
(2017) 09 BOM CK 0109
In the Bombay High Court
Case No : 10423 of 2017

Neha D/o Deepak Likhar

APPELLANT

Vs

The Scheduled Tribe Caste Certificate Scrutiny Committee,
Amravati, & Ors.

RESPONDENT

Date of Decision : 26-09-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 09 BOM CK 0109

Hon'ble Judges : Shantanu Kemkar, G. S. Kulkarni

Bench : DIVISON BENCH

Advocate : Ashwin Deshpande, Piyush Pandey, A.A. Kumbhakoni, Shardul Singh,
Sandeep Babar

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. By consent of the parties heard finally.
2. This Petition under Article 226 of the Constitution of India challenges the order dated 2nd September, 2017 passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati (for short "Scrutiny Committee") whereby the Scrutiny Committee has invalidated the caste claim of the Petitioner belonging to "Halba/Halbi (S.T.)" and confiscated the caste certificate of the Petitioner dated 27th July, 2016 issued by the Executive Magistrate, Achalpur, Dist. Amravati.
3. The case of the Petitioner is that the Petitioner validly obtained caste certificate dated 27th July, 2016 as issued by the Executive Magistrate, Achalpur. The Petitioner has obtained admission on a reserved seat on the basis of her caste certificate in the Respondent No. 2 - Medical College, so as to pursue the M.B.B.S. course. It is not in dispute that the admission to the said course is a provisional admission and subject to verification of the caste certificate and a validity in that regard to be obtained by the Petitioner from the Scrutiny Committee.

4. The Petitioner accordingly had submitted an application through one Prerana Junior College, Science and Commerce, Nagpur, seeking validity of the caste certificate from the Scrutiny Committee. In support of the said application, the Petitioner submitted about 19 documents which according to the Petitioner would show that the Petitioner belonged to the "Halba/Halbi (S.T.)". The particulars of the documents are set out in paragraph 6 of the Petition as also in paragraph 2 of the impugned order passed by the Scrutiny Committee. The Scrutiny Committee invited a Vigilance report, which was placed on record of the Committee. The said report is dated 24th August, 2017.

5. The Petitioner inter alia relied on the following pre constitution documents :

(9) Birth Certificate of Ganpat Halbi (great grandfather) dated 26/04/1920-Male child born to Ganpat Halbi.

(10) Birth Extract of Ganpat Halbi (great grandfather) dated 27/04/1920- Male child born to Ganpat Halbi.

6. Apart from the said pre constitution documents, there are several other documents which are of the years 1950 to 2016. We do not refer to the details of these documents, suffice it to observe that it is not in dispute that all these documents were on the record of the Scrutiny Committee for its due consideration. The Petitioner had also supported her caste claim by placing on the record before the Scrutiny Committee, a "caste validity certificate", granted to the Petitioner's cousin sister named "Krutika Pandurang Likhari" granted by the Scrutiny Committee on 29th January, 2016. A copy of which is placed on record at (AnnexP10), page 76 of the paper book.

7. The Scrutiny Committee considering these documents as also the Vigilance report did not accept the claim of the Petitioner, principally on the ground that there were pre constitution documents concerning the petitioner's great grandfather showing the caste entry as "Halbi", however there exists a "Halbi" caste of a similar nomenclature which is a "Special Backward Class" of "Koshti" community. The Scrutiny Committee while answering Issue No. 1 observed that on the basis of these documents, it cannot be said that the Petitioner belonged to the "Halbi(S.T.)". Another reason which the Scrutiny Committee recorded to so conclude was that some of the blood relatives of the Petitioner were found to be belonging to the "Koshti" caste. In this regard, a purported reference has been made to "Koshti" caste entries as obtained by the Vigilance Officer in respect of the Petitioner's great grandfather and grandfather. In this regard the following two documents are referred by the Scrutiny Committee:

Sr. No. Nature of Documents Name Caste recorded as Date of admission/ Birth/ Death Relation with the applicant

1 2 3 4 5 6

1 An extract of death Ganpat Laxman Koshti 1930 Great grandfather

2 An extract of birth Shankar Ganpat Koshti 1948 Grandfather

The Scrutiny Committee observes that these two pre constitution documents are having a probative value and therefore the documents of the year 1920 (supra) as placed on record on behalf of the Petitioner would not establish the claim of the Petitioner as belonging to "Halbi(S.T.)". It is further observed that the Petitioner has also failed to establish her caste claim as could be gathered from the Vigilance Inquiry and also the affinity test as discussed in the answer to the Issue No. 2. It is basically for these reasons, the Scrutiny Committee concluded that the caste certificate issued to the Petitioner is found to be false and rejected to grant validity to the Petitioner's caste certificate.

8. The learned counsel for the Petitioner in assailing the impugned order submits that the Scrutiny Committee has misguided itself in passing the impugned order. It is submitted that the two pre constitution documents of the year 1920 i.e. birth certificate and the birth extract pertaining to great grandfather of the Petitioner could not have been discarded by the Scrutiny Committee. It is submitted that in the impugned order there is no discussion about these documents, much less on the evidentiary weightage these documents would have. It is submitted that only on the ground that Vigilance report refers to two subsequent documents, the Scrutiny Committee has rejected the claim of the Petitioner. It is submitted that even the Vigilance Officer in its report has not disbelieved the two pre constitution documents of the year 1920 (supra) which are referred at Sr. Nos. 9 and 10 in paragraph two of the impugned order. On behalf of the petitioner our attention has been drawn to the Vigilance Officer's report which records that the Vigilance Officer had visited the record department in the office of the Nagar Parishad, Achalpur, Dist. Amravati, from where it is stated to be revealed, from the death register, that the great grandfather of the Petitioner named Ganpat Laxman died in the year 1930 and to the birth extract to the grandfather of the Petitioner Shankar Ganpat a female child was born in the year 1948, both these documents indicating the caste as "Koshti". This is stated to be revealed from the birth and death extracts from the police station register in the office of District Collector, Amravati. The case of the Petitioner in regard to these death and birth extracts obtained from the police station register is that the said persons are not the relatives of the Petitioner as seen from the family tree despite which the Vigilance report without verification records these two persons to be relatives of the Petitioner. In the reply to the show cause notice the petitioner denied these documents as also stated that these two persons are not related to the Petitioner. It is submitted that however these two documents as referred in the vigilance report cannot bring about a situation that the 1920 documents (supra) are required to be disbelieved when proved. It is submitted that although the case of the petitioner is that these documents do not pertain to the Petitioner, the documents of the year 1930 and 1948 as referred by the Vigilance are required to be considered as stray or isolated entries. It is also submitted that the Petitioner has already produced on record several documents which would go to show that the petitioner belong to the "Halbi

(S.T.)" which include the preconstitution documents of the year 1920 and in view of these documents, the documents in the Vigilance report cannot be relied upon, to negative the Petitioner's claim. It is further submitted that the cousin sister of the Petitioner Krutika Pandurang Likhar was granted validity certificate as belonging to "Halbi (S.T.)" community, as directed by the order passed by the Division Bench at Nagpur in the case of Kum. Krutika d/o. Pandurang Likhar vs. The Scheduled Tribes Caste Certificate Scrutiny Committee and Another in Writ Petition No.2591 OF 2005 dated 14th December, 2015. It is submitted that these very documents on the basis of which the Petitioner has supported her caste claim, had fell for consideration of the Scrutiny Committee and this Court, and that this Court not only issued a direction to the Scrutiny Committee to issue a caste validity certificate but also granted a declaration that the Petitioner's sister Krutika belongs to "Halbi (S.T.)". It is thus submitted that the entire approach of the Scrutiny Committee is arbitrary in discarding the 1920 pre constitution documents (supra), as also to discard the proceedings in which a validity certificate was granted to the Petitioner's cousin sister in pursuance of the order dated 14th December, 2015 passed by this Court in Writ Petition No. 2591 of 2005. It is thus submitted that impugned order deserves to be quashed and set aside.

9. On the other hand, the learned counsel for the Respondent submits that the impugned order is legal and valid and would not call for any interference, in as much as the Scrutiny Committee has rightly rejected the claim of the Petitioner on the ground of the two documents of the year 1930 and 1948 (supra) as referred in para 5 of the impugned order which showed the caste of the great grandfather and that of the grandfather as "Koshti". It is submitted that in view of these two documents the Scrutiny Committee is justified not referring to the 1920 pre constitution documents as relied by the Petitioner. It is submitted that the impugned order is thus required to be sustained in view of the said new material as placed on record under the Vigilance report. It is then submitted that the order dated 14th December, 2015 passed by this Court in Writ Petition No. 2591 of 2005 would also not assist the Petitioner in as much as different material is now revealed in the Vigilance report in the present case. It is therefore, submitted that this Petition needs to be dismissed.

10. We have heard learned counsel for the parties. We have also perused the impugned order as also the Vigilance report as placed on record, the genealogy of the Petitioner's family and the order passed by this Court on 14th December, 2015 in Writ Petition No. 2591 of 2005 (supra).

11. At the outset, we may observe that the crucial test for the Scrutiny Committee to decide the caste claim of the Petitioner surely fell on the two pre constitution documents dated 26th April, 1920 and 27th April, 1920 as referred above. What we find from the reasons as recorded by the Scrutiny Committee, in answering the issue No. 1 is that the Scrutiny Committee has completely discarded these documents, only for the reason that the Vigilance report refers

to the two new documents as referred above of the year 1930 and 1948 which shows the caste of the great grandfather and the grandfather of the Petitioner as "Koshti". However, a careful reading of the impugned order reveals that there is no finding much less any cogent reason to discard the documents dated 26th April, 1920 and 27th April, 1920 as relied by the Petitioner. It cannot be disputed that these documents had high probative value, being pre constitution documents. It is significant that the Vigilance Officer also has not disbelieved these documents and in fact in the report as placed before the Scrutiny Committee has confirmed the said documents as genuine documents as relied upon by the Petitioner. There is no material on the record of the Scrutiny Committee by which one can reach an unequivocal conclusion that the said two documents of the year 1920 as relied by the Petitioner cannot be taken into consideration and were thus required to be discarded. In the absence of any such material and a finding to that effect, it is difficult to accept a conclusion as recorded by the Scrutiny Committee, to discard the documents of the year 1920, only on the basis of two stray documents referred in the Vigilance report. It is further significant that in the reply filed to the show cause notice issued on the basis of the Vigilance report, the Petitioner has categorically stated that these documents referred by the Vigilance Officer of the year 1930 and 1948 do not pertain to the persons who are relatives of the Petitioner and in that regard attention of the Scrutiny Committee was drawn to the genealogy. There is no material on the record of the Scrutiny Committee to junk this plea of the petitioner, as also there is no discussion in that regard in the impugned order. Thus, in our opinion these facts and circumstances revealed a clear situation before the Scrutiny Committee, that there was no contra material to discard the two pre constitution documents of the year 1920 and as a matter of fact the existence of these documents and applicability of the same to the Petitioner stood affirmed in the Vigilance report. Thus the only conclusion which can be drawn is that these documents, having high probative value conclusively assisted the Petitioner to establish the claim of the Petitioner belonging to the "Halbi (S.T.)" caste.

12. In our opinion the Scrutiny Committee misdirected itself on the premise of some new stray/isolated material revealed in the vigilance report which in the first place was disputed by the petitioner and secondly could not be proved to be of any relevance to the petitioner. In this situation such material certainly could not have been relied upon by the Scrutiny Committee to discard the pre constitution documents which stood proved and which were supporting the claim of the Petitioner that the Petitioner belongs to "Halba(S.T.)" caste. In this context learned counsel for the Petitioner would be right in relying on the decision of the Division Bench of this Court in the case of Priya s/o. Pravin Parate vs. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur and Others, 2013(1) Mh.L.J. wherein Mr. Justice B.R. Gavai speaking for the Bench observed thus :

"Merely because some stray entries as "Koshti" are recorded in respect of caste of some of the relative of Petitioners from their paternal side; the voluminous

documentary evidence of pre constitution era which clearly certify the Petitioners great grandfather and his brothers to be Halbi, could not have been lightly brushed aside by the Scrutiny Committee".

In so observing the Division Bench has referred to the decision of the Supreme Court in the case of Anand vs. Committee for Scrutiny and Verification of Tribe Claims and Others, reported in 2011 (6) Mh.L.J. 919. The Court in para 10 and 11 of the said order observe thus:

10. From the aforesaid authority, it would reveal that persons belonging to Halba Tribe had migrated to west and taken service under the Gond Kings of Chanda. It can also be seen that some of them had taken to weaving and had amalgamated with the Koshti caste in Bhandara and Berar. Merely because some stray entries as "Koshti" are recorded in respect of caste of some of the relative of petitioners from their paternal side; the voluminous documentary evidence of preConstitution era which clearly certify the petitioners greatgrand father and his brothers to be Halbi, could not have been lightly brushed aside by the Scrutiny Committee. As discussed herein above, the Hon"ble Apex Court in case of Anand (supra), found that the preIndependence documents have a greater probative value and they should be given due consideration while considering the claim of a tribal.

11. As already discussed herein above, merely because it was found that the petitioners forefathers were involved in the profession of weaving, could not have been a ground to reject their tribal claim, particularly in view of the observations contained in the Amravati District Gazetteer, so also in the authority of R.V. Russell, cited above. (emphasis supplied)

13. Apart from the above clear position in regard to two pre constitution documents, in our opinion the Scrutiny Committee could not have overlooked that the caste validity certificate was issued to the cousin sister of the petitioner Krutika, in view of the declaration as granted by the Division Bench of this court in Writ Petition No. 2591 of 2005 in its order dated 14th December, 2015. The Division Bench considering the claim as made by Krutika, which was also on the documents and genealogy as relied upon by the Petitioner, thought it appropriate to set aside the order passed by the Scrutiny Committee and grant validity to the caste certificate of Krutika. In our opinion, all these facts and circumstances completely support the case of the Petitioner to succeed in her claim before the Scrutiny Committee.

14. Resultantly, with certitude we are of the opinion that the Petition deserves to succeed. We accordingly set aside the impugned order dated 2nd September, 2017 passed by the Scrutiny Committee and direct the Scrutiny Committee to forthwith, issue to the Petitioner a caste validity certificate, of the Petitioner belonging to the "Halbi (S.T.)", on receipt of an authenticated copy of this order.

15. The Petition is allowed in the above terms.

16. No order as to costs.