste validity certificate of belonging to the Scheduled Tribe Mana, which is also the position in respect of his uncle Nishikant Laxman Wagh and his children and so also of the children of his other uncle Vinod Wagh, as against which, the same status, has been denied to the petitioner. So the father in this case is a tribal and the son because of the decision of the Committee becomes a non-tribal, which is a situation, which cannot be countenanced.

11. In light of what has been held above, in our considered opinion, the decision of the caste Scrutiny Committee dated 10/11/2022 (pg.198) cannot be sustained. The same is hereby quashed and set aside and it is held that the petitioner belongs to the Scheduled Tribe Mana as included in entry 18 of the Constitution (ST) Order, 1950. The respondent no.1 is, therefore, directed to issue an appropriate validity certificate to the petitioner, on 17/08/2023 before 5:00 p.m. Till such time, this judgment shall be treated as a document certifying the validity of the petitioner being entitled to the benefits of the Scheduled Tribe Mana. The respondent nos.2 and 3, who are present before us will accordingly act upon this judgment in the matter of entertaining the claim of the petitioner for granting him admission.

12. The writ petition is accordingly allowed. Rule is made absolute in the above terms. No order as to costs.