

(2022) 08 BOM CK 0097
In the Bombay High Court
Case No : Writ Petition No. 9267 Of 2021

Priyanka And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 18-08-2022

Acts Referred:

Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes And Special Backward Category (Regulation Of Issuance And Verification Of) Caste Certificate Act, 2000 — Section 10, 12

Citation : (2022) 08 BOM CK 0097

Hon'ble Judges : Mangesh S. Patil, J;Sandeep V. Marne, J

Bench : Division Bench

Advocate : Sunil M. Vibhute, Vaishali N. Patil (Jadhav), Shamsunder B.Patil, Kashyam A. Shinde, Mrigesh D. Narwadkar

Final Decision : Dismissed

Judgement

Sandeep V. Marne, J

1. Rule.

2. Rule is made returnable forthwith and heard finally with the consent of the learned Advocates for the respective parties, at the stage of admission.

3. The petitioners are the sister and brother, who have been issued with the tribe certificates dated 25.01.2007, certifying that they belong to 'Koli Mahadeo' tribe, which is recognised as scheduled tribe. On the strength of the tribe certificates, the petitioner No. 1 was allotted Medical College for M.B.B.S. course in the year 2015, and since the College was refusing to admit her for want of tribe validity certificate, she had filed Writ Petition No. 9594 of 2015. In that petition, initially an interim order was passed on 22.09.2015 directing the concerned college to allow her to secure admission and continue her studies for the first year of MBBS Course. The petition was subsequently disposed of by order dated 03.12.2015 recording the statement of the respondent Committee therein that the proposal

for verification of tribe certificate of petitioner No. 1 would be decided within one year. She was allowed to prosecute further studies and appear for examination, subject to the decision of the Committee. It appears that the petitioner No. 1 has now completed her M.B.B.S. course in the year 2019 and has also undergone the necessary internship of one year. So far as, petitioner No. 2 is concerned, he is apparently undergoing Engineering Degree Course with IIT, Palakkad Kerala.

4. In the above backdrop, the tribe certificates of both the petitioners came up for verification before the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad. By the impugned order dated 10.08.2021, the Committee has invalidated the tribe claim of both the petitioners and has further directed that necessary action be initiated against them by their respective Educational Institutions as provided under Section 10 and 12 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

5. The petitioners have challenged the judgment and order dated 10.08.2021 passed by the Scrutiny Committee in the present petition. By order dated 24.09.2021, this Court directed not to take action against the petitioners in pursuance of the impugned judgment. The interim protection has been continued from time to time.

6. Appearing for the petitioners Mr. Vibhute, contended that the father of the petitioners has been granted the validity certificate on 13.06.2006. He further contended that the validity certificate of the father was premised on the report of the Vigilance Cell dated 15.02.2006. He further submitted that the Research Officer had given positive report, so far as affinity test was concerned.

7. Mr. Vibhute, further contended that in the light of the issuance of validity certificate in favour of the petitioners' father based on Vigilance Cell Inquiry Report, it was not open for the Vigilance Cell to record the contrary observations, while conducting vigilance inquiry in respect of the tribe claims of the petitioners. Similar submission is made with regard to the opinion of the Research Officer.

8. It is further contended on behalf of the petitioners that this is not a case of suppression of any fact in that the alleged addition in respect of the School records of two paternal side relatives of the petitioners was already highlighted in the Vigilance report of the father and that the said aspect was duly considered by the Committee while issuing the father's validity certificate.

9. Mr. Vibhute, in support of his contentions has relied upon the following decisions :

a) Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and Others - 2010 (6) Mh. L.J. 401.

b) Prakash s/o Rambhau Thakur Vs. The State of Maharashtra and Anr. - Judgment dated 10.09.2009 in Writ Petition No. 2016 of 2007.

c) Shweta Balaji Isankar Vs. State of Maharashtra and Ors. - Order dated 27.07.2018 in Writ Petition No. 5611 of 2018.

d) Sayanna Vs. State of Maharashtra and Ors.- 2009 (10) SCC 268.

e) Miss. Madhu Narayan Birkale Vs. The State of Maharashtra and Ors, Judgment dated 11.04.2022, in Writ Petition No. 8372 of 2018.

f) Anil s/o Shivram Bandawar Vs. District Caste Certification verification Committee Gadchiroli and Anr. - 2021 (5) Mh.L.J. 345.

g) Ishwar s/o Naga Bondalwar and Anr Vs. The District Caste Certificate Scrutiny Committee Gadchiroli, through its Princiapal Secretary, Dr. Babasaheb Ambedkar Samajik Nyay Bhawan, I.T.I. Square, LIC Road, Gadchiroli 442605 -Judgment dated 26.07.2021 in Writ Petition No. 472 of 2020.

h) Jaywant Dilip Pawar Vs. State of Maharashtra and Ors.- Order dated 08.03.2017 passed by the Supreme Court, in Civil Appeal No. 2336 of 2011.

10. Appearing for respondent Nos.1 and 2, Mrs.Vaishali Patil, the learned Assistant Government Pleader has supported the impugned judgment and order of the Committee. She submitted that the father of the petitioners has already been issued with show cause notice dated 25.08.2021 calling upon him to submit an explanation, as to why his validity certificate dated 13.06.2006 should not be cancelled. She submitted that despite grant of repeated opportunities, the father has avoided to appear before the Committee.

11. Mrs. Patil, has taken us through the records relating to the father's validity certificate. She particularly invited our attention to the affidavits filed by Ku. Sapna d/o Shripatrao Jamadar, Shri Shanime Vijaykumar Shivaji and Shri Rohan Shriram Akoskar, admitting that they are relatives from maternal side of the petitioners father and therefore the decision of the earlier Committee granting validity in favour of father based on the validity certificates of the aforesaid relatives was clearly erroneous. She invited our attention to the findings recorded in the impugned judgment, with regard to the affinity test in respect of the petitioners, to the effect that the family members of the petitioners are not found to be following the trait, traditions and customs of the 'Koli Mahadeo' tribe.

12. The rival contentions of the parties now fall for our consideration.

13. Since the sheet anchor of the petitioners has the validity certificate granted in favour of their father, we have carefully gone through the records leading to the issuance of validity certificate in favour of their father. It is true that the addition of the words, 'Koli Mahadeo', in respect of the School Records of Sarubai Ravan Koli and 'Mahadeo' in respect of School records of Ku. Koli Triveni Ravan were specifically highlighted by the Vigilance Cell in its report dated 15.02.2006. We are therefore curious as to how the Committee proceeded to issue validity certificate in favour of father of the petitioners, despite such observations by the Vigilance Cell. The petitioners have placed on record only the validity certificate

of father and not the order passed by the Scrutiny Committee. The same is in the original record pertaining to the father. After carefully going through the order passed by the Committee in the case of father, we have noted that this aspect of additions being made in case of two paternal relatives of father has been completely ignored by the Committee in its order dated 03.06.2006. We further went through the reply filed by the father to the Vigilance Cell report and we again found that the father did not refer to the said additions in the School records of his paternal relatives in his reply. It, therefore, appears that the validity certificate has been granted in favour of the father by not taking into consideration the factum of subsequent additions of the words, 'Koli Mahadeo' and 'Mahadeo' in respect of Sarubai Ravan Koli and Triveni Ravan Koli respectively. It is an admitted position that the said two persons are the sisters of father of Balaji Ravan Koli (Petitioners' father).

14. Further perusal of the order dated 03.06.2006 passed in the case of father shows that the Committee considered Shri Shanime Vijaykumar Shivaji as father's relative without bothering to find out as to whether said relative was of paternal side or maternal side. As a matter of fact, the Committee had before it the affidavit of Shanime Vijaykumar Shivaji, dated 26.09.2005, stating that Balaji Ravanrao Wadikar is his maternal cousin (son of mother's sister). Thus, despite clear evidence of Shanime Vijaykumar Shivaji, being maternal relative of the father, the Committee proceeded to rely upon the validity certificate issued in his favour for the purpose of upholding the tribe claim of the petitioners' father. The Committee also had before it, similar affidavits of other two maternal side relatives viz. Ku. Sapna d/o Shripatrao Jamadar and Shri Rohan Shriram Akoskar, who again admittedly are the maternal relatives of the petitioners' father.

15. In the light of the above facts emerging through the original record pertaining to the validity claim of the petitioners' father, we cannot find any fault in the impugned judgment of the Committee, refusing to rely upon the father's validity certificate for the purpose of upholding the tribe claim of the petitioners.

16. Additionally the Committee has considered the School records of as many as 15 paternal side relatives of the petitioners and in respect of all, there are consistent entries of caste of 'Koli'. Thus, before the Committee, there were three sets of entries/evidence :

(i) Validity certificate issued in favour of three maternal side relatives of father, (ii) Entries of 'Koli Mahadeo' in respect of some of the paternal side relatives, in which there were subsequent additions, (iii) Consistent entries of 'Koli' in School records of 15 paternal side relatives.

17. In the light of this evidence emerging before the Committee, it cannot be said that the finding recorded by the Committee is, in any manner, perverse. Expecting the Committee to blindly follow the validity certificate of father would tantamount to perpetrating the illegality. The Committee has, in our opinion, rightly corrected the error, albeit after some delay and has now proceeded to

issue show cause notice to the father.

18. What remains is dealing with various judgments cited by Mr. Vibhute :

(i) Apoorva (supra), it has been held that when the candidate submits the caste validity certificate granted earlier certifying that the blood relation of the candidate belongs to the same caste, the Committee may grant such certificate without calling for the vigilance Cell report. However, this decision is of a little assistance to the petitioners, as the said decision further clarifies that if the Committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow the earlier decision and may refuse to grant certificate to the applicant before it. In the present case, the Committee has rightly gone through the records of the case of the father of the petitioners and has rightly arrived at the conclusion that the father's validity certificate cannot be the basis for upholding the tribe claim of the petitioners.

(ii) Prakash (supra), there were pre constitutional entries, which were taken into consideration while deciding the claim of the brother of the petitioner therein, which is not the case here. In that case, this Court held that the Committee cannot be permitted to take diagonally opposite stand on the same material in two different cases. However, in that case there was no dispute about the correctness of the validity certificate granted in the case of brother of the petitioner therein, whereas, in the present case, the Committee has doubted the correctness of the validity certificate of the father for sound reasons. Therefore, this judgment is clearly distinguishable.

(iii) Shweta (supra) is relied upon by the petitioners to contend that mere issuance of show cause notice to the father, cannot be a reason to straightaway discard his certificate of validity. In the present case, we have gone through the records relied upon in the case of the father and have observed that grant of validity certificate to father was by ignoring the additions made in the School records of two paternal relatives and by relying upon the validity certificates of maternal relatives. Therefore, this decision is of no assistance to the petitioners.

(iv) Sayanna (supra), the controversy was about the addition of the word "lu" in the register of School. The Court has decided the question whether the Committee was justified in coming to the conclusion about the addition of the said word based on records before it. In the present case there is absolutely a factual controversy about the subsequent addition of words 'Koli Mahadeo' and 'Mahadeo' in the School records of two paternal side relatives of the petitioners. In fact, such subsequent additions have been noticed by the Vigilance Cell, not only while deciding the tribe claim of the petitioners, but also while deciding the tribe claim of their father. Therefore, the judgment in Sayanna (supra) has no application to the present case.

(v) Miss. Madhu (supra) merely follows the decision of the Supreme Court in Sayanna and therefore has no application to the facts and circumstances of the present case.

(vi) Anil and Ishwar (supra) are the decisions of this Court relating to the show cause notices for cancellation of the validity certificates issued earlier. This Court has gone into aspect as to whether the issuance of such show cause notices in the facts and circumstances of those cases was warranted or not. In the present case, the said issue is not involved, therefore, both the decisions are of little assistance to the petitioners.

(vii) Jaywant (supra) the issue was about the relatives of the appellants therein not being residents of the areas mentioned in the Presidential Order, 1956 and therefore, the said order also has no application to the present case.

19. Thus, none of the decisions cited by the Mr. Vibhute are applicable to the peculiar facts and circumstances of the present case.

20. In the result, we find no jurisdictional error or perversity in the impugned judgment passed by the Scrutiny Committee. In prayer Clauses 'D' & 'F', the petitioners have sought the following reliefs :

"(D) The respondent No. 3 and 4, may kindly be restrained from taking any adverse action against the petitioner pursuant to the impugned judgment and order dated 10.08.2021 of respondent No. 2 committee and respondent No. 3 and 4 may kindly be directed to issue Internship Completion Certificate, Decree Certificate of course of M.B.B.S and other original documents, which the petitioner No. 1 is entitled.

(F) The respondent No. 5 may kindly be directed to consider the petitioner from Schedule Tribe category in entire admission process of NEET-PG-2021 without insisting for Tribe Validity Certificate of the petitioner, subject to the adjudication of Tribe Claim of the petitioner by this Hon'ble Court in this petition."

21. Having held that the order passed by the Committee is valid, we are afraid we cannot grant prayer Clauses D & F to the petitioners. In *Chairman and Managing Director, Food Corporation of India and Ors. Vs Jagdish Balaram Bahira* (2017) 8 SCC 670, the Hon'ble Supreme Court has held that withdrawal of benefits secured on the basis of caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim. The entire petition of the petitioners must fail. We, therefore, proceed to pass the following order :

ORDER

- 1) The petition is dismissed.
- 2) The interim protection granted earlier is vacated.
- 3) No costs.
- 4) Rule is discharged.