
(2022) 05 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 3725 Of 2021

Ku. Dipti

APPELLANT

Vs

Schedule Tribe Caste

RESPONDENT

Date of Decision : 05-05-2022

Acts Referred:

Citation : (2022) 05 BOM CK 0036

Hon'ble Judges : Sunil B. Shukre, J;M.S. Jawal Kar, J

Bench : Division Bench

Advocate : Ashwin Deshpande, N.R.Patil

Final Decision : Allowed

Judgement

M.S.Jawalkar, J

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

2. The petitioner claims to belong to 'Halbi' Schedule Tribe. The Sub-Divisional Officer Revenue, Achalpur had issued a Caste Certificate to the petitioner as belongs to 'Halbi'. The petitioner has completed B.Sc. from College run by Jagdamba Mahavidyalaya, Achalpur City and presently is doing PG Course. The petitioner had sent her Caste Claim for verification to the respondent-Schedule Tribe Caste Certificate Scrutiny Committee (in short, 'the Committee') through the College alongwith relevant documents and validity certificates. As her caste claim was pending since 2016, the petitioner through her father sent representation dated 30-03-2019, 03-01-2019, 03-03-2020 and 23-02-2021 requesting to decide the caste claim as early as possible. The petitioner in her representation also stated that, there are 5 validities in the family. The petitioner, therefore, requested the respondent - Committee to issue Validity Certificate in view of the validities in the family, inspite of it, the respondent-Committee was not decided the caste claim and invalidated the caste claim of the petitioner. Presently, the petitioner is challenging the order dated 22/07/2021 of the

respondent - Committee invalidating the caste claim of the petitioner.

3. The learned counsel for the petitioner submits that although there are several validity certificates placed on record, the respondent - Committee without any reason, discarded the same.

4. The petitioner further submits that the 'Halbi' Schedule Tribe is recognized as Schedule Tribe in the State of Maharashtra and included at Sr. No. 19 in the Constitutional Schedule Tribe Order, 1950. The show cause notice was sent to the petitioner alongwith the copy of the Police Vigilance Report dated 09/05/2018 by the respondent - Committee seeking explanation on the said report. The petitioner submitted the detailed reply on the same, stating that, as Police Vigilance in its report came up with some 'Koshti' documents, they are not from the petitioner's family and therefore, there is no relation with these documents and thus the said documents cannot be relied upon. There are 5 validities in the family of the petitioner, which the petitioner placed before the respondent - Committee.

5. The petitioner submits that the respondent - Committee has erred in invalidating the caste claim of the petitioner for 'Halba/Halbi' Schedule Tribe Category. The findings recorded by the respondent - Committee are based upon totally irrelevant consideration and factors. It is not the case of the respondent - Committee that the documents placed on record are bogus, false, non-existent or fabricated. All the documents are pertaining to the period prior to 1950 and onwards, unequivocally and undisputedly indicate the claim of the petitioner as 'Halba/Halbi' Schedule Tribe. When the documents on record conclusively establish that the petitioner belongs to 'Halba/Halbi' Schedule Tribe, then it is not permissible for the respondent - Committee to go into affinity test and to reject the claim of the petitioner. The Committee failed to appreciate that the petitioner originally hails from Achalpur city which is border area of Melghat and is earmarked for 'Halba/Halbi' Tribals in the map of the Tribal area prepared by the State Government of Maharashtra. The respondent - Committee considered the irrelevant documents and has not given consideration to the genuine documents and also validity certificates which are issued in the family. The allegation is that the documents showing caste as 'Koshti' was suppressed by the applicant/petitioner. However, as those documents do not belong to the petitioner's family, then there is no question of suppression. The oldest documents in respect of the petitioner's grandfather and great grandfather are of 1920, 1929 and 1930 onwards showing the caste as 'Halbi'. There are 5 validities in the petitioner's family in respect of blood relatives. The petitioner is relying upon the following citations in support of her contentions;

i) Apoorva Vinay Nichale V/s. Divisional Caste Certificate Scrutiny Committee and others, reported in 2010 (6) Mh.L.J. 401,

ii) Priya Parate V/s. Schedule Tribe Caste Certificate Scrutiny Committee, reported in (2013), Mh.L.J. 180,

iii) Kum. Arya Vaibhav Umbarje V/s. State of Maharashtra, W.P. No. 3735 of 2022, decided on 21/03/2022,

iv) Bharat Bhagwant Tayade V/s. State of Maharashtra, W.P. No. 11617 of 2017, decided on 15/03/2022,

v) Saurabh Ashok Nikam V/s. State of Maharashtra, W.P. No. 241 of 2022, decided on 06/01/2022,

vi) Shubham Sanjay Nandanwar V/s. Schedule Tribe Caste Certificate Scrutiny Committee, Amaravati, 2021(1) Mh.L.J. 379,

vii) Anita Atmaram Gaikwad V/s. State of Maharashtra, Special Leave Appeal (C) No. 23081/2010, decided on 16/04/2013.

6. As against this, Shri N.R. Patil, learned Assistant Government Pleader supports the order of the respondent - Committee and submits that as there is 'Koshti' Caste shown of the relatives of the petitioner, the order passed by the respondent - Committee is perfectly justified and no intervention is called for.

7. We heard both the parties at length and gone through the documents placed on record and order passed by the respondent - Committee. The petitioner has placed on record the following documents;

Sr.No.

Particulars of Documents

Date

i)

Copy of Birth Certificate of the Petitioner. 04-06-1999

04-06-1999

ii)

Copy of School Certificate of the petitioner

02-05-2008

iii)

Copy of School Leaving Certificate of the petitioner

10-07-2014

iv)

Copy of School Transfer Certificate of the petitioner's father.

17-08-1973

v)

Copy of Birth Certificate of the petitioner's father

18-04-1967

vi)

Copy of Birth Register of the petitioner's father.

18-04-1967

vii)

Copy of Caste Certificate of the petitioner's father.

12-06-1989

viii)

Copy of Birth Register of the petitioner's great great Grandfather (Kisan Vald Hiranman Halbi)

19-01-1920

ix)

Copy of School Record of the petitioner Grandfather (Uttam Kisan father Hiranman).

04-11-1929

x)

Copy of Birth Register of the petitioner's cousin's Grandfather (Kisan Halbi)

12-09-1930

xi)

Copy of School Record of the petitioner's Grandfather (Pandurang Kisan Nadge)

01-03-1930

xii)

Copy of Akhiv Patrika of the petitioner's Grandfather (Pandurang Kisan Uttam Kisan, Gopal Kisan, Govinda Kisan and Madhurabai)

24-07-1945

xiii)

Copy of order passed by this Court in Writ Petition No. 3063/2002 along with validity certificate in the petitioner Real Cousin Uncle (Niwruoti Shankarrao Nadge)

01-09-2015

28-10-2015

xiv)

Copy of order passed by this Court in Writ Petition No. 3064/2002 along with validity certificate in the petitioner Real Cousin Uncle (Ramchandra Shankarrao Nadge)

01-09-2015

30-10-2015

xv)

Copy of order passed by this Court in Writ Petition No. 3751/2003 along with validity certificate in the petitioner Real Cousin Brother (Atul Madhukarrao Nadge)

11-01-2016

08-03-2016

xvi)

Copy of order passed by this Court, Order/Judgment reported in 2017(7) All MR - 366 along with validity certificate in the petitioner Real Cousin Brother (Arun Madhukar Nadge)

07-04-2016

11-07-2016

xvii)

Copy of order passed by this Court in Writ Petition No. 5859/2003 along with validity certificate in the petitioner Real Cousin Brother (Shubham Niwruoti Nadge)

05-10-2018

20-11-2018

8. From these documents, it can be seen that the High Court had issued a direction, in respect of 5 blood relatives from paternal side of the petitioner, to Schedule Tribe Caste Certificate Scrutiny Committee (the respondent - Committee) to issue validity certificates. However, the respondent - Committee now raises a doubt in respect of said the validity certificates. The judgments of this Court have attained finality and are binding on all the sub-ordinate authorities. Thus, the respondent - Committee has no authority to express any doubt about the correctness of the said validity certificates and reject it. As held in Apoorva Nichale case (supra) in para 9 of the said case, which read as follows,

"9..... the matter pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore, where a committee has given a finding about the validity of the caste of a candidate another committee

ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and it entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The caste scrutiny committee is directed to furnish the caste validity certificate to the petitioner.”

9. In the present petition, the facts disclose that there were directions issued to the Schedule Tribe Caste Certificate Scrutiny Committee for issuing the Tribe Validity Certificates to Nivrutti Shankarrao Nadge, Ramchandra Shankarrao Nadge, Arun Madhukarrao Nadge, Atul Madhukarrao Nagade and Shubham Nivrutti Nadge, the paternal relatives of the petitioner, and as per these directions, the said Committee had issued validity certificates to the above said relatives of the petitioner. Thus, now, the respondent - Committee has disregarded and disobeyed the binding judgments of this Court. Apart from this, the oldest documents placed on record is of 1920 which is abstract of Birth Register of the petitioner's great great grandfather Kisan Vald Hiranman Halbi. The entry is of 19/01/1920 wherein the Kisan Vald Hiranman is shown as 'Halbi'. Thus being the oldest entry of 'Halbi', the heirs of the said Kisan definitely would belong to 'Halbi' only.

10. The underlying principle is that the paternal relatives come under the same caste, as they are having common ancestor on the basis of their consanguinity. The extent of claim of the petitioner's relatives is a conclusive factor. No authority can come to the conclusion that a paternal relation belongs to one community and other paternal relation can be considered to belong to some other community. This is against the principle of consanguinity. As held in Apoorva Nichale case (supra), if the caste claim of a candidate as belonging to Schedule Tribe has been validated by the Committee, then the other close relatives can not be denied the validation of the Tribe Certificate. The respondent - Committee on the basis of the entry of 'Koshti' in respect of one Kisan and one Pandurang in the document collected by Vigilance Cell held that they are not Schedule Tribe and these entries are suppressed by the petitioner. There is a doubt whether these persons whose caste are shown as 'Koshti', are really related to the petitioner. Though, it is submitted that Pandurang Kisan Koshti delivered a son by name Wasudeo, the genealogy does not show any Wasudeo, son born to Pandurang. At any rate, the oldest document of 1920 showing caste 'Halbi' which is in respect of great great grandfather of the petitioner and therefore, the said entry being predominant entry will prevail over all other entries as it has great probative value.

11. In the result, we are of the considered opinion that the respondent -

Committee can not have expressed a doubt on the genuineness of the validity certificates issued to the 5 persons in blood relations of the petitioner. The respondent – Committee might not to have rejected the claim of the petitioner as it belongs to 'Halbi' Schedule Tribe. Thus, the petition is deserve to be allowed. Accordingly, we proceed to pass the following order:

ORDER

1. The petition is allowed.
2. The impugned order dated 22/07/2021 is hereby quashed and set aside.
3. The respondent – Schedule Tribe Caste Certificate Scrutiny Committee is directed to issue Tribe Validity Certificate to the petitioner showing that she belongs to 'Halbi' Schedule Tribe, within 4 weeks from the receipt of authenticated copy of this order.
4. Rule is made absolute in the above terms. No costs.
5. Authenticated copy of this order be supplied to both the parties.
6. Parties to act upon the authenticated copy of the order.