

(2017) 12 BOM CK 0084
In the Bombay High Court
Case No : 1312 of 2002

Lalit s/o Shrikrishnarao Bakde

APPELLANT

Vs

Committee for Scrutiny and Verification of Tribes Claims

RESPONDENT

Date of Decision : 14-12-2017

Acts Referred:

Citation : (2017) 12 BOM CK 0084

Hon'ble Judges : B.P. Dharmadhikari, Swapna Joshi

Bench : DIVISON BENCH

Advocate : Ashwin Deshpande, V.P. Maldhure

Judgement

1. Heard Shri Ashwin Deshpande, learned counsel for petitioners and Shri V.P. Maldhure, learned A.G.P. for respondent nos. 1, 2 and 4. Presence of respondent nos. 2 and 3 is not necessary, as petitioner has already completed his education in Engineering with respondent no. 3 College, and thereafter has been employed in a private establishment, as per the statement made by the learned counsel for petitioners. 2. We find that while admitting this Writ Petition on 03.05.2002, this Court granted interim relief in terms of prayer clause (iv) and (v) of the petition. Petitioner no. 1 was therefore permitted to continue his education without any disturbance. 3. By the impugned order dated 25.02.2002, the Scrutiny Committee has invalidated caste claim of petitioner no. 1 as belonging to "Halbi Scheduled Tribe". The order has been passed after coming into force the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, (Act No. 23 of 2001). 4. Shri Deshpande, learned counsel for the petitioners has submitted that old documents of 1922 and 1954 on paternal side unequivocally disclose caste to be Halbi, and merely by placing reliance on a document of one Uttam Jairam Sonparote, a maternal grand father, those documents have been discarded. He contends that documents on maternal side could not have been relied upon at all. 5. He has taken us through the impugned order to show that in old

documents, where caste is mentioned as Halbi, no interpolation is noticed by the Scrutiny Committee. According to him, in this situation, following judgment of Hon"ble Supreme Court reported at 2011 (6) Mh.L.J. 919 (Anand v. Committee for Scrutiny and Verification of Tribe Claims), particularly paragraph no. 18, the Scrutiny Committee ought to have discarded the Koshti documents on maternal side. Support is being taken from Division Bench judgment dated 26.09.2017 in Writ Petition No. 10423/2017 (Neha Deepak Likhar v. The Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati and another) delivered at Bombay. He contends that though in case reported at 2013 (1) Mh.L.J. 180 (Priya Pravin Parate v. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur and others), there is a finding that profession was recorded as Weaving, that finding has not weighed with that Division Bench and old documents mentioning caste as Halbi have been looked into even there. 6. Learned A.G.P. appearing for respondents is strongly opposing the petition. He submits that the Scrutiny Committee has in the impugned order pointed out availability of Halbi Community which is not a Scheduled tribe and which has been later on recognized as "Special Backward Classes". This finding has not been assailed in present matter. As such community exists, documents of community people may mention their caste as Halbi, but, then that would not be sufficient to recognize them as persons belonging to Halbi Scheduled Tribe. When there are two castes or tribes with same name, according to him, the affinity test becomes material and here that test has been applied. The traits and customs disclosed by the petitioner and his family members have been evaluated, and thereafter a finding has been reached that the petitioner does not belong to Halbi Scheduled Tribe. Traits and affinity based upon it is not relevant. He further submits that when petitioner himself has offered documents on paternal side as also on maternal side, reliance on a adverse document on material side cannot be challenged by him. That document records caste as Koshti. Thus, Halbi community in Koshti caste has been recognized as Special Backward Classes and petitioner at the most may belong to that community and therefore, qualify as Special Backward Class and he cannot claim status as Scheduled Tribe. He has also taken us through relevant observations in judgment mentioned supra. 7. Judgment of Hon"ble Supreme Court in case of Anand v. Committee for Scrutiny and Verification of Tribe Claims (supra), particularly from opening line in paragraph no. 18 shows that though thorough examination of old documents is essential, affinity test also needs to be applied. A controversy may crop up when old unimpeachable document mentions a particular caste or tribe and affinity test as applied, does not support that claim. In that situation, if the facts are not as are in present matter, old documents may be found to be decisive. In other words, if there is no caste or tribe, with same or similar name and hence, old documents are acceptable on that count, use of affinity test may not be decisive. However, where there are two castes or tribes of same name and one is a upper caste not qualifying as Scheduled Tribe, affinity test is the only answer. 8. In case of Priya Pravin Parate v. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur and others (supra), the Division Bench of this Court has in paragraph no. 10

looked into some what similar situation. There the old documents mention caste as Halbi, and there were some documents which reveal caste as Koshti. However, those documents which reveal caste as Koshti, also in addition mention profession as Weaving. Hence, taking over all view of the matter and facts presented to it, the Division Bench has found it correct to set aside the order of the Scrutiny Committee and upheld caste claim as belonging to Halbi Scheduled Tribe. 9. Division Bench at Bombay in Writ Petition No. 10423/2017 (Neha Deepak Likhari v. The Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati and another) (supra) has looked into an identical challenge. However, that Division Bench was not called upon to answer the relevance or otherwise of the affinity test, particularly when an upper caste by name Halbi, recognized in State of Maharashtra as Special Backward Class, exists. The application of mind by the Division Bench therefore does not throw any light on contentions raised by the learned A.G.P. before us. Said Division Bench therefore, only looked into the old documents and found them decisive. Perhaps its attention was not invited to existence of an upper caste with very same name. 10. In present matter, the Scrutiny Committee has sent all the documents for vigilance enquiry. Documents submitted by the petitioner mentions caste as Halbi, are not found to be interpolated or doubtful. The Scrutiny Committee has looked into those documents also. 11. Documents for verification were made available by the petitioners only and records show that the vigilance authorities came across a document of one Uttam Sonparote, which mentions his caste as Koshti. Uttam was admitted in a school at Achalpur on 03.04.1939 and his date of birth is 29.03.1933. The extract of admission register carries blank against column in which profession is to be recorded. Contention that said document could not have been looked into because it is on maternal side, cannot be accepted, because candidate has forwarded the documents of his mother also in support of his caste claim. Those documents are mentioned at Sr.No. 16, 17, 18, 19 and 20 by the Scrutiny Committee. 12. When the Vigilance Cell Authorities came across such a document, it was put to petitioner, and petitioner has pointed out that being on maternal side, it was not a clinching circumstance. However, the Scrutiny Committee has applied the affinity test also and consideration thereof is contained at page no. 5 of the order of the Scrutiny Committee. The result thereof is a finding that petitioner does not belong to Halbi Scheduled Tribe. 13. As rightly pointed out by the learned A.G.P. here petitioner has not questioned order of the Scrutiny Committee by pointing out that there is no upper caste Halbi or then Halbi Koshti recognizes Special Backward Classes in State of Maharashtra. In view of this finding of the Scrutiny Committee it is apparent that mere reliance on old document to urge that the petitioner belongs to Halbi Scheduled Tribe is erroneous and misconceived. 14. However, during arguments, learned counsel for petitioners has invited our attention to the fact that presence of other community by name Halbi Koshti community or recognition as Special Backward Class was never expressly put to the petitioners, and as such the petitioners could not explain the same to the Scrutiny Committee. According to him, before using such material it ought to have been put to the petitioners.

Learned A.G.P. has submitted that after order was passed by the Scrutiny Committee, a ground in this respect could have been raised in the Writ Petition. Petitioners have not raised any such ground expressly. As already noted supra, insistence in the matter is only upon old documents which mention caste as Halbi. 15. In this situation, in present facts when petitioner has already completed education and is in private employment, we declare that the impugned order of invalidation shall not be used to the prejudice or affect the education of petitioner or degree of engineering obtained by him at any point in future. We also direct that it shall not be used as res judicata while examining caste claim of any of the blood relatives of petitioner. 16. If such claims are pending or are made by any blood relatives, the same shall be examined independently by the Committee on its own merit. With these directions we dispose of the present Writ Petition. No costs.