

(2010) 08 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No. 2942 OF 2004

Nitin Sherkar through his natural guardian father
Dnyaneshwar Onkarrao Sherkar

APPELLANT

Vs

The Scheduled Tribes Caste Certificate Scrutiny Committee
and Others

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Citation : (2010) 08 BOM CK 0088

Hon'ble Judges : J.P. Devadhar, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : K.H. Deshpande, for the Appellant; S.M. Puranik, for Respondent No. 1, S.S. Wandile, A.G.P. for Respondents 2 and 3 and T.D. Khade, for the Respondent

Final Decision : Allowed

Judgement

A.B. Chaudhari, J.—This petition is directed against the order dated 28.6.2004 (Annexure34) passed by respondent No. 1Caste Scrutiny Committee invalidating the tribe claim of the petitioner and cancelling his caste certificate dated 1.9.1998 issued by Sub Divisional Officer, Achalpur. The petitioner is also seeking declaration that he belongs to "Halbi" caste which is recognized as Scheduled Tribe at Sr. No. 19 in the Constitutional Order, 1950 in relation to the State of Maharashtra and the caste certificate dated 1.9.1998 is valid and legal.

2. Facts giving rise to the present petition are that the petitioner belongs to "Halbi" Scheduled Tribe. The petitioner and his family and his ancestors hails from the place of Achalpur city which is border area of Melghat, which was identified as the area occupied by "Halbi", even prior to the removal of area restriction from the Constitutional Scheduled Tribe Order 1950 by way of amendment effected in 1976. Melghat area is located on the border of Madhya Pradesh and Maharashtra State. Like this area in Maharashtra, some of the adjacent areas along the border side in Madhya Pradesh were identified as areas

occupied by "Halbi" tribal. That prior to the Reorganization of the States, the entire "Halbi" tribal area along the border sides of Maharashtra and Madhya Pradesh was part and parcel of the then C.P. & Berar State.

3. The petitioner passed his 12th standard examination in June 2004 and obtained the certificate of caste dated 1.9.1998 from the Sub Divisional Officer, Achalpur. Since the petitioner wanted to apply for admission to medical course from the Scheduled Tribes category, he submitted the said original certificate along with other relevant documents on 30.10.2003 to the Committee through his college Jagdamba Mahavidyalaya, Achalpur. He submitted in all 22 documents. Thereafter the petitioner received a show cause notice dated 2.6.2004 from the Committee along with police vigilance report dated 2.6.2004, a statement dated 2.3.2004 and a pedigree chart that was annexed. The petitioner filed reply to the said show cause notice on 19.6.2004 by hand which was received by the Committee. Thereafter the Committee made the impugned order on 28.6.2004 and rejected the caste claim made by the petitioner ignoring all the documentary evidence only on the ground that the petitioner did not satisfy the affinity test as found by the vigilance cell in its report and agreed by the Research Officer.

4. Mr. Deshpande, learned senior counsel, invited our attention to the oldest document in respect of grand father of the petitioner, namely Onkar Kisanji. The said document is Dakhil - Kharij entry from the school which shows that the caste of Onkar Kisanji was recorded as "Halbi" when he was admitted in the school on 1/8/1928 in the first standard. He came out from the said school on 1.4.1930. There are other documents showing the caste as "Halbi" but they are not old documents or the documents pertaining to pre constitutional period. Perusal of the impugned order made by the Caste Scrutiny committee or the vigilance cell report do not anywhere indicate a single reason to throw any doubt about the said document of Dakhil - Kharij entry of Onkar Kisanji the grand father of the petitioner nor the counsel for the Caste Scrutiny Committee could point out anything when specifically asked by us as to why the said document was ignored. Mr. Deshpande relied on the decision dated 13.12.2004 in W.P. No. 571 of 2004 Ku.Pragati Vasantrao Bhujade v. The Scheduled Tribe Caste Scrutiny Committee.

5. The only submission made by the learned Counsel for the Caste Scrutiny Committee was that since the vigilance cell report shows that the petitioner did not satisfy the affinity test and since the said report was approved by the Research Officer, the caste scrutiny committee preferred to approve the report treating that the petitioner failed in the affinity test. He relied on the Full Bench decision of this Court in Shilpa Vishnu Thakur v. State of Maharashtra reported in 2009 (3) Mh.L.J. 995 and argued that the judgment in case of Ku. Pragati cited by Mr. Deshpande was considered by the Full Bench and it did not agree with the proposition of law stated therein that no affinity test is required to be applied in case wherein no other view was possible based on documentary evidence.

6. We have considered the Full Bench decision of this Court. We have gone through the order made by the Caste Scrutiny Committee so also the vigilance report. At the outset, we find that the vigilance cell report itself shows that the language of communication of the petitioner's family is "Halbi" and that his mother tongue is Marathi. The report of the Scrutiny Committee shows no basis on which either the vigilance cell or the committee has drawn the inference that the traits indicated in the statement of petitioner's father that was recorded did not tally with the traits of "Halbi". Neither the vigilance cell report nor the order of Caste Scrutiny Committee anywhere show which traits did not tally with the traits stated by the father of the petitioner when his statement was recorded by the vigilance cell. The Research Officer without showing any reason whatsoever has simply stated as "agreed" at the bottom of the said vigilance cell report. We do not think that the Research Officer has really done his work in the instant case. The vigilance report also does not show any basis on which the said conclusion was drawn. We, therefore, find that this is the only affinity test report relied upon by the Committee and there is no other report or material to record a finding. This affinity test report of the vigilance cell and the agreement by the Research Officer in one word "agreed" without any authentic material being indicated, in our opinion, is of no significance. We, therefore, do not attach any significance to the findings recorded by the Caste Scrutiny Committee on the affinity test and that being the only basis for rejecting the caste claim, without considering the sanctity and importance of the said documentary evidence of Dnyaneshwar and Onkar Kisanji as "Halbi", which is not in dispute. We therefore find that the impugned order made by the Caste Scrutiny Committee must be set aside. We further find in the above background that the petitioner was entitled to be declared as "Halbi" Scheduled Tribe. For the above reasons, we make the following order.

7. Writ petition is allowed. Rule is made absolute in terms of prayer Clause (I), (ii) and (iii) of writ petition. No order as to costs.