

(2021) 08 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No.7406 Of 2019

Jagdish Suresh Kedare

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 05-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 342(1)

Citation : (2021) 08 BOM CK 0003

Hon'ble Judges : Sadhana S. Jadhav, J; Surendra P. Tavade, J

Bench : Division Bench

Advocate : R. K. Mendadkar, V. M. Mali

Judgement

Surendra P. Tavade, J

1. Rule taken up for hearing with consent of both the parties.
2. By this Petition under Section 226 of the Constitution of India, the Petitioner seeks the following reliefs as under:
 - (a) This Hon'ble Court be pleased to issue Writ of Certiorari and or any other Writ, Order of Direction in the nature of Certiorari thereby quashing and setting aside the impugned Judgment and Order dated 15-2-2017 passed by the Respondent No. 2 Committee with further AS.odt direction to Respondent No. 2 Committee to issue certificate of validity in respect of cast certificate dated 30-12-1991 issued by the Respondent No. 3.
 - (b) That this Hon'ble Court be pleased to hold and declare that the cast certificate dated 30-12-1991 issued by the Respondent No. 3 as belonging to Halba, Scheduled Tribe is valid, legal and subsisting.

3. The facts of the petition can be summarized as under :

The Petitioner was granted caste certificate on 30th December, 1991 as belonging

to ""Halba"" Scheduled Tribe. The Petitioner moved to the

Respondent No. 2 - Committee seeking verification of his Tribe Certificate for the service purpose along with his application. He submitted pre-

constitutional documents of his paternal relatives in relation to belonging to ""Halba"", Scheduled Tribe granted in favour of his parental relatives. The

Petitioner has placed on record basic documentary evidence which are fundamental in nature in relation to his parental relatives as under:

1) Laxman Mithaji Kedare

2) Ramadas Mithaji Kedare

3) Arvind Baliram Kedare All of them are shown as belonging to ""Halbi"" Caste. The Petitioner has also produced on record School Leaving

Certificates of Prabhakar Kedare and Pralhad Sitaram Kedare, wherein, their caste is shown as ""Halbi"". The Petitioner has also produced on record

Sale Deed dated 13 th December, 1947 in relation to Prabhakar Baliram Kedare showing his caste as ""Halbi"". All these persons are relatives of the

Petitioner by blood from paternal side. The Petitioner also placed on record Caste & Validity Certificate issued to Pandurang Kedare by the competent

authority. It is contended that the Respondent No. 2 in spite of overwhelming documentary evidence, has caused inquiry through its vigilance cell, the

said report is also in favour of the Petitioner.

4. It is contended that the inquiry report was forwarded to the Petitioner by the Respondent No. 2 - Committee on 28th January, 2012 and he was

asked to file reply. Accordingly, the Petitioner has filed reply along with the documentary evidence of pre-constitution period. It is contended that the

Respondent No. 2 - Committee decided the case of the Petitioner and invalidated the caste certificate of the Petitioner by its impugned order dated

24th February, 2012 mainly contending that the Petitioner has to produce Caste Certificate from his original State of residence as on 6th September,

1950.

5. Being aggrieved by the said order, the Petitioner filed Writ Petition No. 1729 of 2013 before this Court. On hearing both the sides, this Court was

pleased to set aside the impugned order dated 24th February, 2012 passed by the Respondent No. 2 - Committee and remanded the matter to the

Respondent No. 2 - Committee to decide the caste claim afresh. Thereafter, the Petitioner appeared before the Respondent No. 2 - Committee but

the Committee did not decide the caste claim of the Petitioner in spite of direction given by this Court. Hence, he fled Contempt Petition No. 227 of

2015 in this Court. The said Contempt Petition was disposed of on 10th June, 2015 with direction to decide the caste claim of the Petitioner within two

months on its own merits.

6. In spite of the aforesaid direction given by this Court, the Committee did not decide the claim of the Petitioner. Hence, the Petitioner again fled

Contempt Petition No. 445 of 2016 before this Court and show cause notice was issued to the members of the Respondent No. 2 - Committee.

Before the appearance of Respondent No. 2 in the Contempt Petition, the Petitioner was called for inquiry on 25th January, 2017. The Respondent

No. 2 - Committee examined the Petitioner on the point of affinity test. The Petitioner requested the Respondent No. 2 to take his hearing in ""Halbi

dialect/language but the Respondent No. 2 - Committee refused to do so on the ground that they themselves do not know ""Halbi"" dialect/language.

The Petitioner has given all germane and relevant information to the Respondent No. 2 - Committee. The Petitioner categorically pointed out that the

caste of his father and other blood relatives from parental side has been described as plain as ""Halba"" / ""Halbi"". In the month of March, 2017, the

Committee invalidated caste certificate of the Petitioner, the said order is impugned in this Petition.

7. In the course of argument before us, learned Counsel for the Petitioner submitted that in the light of voluminous documentary evidence produced by

the Petitioner, the Respondent No. 2 - Committee ought to have accepted the caste claim of the Petitioner. He has pointed out various documents

produced by the Petitioner before the Respondent No. 2 - Committee. It is contended that some of these documents were preceding Presidential

Notification but those documents were erroneously discarded on the ground that the occupation of relatives of the Petitioner is shown as weaver

(Vinkar) and weaving is taboo ""Halba"" Tribe. It is contended that the Committee erroneously held that ""Halbi"" is sub-caste entry of ""Koshti"". It is

also contended that the Committee has wrongly held that the occupation of the Petitioner and his family members is weaving and there is a caste

Halba"", ""Koshti"" in the area of Achalpur City from where the Petitioner hails. Hence, it is contended that the order of the Respondent No. 2 is not

legal and proper and it may be set aside.

8. On the other hand, learned Counsel appearing on behalf of the Respondent Nos. 1 and 2 supported the order of the Respondent No. 2 - Committee.

It is submitted that, in view of the Judgment of the Supreme Court in the case of Kum. Madhuri Patil V/s. Additional Commissioner Tribal

Development {Reported in 1994 (6) S.C.C 241} and in view of the matter of Director of Tribe Welfare Govt. of A. P. V/s. Laveti Giri {1995 (4)

S.C.C. 32}, the conclusion recorded by the Respondent No. 2, it does not call for any interference.

9. The Petitioner has produced on record the following school record in relation to his relatives read as under :

(1) Laxman Mithaji Kedare showing caste as ""Halbi"" as on 14th April, 1937. (2) Ramadas Mithaji Kedare showing caste as ""Halbi"" as on 2nd April,

1940. (3) Prabhakar Kedare showing caste as ""Halbi"" as on 2nd August, 1940. (4) Arvind Baliram Kedare showing caste as ""Halbi"" as on 30th June,

1948. (5) Pralhad Sitaram Kedare showing caste as ""Halbi"" as on 1 April, 1949. (6) Sale Deed dated 13 th December, 1947 in relation to Prabhakar

Baliram Kedare showing Caste as ""Halbi"".

10. The caste of the aforesaid persons is shown as ""Halbi"". The said documents are having high probative value. However, the Respondent No. 2

observed that these documents submitted by the candidate himself and though caste recorded as ""Halbi"" in these documents, the occupation is shown

as 'weaving' which means ""Koshti"" in vernacular. From these documents, it is clear that entry ""Halbi"" is sub- caste entry of ""Koshti"".

11. It is noted by the Respondent No. 2 - Committee in its report that the school record of the relatives of the Petitioner is pertaining to period 1937,

1940, 1947, 1949, wherein, caste is recorded as ""Halba"" and ""Halbi"" while in general register the occupation recorded as 'Weaving'. These documents

of old period including pre- independence era, though shows caste ""Halbi"", but anthropological as well as historical research including read as below:

(i) N. S. Hajari Report, 1965.

(ii) Tribal Research Training Institute Report 1970.

(iii) People of India-Maharashtra by Anthropological Survey of India.

(iv) Dr. R. K. Mutatkar Research Report.

(v) Bhartiya Sanskruti Kosh (by Bhartiya Sanskruti Kosh Mandal).

(vi) Government Resolution dated 13th June, 1995.

As well as information collected by committee by contacting several old peoples belonging to ""Halba"" / ""Halbi"" Scheduled Tribe, make it very clear

that apart from ""Halba"" / ""Halbi"" Scheduled Tribe, sub caste ""Halba Koshti"" of ""Koshti"" caste, which is Special Backward Class in Maharashtra and

there is similarity in nomenclature between these two groups.

12. So far as Amravati District in Maharashtra is concerned, ancestral primitive area of residence of genuine ""Halba"" / ""Halbi"" Scheduled Tribe was

confined to the followings:

(a) Wagholi, Karla, Amduri, Shirajgaon-Korde, Kawathkadu in Chandur- Rly Tahasil.

(b) Wadhona, Virul-Ronghe, Ramgaon in Dhamangaon Rly. Tahasil.

(c) Varha, Veergavhan in Tiwasa. Tahasil.

(d) Chausala, Anjangaon Surji in Anjangaon Surji Tahasil.

(e) Parsapur, Ekaspur, Dhamangaon Gadhi in Achalpur Tahasil.

(f) Karla, in Warud Tahasil.

(g) Gullarghat, Diya in Dharni Tahasil.

On the contrary sub-caste ""Halba"", sub-caste ""Halbi"", sub-caste ""Halba Koshti"" of ""Koshti Caste"" were earlier residing at Abbaspura, Patvipura,

Raipura, Sultanpura, Vilayatpura, Sarmaspura, Anwarpura, Jeevanpura, Sawaipura, Ramtekpura, Bilanpura and Begampura in Achalpur City.

13. It is also noted that all above mentioned documents of pre-independence era from 1937 to 1949 are from Sarmaspura, Achalpur (Tahasil -

Achalpur) and prior to independence, in above place there were only people belonging to various sub- caste of ""Koshti"" Caste and same was not

primitive belt of residence of genuine ""Halba"" / ""Halbi"" Scheduled Tribe. Therefore, Committee has not considered those documents of pre-

independence era. The Committee has also observed in the impugned order that the document on which Committee relied upon shows that occupation

as ""Vinkari"" (Weaving), which is traditional occupation of ""Halbi"" sub- caste of ""Koshti"" caste and rather ""Vinkari"" (Weaving) is taboo in ""Halbi

Scheduled Tribe, whereas traditional occupation in ""Halbi"" Scheduled Tribe is ""preparation of poha"". The caste claim of the Petitioner was rejected on

the ground that the documents produced by the Petitioner for a period 1937, 1940, 1947 and 1949 are also from Sarmaspura area of Achalpur City and same shows occupation is ""Vinkari"" (Weaving).

14. The view taken by the Respondent No. 2- Committee inasmuch as it is now settled position of law that it is not permissible for the Courts or any other authorities to interpret entries in the Presidential Notification and the entries are required to be taken as a stand. In this connection, a reference may be made to the decision of the Constitution Bench of the Apex Court in the case of State of Maharashtra V/s. Milind & Others. {(2001) 1 SCC.

4, Civil Appeal No. 2294 of 1986}. The relevant observations of the Supreme Court in Paragraph No. 36, are reproduced as below:

It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitutional (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or AS.odt tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by Parliament by law and by no other authority.

4. It is not open to State Governments or Courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

15. It is not disputed before us that the documents referred above related to the relation of the Petitioner as already indicated that some of the documents preceding the Presidential Notification. Under the circumstances, the documents undoubtedly are having high probative value and should be

given due weight particularly having regard to the fact that these entries date back to 1937. It appears that the Respondent No. 2 - Committee has

solely relied on the basis of vigilance commission report wherein it was recorded

that the occupation of the relatives of the Petitioner has been recorded as ""Weaver"". These said entries are seriously disputed by the Petitioner. The Caste of the Petitioner and his parental relatives is shown in ancient documents as ""Halbi"", which is Scheduled Tribe as per Presidential Notification. In the light of the voluminous documentary evidence submitted by the Petitioner, it is not possible to disregard his caste claim on the basis of vigilance report.

16. In the case of Madhuri Patil (SCC P.257) the Supreme Court has observed in Paragraph No. 15 which is reproduced as below:

The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated

by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts

and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The Court has to see whether

the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee

ultimately to record the finding. Each case must be considered in the backdrop of its own facts"".

The same view has been reiterated in the case of Director of Tribal Welfare, Govt. of A. P. V/s. Laveti Giri' {1995 (4) S.C.C. 32,}

17. Applying the above test to the facts of the present case, we are satisfied that the Respondent No. 2 - Committee failed to consider all the relevant

material placed before it and did not apply its mind and erroneously brushed aside the documents of pre-independence era which led the Committee

ultimately to record a finding against the Petitioner. We therefore, set aside the order of the Respondent No. 2 - Scrutiny Committee. Rule is made

absolute in terms of prayer Clauses (a) and (b), the Respondents are given two weeks time to comply with the order.