
(2007) 07 BOM CK 0113

In the Bombay High Court

Case No : Writ Petition No's. 2575, 2577, 2578, 2753, 2757 and 2758 of 2007

Pushpa Pathrabe

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Citation : (2007) 6 ALLMR 256 : (2008) 3 BomCR 818 : (2008) 1 MhLj 404

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : S.V. Manohar, A.B. Patil, B.G. Kulkarni and Rohit Deo, for the Appellant; N.S. Khubalkar, A.G.P., M.V. Samarth and Jayant Pendsey, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Petitioners in all these petitions are Corporators elected to the Municipal Corporation of Nagpur from the Constituencies reserved for Scheduled Tribe. They all claimed to belong to "Halba" community which is included in Presidential Notification as "Halba Scheduled Tribe". While contesting the elections they had not obtained their caste validity certificates. They applied to the Caste Scrutiny Committee under 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 (hereinafter referred to as "Caste Certificate Act") for scrutiny of their caste claims. The Committee, by its impugned orders dated 13th June, 2007, invalidated the claim of the petitioners in each of these petitions to belong to Halba Scheduled Tribe. As a consequence, respondent No. 3 Municipal Commissioner, Nagpur unseated them by his communication dated 16th June, 2007. Aggrieved by the decision of Caste Scrutiny Committee, the petitioners have approached this Court by present petitions.

Notices were issued to the respondents. By consent of the parties the petitions

were taken up for final hearing by making Rule returnable forthwith.

2. Another Corporator Shri Deorao Ganpatrao Umredkar who was elected as Mayor of Nagpur as the post was reserved for Scheduled Tribe, and who too claimed to belong to Halba Scheduled Tribe, was likewise unseated by Order dated 16th June, 2007 as a sequel to invalidation of his caste claim by Scrutiny Committee on 13th June, 2007. He too approached this Court by filing Writ Petition No. 2576 of 2007 against the decision of the Scrutiny Committee, which was dismissed by this Court by judgment dated 6th July, 2007 [since reported in 2008(1) M.L.J. 364

3. The petitioners in these petitions have assailed the decision of the Caste Scrutiny Committee on almost similar lines as in the petition filed by Shri Deorao Umredkar. The challenges are identical and have been substantially dealt with in the judgment dismissing Writ Petition No. 2576 of 2007. As far as grounds, raised by the petitioners in these petitions which are same as in Shri Deorao Umredkar's petition, the reasons given while dismissing his Writ Petition No. 2576 of 2007 need not be repeated in this judgment. This judgment is restricted to the grounds made out by the petitioners which are personal to them, while referring to the common grounds only to the extent necessary.

4. We have perused records in all cases of petitioners. We find that certain factual aspects as to furnishing of information by respective petitioner and evidence etc. are monotonous. In all cases petitioners" Advocate gave monotonous letter through Advocate on 2-3-2007 filing Vakalatnama. Filed xerox copy of affidavit of the petitioner along with advocates letter dated 8-3-2007 and furnished copies of books etc. by communication dated 14-5-2007. The petitioners have disputed correctness of Vigilance Cell report by communication dated 14-5-2007 and called it to be false, also demanded that unless the petitioners are granted adjournment for three months they would not furnish reply. The petitioners have in same case furnished affidavit of Nanaji Tulshiram Parate giving pedigree. The petitioner again submitted application on 22-7-2007 made allegations against the Vigilance Cell. The petitioners have not furnished independent evidence.

5. The petitioners have also assailed the decision of the Caste Scrutiny Committee on the ground that the Research Officer associated with the Vigilance Cell was not duly qualified and did not have expertise in respect of Halba Tribe. Therefore, there was no compliance to the requirement in the judgment of Ku. Madhuri Patil v. Additional Commissioner, Tribal Development reported at AIR 1995 SC 95. The Vigilance Cell itself was not constituted properly and hence, the entire procedure was vitiated.

The petitioner claimed that her request for cross-examination of the officers of Vigilance Cell had been wrongly rejected by the Committee, contravening the principles of natural justice.

6. All the petitioners averred in application on 14-5-2007, that the Vigilance Cell

had prepared a wrong report. They have sought inspection of the record and certified copies of documentary evidence collected by the Vigilance Cell. They also claimed that since respective parents were uneducated there could not have been school leaving certificate of her father which had been procured by the Vigilance Cell. Most amongst the petitioners have stated that statement of relatives recorded by Vigilance Cell were not correctly recorded by the Cell and the genealogical tree of the family was not correctly brought on record.

7. The petitioner had not secured caste certificate by making false representation and therefore, there was no justification for ordering their prosecution.

8. In view that on same points there is variation and therefore aspects emerging from record are discussed while dealing with each case as hereinafter.

W.P. No. 2575/2007

9. Petitioner Pushpa Pathrabe in Writ Petition No. 2575 of 2007 claimed that she had applied to respondent No. 4 Committee for scrutiny of her claim as belonging to Halba Scheduled Tribe. The Committee conducted vigilance inquiry and served upon the petitioner a copy of Vigilance Cell Report, calling upon the petitioner to furnish an explanation and evidence to prove the tribe claim. What reveals on perusal of record is as below.

(a) Information given in application form for issuance of Caste Certificate:

(i) Caste claimed : Halba, Halbi.

(ii) Place of birth : Umrer.

(iii) Place of residence : Prior to 1950-Umrer, Tahsil: Umrer, District: Nagpur. She has not given information regarding their residence after 1960.

(iv) Religion : Adiwasī.

b) Information given in Form-E:

(i) Traditional family Occupation : Labour.

(ii) Scheduled Tribe Claimed : Halba (Scheduled Tribe)

(iii) Mother Tongue : Marathi.

(iv) Place of Origin : Umrer, District: Nagpur.

(v) Information about family members : Information about family members as Uncle, Mother, Maternal Uncles and Grandfather.

(vi) He has shown that except mother all relatives, namely, father, uncle and grandfather are shown to be resident of Umrer, while place of origin of mother is shown to be at Nagpur.

(vii) She relied on documents furnished with dated 2-7-1956 and 2-8-1956 respectively relating to caste of her father's uncle Rambhau Pandurang and her

own uncle Ramkrushna Vithoba which show that they belong to Halba community.

(c) Co-operation with Vigilance Cell:

Statement of petitioner's uncle Ramgopal Ramaji Bokade was recorded by Vigilance Cell where he given pedigree and gave information as occupation of the tribe to be weaving and gave place of original residence as Umrer and stated that they left the said place since last 20 years.

Caste of Ramgopal is recorded as Vinkari.

Petitioner did not give statement.

(d) Evidence and representations before Committee:

(i) The petitioner has furnished xerox copy of affidavit as in other cases which is replica of affidavit in Shri Deorao Umredkar's case. Affidavit is dated 23-2-2007, original whereof is not filed.

(ii) The petitioner has submitted objection dated 21-3-2007, 23-4-2007 and objection dated 14-5-2007 and made allegations and demands as referred to in paragraph 5 above and as done by Deorao Umredkar in Writ Petition No. 2576 of 2007.

(iii) The petitioner has tendered affidavit of Ramgopal Bokade, apparently dated 21-3-2007, in which he has stated that the officers of Vigilance Cell did not correctly record his statement and did not give him its copy. He has alleged that details of children of Pandurang son of Budhaji are not correctly narrated in the pedigree recorded by the officers and gave pedigree according to him as correct pedigree.

She, therefore, prayed for quashing and setting aside of the impugned orders.

10. We find that barring omissions about Pandurang and his children there is no difference in the pedigree recorded by the Vigilance Cell which fact does not, in any manner, reflect on petitioner's claim as she has shown to be one amongst the children of Natthuji, and Natthuji along with his brothers is a child of Ramaji who was son of Budhaji. This petitioner has once again furnished information in a printed form almost repeating information already given and adding nothing more. The petitioner has not examined witness or did not bring any evidence in support of her claim.

W.P. No. 2577/2007:

11. Petitioner Vilas Parate in Writ Petition No. 2577 of 2007 has raised similar grounds as indicated in paragraphs 5 to 10 above as in case of Pushpa Pathrabe and further that his father was uneducated, and yet Vigilance Cell had procured caste certificate of his father showing that his father belongs to caste "Koshti". He claims that his cousin Sukhdeo Pundlik was shown to belong to "Halba" community in certificate dated 8-7-1955. Perusal of record reveals:

a) Information given in application form for issuance of Caste Certificate:

(i) Caste claimed : Halba, Halbi.

(ii) Place of birth : Nagpur.

(iii) Place of residence : Prior to 1950-Nagpur, but without detailed address. He has not given information regarding their residence alter 1960.

(iv) Religion : Adiwas.

b) Information given inform-E:

(i) Traditional family Occupation : Labour.

(ii) Scheduled Tribe Claimed : Halba.

(iii) Mother Tongue : Halbi.

(iv) Place of Origin : Nagpur.

(v) Information about family members : No information given except father's name as "Madhya Ganya Parate".

(c) Co-operation with Vigilance Cell:

Petitioner has refused to record statement.

(d) Evidence and representations furnished by petitioner:

(i) Petitioner has tendered xerox copy of his affidavit dated 23-2-2007 which contains prototype assertion as in case of Shri Deorao Umredkar.

(ii) Petitioner has submitted representations dated 17-4-2007 and 14-5-2007 and levelled charges and allegations against committee like all other corporators did.

(iii) The petitioner has tendered xerox copy of affidavit of Nanaji son of Tulshiram Parate and gave details of pedigree.

(iv) Petitioner did not furnish any other evidence in support of his claim.

W.P. No. 2578/2007:

12. Petitioner Sanjay Bhalchandra Pimparikar, in Writ Petition No. 2578 of 2007 raised similar grounds as indicated in foregoing paras 5 to 8 and that his father was uneducated and yet the Vigilance Cell had procured school leaving certificate of his father and paternal uncle showing that they belong to "Koshti" caste. The petitioner claimed that certificate in respect of his grandfather's cousin dated 20th May, 1998 showed his cousin to belong to Halba caste. He claimed to have also submitted a genealogical tree of his family kept by Bhat who maintained such records, which was not considered by the Committee. Perusal of record reveals:

a) Information given in application form for issuance of Caste Certificate:

(i) Caste claimed : Halba.

(ii) Place of birth : Nagpur

(iii) Place of residence : Prior to 1950-Nagpur, Prior to 1960-Nagpur, Prior to 1967-Nagpur, but without detailed address.

(iv) Religion : No details are given.

b) Information given in Form-E:

(i) Traditional family Occupation : Vinkar (Weaving),

(ii) Scheduled Tribe Claimed : Halba, Halbi.

(iii) Mother Tongue : Marathi.

(iv) Place of Origin : Nagpur, Post. Distt. Nagpur and that his family resides at present address since 1940.

(v) Information about family members : No information given except father's name.

c) Co-operation with Vigilance Cell:

Vigilance Cell recorded statement of petitioner where he given pedigree and gave information as occupation of the tribe to be Cultivation and Paddy Beater (DHAN KUTAI) as given place of original residence for last 35 years to be Lai Ganj, Bastarwari, Nagpur.

He informed the Vigilance Cell that his family had never left the place of origin.

d) Evidence and submissions of petitioner before Committee:

(i) Petitioner has tendered xerox copy of his affidavit dated 23-2-2007 which contains prototype assertions as in case of Shri Deorao Umredkar.

(ii) Petitioner has submitted representations dated 21-3-2007, 23-4-2007 and 14-5-2007 and levelled charges and allegations against committee similar to those furnished by all other corporators.

(iii) Petitioner has filed affidavit dated 14-5-2007 and denied pedigree recorded by Vigilance Cell. He has tendered before Scrutiny Committee own affidavit dated 14-5-2007 stating that the details of pedigree given before Vigilance Cell were revealed under threat. He has then tendered xerox copy of affidavit of Nanaji son of Tulshiram Parate and gave details of pedigree.

(iv) Petitioner did not read any other evidence in support of his tribe claim.

13. We find that the petitioner, however, did not give what was exact factual data. Contents of affidavit of Nanaji do tally to petitioner's version as recorded by Vigilance Cell about Dhondu (grandfather of petitioner) and Dhondu's sons. It

is thus seen that petitioner's affidavit dated 14-5-2007 is sworn and filed sheerly to create a dispute and nothing more.

W.P. No. 2753/2007:

14. Raising similar pleas, petitioner Bhimrao Nandanwar in Writ Petition No. 2753 of 2007 added that the Committee's approach was discriminatory, inasmuch as the Committee issued certificate of validity as belonging to Gond Scheduled Tribe to a person who was shown to have been born to a person belonging to "Burad" Scheduled Caste. The petitioner also heavily upon the reports of Census of India of 1891, particularly Part-I pertaining to Central Provinces and Feudatories. After perusal of record what is seen is as under:

(a) Information given in application form for issuance of Caste Certificate:

(i) Caste claimed : Halba.

(ii) Place of birth : At home.

(iii) Place of residence : Information not supplied.

(iv) Religion : He has not stated about religion.

b) Information given in Form-E:

(i) Occupation : Labour.

(ii) Scheduled Tribe Claimed : Information not supplied.

(iii) Mother Tongue : Halbi.

(iv) Place of Origin : Nagpur

(v) Information about family members : No information given except father's name.

c) Co-operation with Vigilance Cell:

Refused to give statement.

Vigilance Cell has recorded statement of one Deoraoji Bhakru Dhakate. He has stated that he is permanent resident of Beena and origin of Nandanwar family is from Beena and presently they are residing at Nagpur. Petitioner's family and Deoraoji belong to same caste. He has also given pedigree of the petitioner's family.

Petitioner has submitted representations dated 26-4-2007 and 14-5-2007 and levelled charges and allegations against committee

d) Petitioner did not lead any other evidence in support of his Tribe claim.

W.P. Nos. 2754/2007, 2757/2007 and 2758/2007:

15. Challenges coined in Writ Petition No. 2754 of 2007 by Shri Bhaskar Shamrao

Burde, W.P. No. 2757 of 2007 by Shri Sharad Tulsiram Bhanarkar, Writ Petition No. 2758 of 2007 by Shri Parasram Chudaman Bokde are similar to those of Shri Bhimrao Nandanwar.

In view of this it would be sufficient to refer to the record as under:

W.P. No. 2754/2007:

16. a) Information given in application form for issuance of Caste Certificate:

(i) Caste claimed : Halba.

(ii) Place of birth of father, grandfather and great grandfather : Tentatively at Nagpur at the residence and caste not recorded in the column.

(iii) Place of residence : Prior to 1950-Nagpur, but without detailed address. He has not given information regarding their residence after 1960.

(iv) Religion : Adiwasī.

b) Information given in Form-E:

(i) Occupation : Labour.

(ii) Mother Tongue : Halbi.

(iii) Place of Origin : Nagpur.

(iv) Information about family members : No information given except father's name and that his place of origin is Nagpur.

c) Co-operation with Vigilance Cell:

No statement, except a representation of petitioner, is recorded. He in his letter dated 23-2-2007 wrote to the Vigilance Cell that Vigilance Cell cannot compel the candidate to furnish evidence and if Committee informs him as to why Committee is not satisfied about petitioner's tribe claim petitioner shall furnish evidence available with him. He also urged that the Vigilance Cell cannot insist upon evidence prior to 1950.

d) The petitioner has not furnished independent evidence. Any affidavit of pedigree or genealogical tree is also not filed.

W.P. No. 2757/2007:

17. Information given in application form for issuance of Caste Certificate:

(i) Caste claimed : Halba (Halbi).

(ii) Place of birth : Not known.

(iii) Place of residence : Prior to 1950-Nagpur, Prior to 1960-Nagpur, Prior to 1967-Nagpur, but without detailed address.

(iv) Religion : Adiwasī.

(v) Information about family members : No information given except father's name.

b) Information given in Form-E:

(i) Traditional family Occupation : Vinkar (Weaver).

(ii) Scheduled Tribe Claimed : Halba (Halbi).

(iii) Mother Tongue : Marathi.

(iv) Place of Origin : Nagpur, Post and Distt. Nagpur.

(v) Information about family members : No information given except father's name.

(vi) Place of residence : Prior to 1950-Nagpur, Prior to 1960-Nagpur. Prior to 1967-Nagpur, but without detailed address. Residing at present address since 1954.

(vii) Religion: Adiwasī.

c) Co-operation with Vigilance Cell:

Refused to give statement.

Vigilance Cell has collected information about blood relations and found those to be "Koshtis."

d) Evidence and submissions of petitioner before Committee:

(i) Petitioner has tendered xerox copy of his affidavit dated 23-2-2007 which contains prototype assertions as in case of Shri Deorao Umredkar.

(ii) Petitioner has submitted representations dated 17-4-2007, 23-4-2007 and 14-5-2007 and levelled charges and allegations against committee, as done by other corporators.

(iii) Petitioner did not lead any other evidence in support of his tribe claim.

W.P. No. 2758/2007:

18. a) Information given in application form for issuance of Caste Certificate:

(i) Caste claimed : Halba (Halbi).

(ii) Place of birth : Not known.

(iii) Place of residence : Prior to 1950-Nagpur, Prior to 1960-Nagpur, Prior to 1967-Nagpur, but without detailed address.

(iv) Religion : Adiwasī.

b) Information given in Form-E:

(i) Occupation : Vinkar (Weaver),

(ii) Scheduled Tribe Claimed : Halba (Halbi),

(iii) Mother Tongue : Marathi,

(iv) Place of Origin : Nagpur, Post and Distt. Nagpur and staying at this place since 60 years.

(v) Information about family members : No information given except father's name and his place of birth to be Nagpur.

c) Co-operation with Vigilance Cell:

Statement of petitioner's uncle Jagan Balaji Bokade was recorded by Vigilance Cell where he has given pedigree and told that the occupation of the tribe was weaving and has given place of original residence for last 50 years to be Tandapeth, Lai Darwaja, Nagpur, Caste of Balaji Bokade is recorded as Vankari.

Petitioner's statement is not given to Committee.

d) Evidence and representations submitted before Committee:

(i) Petitioner has tendered xerox copy of his affidavit dated 23-2-2007 which contains prototype assertions as in case of Shri Deorao Umredkar.

(ii) Petitioner has submitted representations dated 26-4-2007 and 14-5-2007 and levelled charges and allegations against committee as done by other corporators.

(iii) Petitioner has furnished xerox copy of affidavit of Nanaji Tulshiram Parate dated 18-4-2007 however fail to furnish its original. In these affidavits it is alleged that he possesses record of pedigree of Halbi Adiwasis and on translating the record he has given the pedigree of petitioner in his affidavit.

(iv) Petitioner did not furnish any other evidence in support of his tribe claim. We find that there is hardly any deficiency in pedigree recorded in statement of Jagan recorded by Vigilance Cell and one shown in the affidavit of Nanaji Parate.

We have heard the learned Advocates for the parties and examined the records in the light of arguments advanced.

19. Claim of petitioner Smt. Pushpa Pathrabe in Writ Petition No. 2575 of 2007 would show that she relies on an amended genealogical tree, stated on affidavit by one Ramgopal Ramaji Bokade, which would make Rambhau Pandurang her relation. Said Rambhau Pandurang's school leaving certificate (Annexure-J) shows his caste as Halba. As the discussion hereinafter would show that on facts of this case Halba is the sub-caste of Koshti caste and cannot be read as Halba Scheduled Tribe just on account of phonetical similarity. The certificate which has been filed at page 89 by the petitioner shows that the occupation of parents was weaving, which was not the occupation of Halba Scheduled Tribe. In any case Halba Scheduled Tribe were not residents of Nagpur district as can be seen from the documents produced by the petitioners themselves.

20. Further as pointed out in the returns on behalf of the committee the caste of petitioner's father as well as real paternal uncle Baburao is recorded as "Koshti". This has not been explained by the petitioner. The extent to which a person can go in order to get an advantage can be seen from the petitioner's claim that her religion is "Adiwasi", in her application to the Tahsildar which is on the committee's record from pages 1 to 7. Even affidavits dated 5-3-1922 and 28-12-2006 recites that the petitioner belongs to Adiwasi Halba religion. It may be recalled that ethnographic notes produced by the petitioners themselves show that all the Halbas has recorded their religion as "Hindu" in 1961 Census. Even 1891 Census shows that out of 97917 Halbas only 242 had recorded animistic as their religion i.e. persons professing aboriginal forms of belief. This indicates deliberate deviation from truth in order to get advantage. In face of certificates of her father and uncle showing Koshti as their caste it cannot be said that the Committee was in error in concluding that the petitioner Pushpa had failed to prove that she belongs to Halba Scheduled Tribe.

21. Petitioner Vilas Parate in Writ Petition No. 2577 of 2007 claimed that his uncle was uneducated. However, certified extract of school register shows caste of petitioner's uncle Nilkanth as "Koshti". Instead of replying to this, the petitioner had only attempted to protract the proceedings. The name of petitioner's father in the extract has been referred to as Madhukar son of Ganpatrao Timaji Parate. The petitioner applied to the Municipal School praying for extract of the school register claiming that his father was illiterate and stating date of birth of his father as 18-6-1940, when in the extract produced by the committee, the date is shown to be as 15-12-1939. Instead of respectfully referring to his father as Madhukar Ganpat Parate in his application at page 64, the petitioner referred to his father as "Madhya Ganya Parate". It is significant to note that in the petition too the petitioner described his father as "Madhukar" and not "Madhya". The petitioner has filed on record one affidavit of Nanaji Tulshiramji Parate, where also names of his ancestors are referred to as Madhukar, Ganpat, Timaji and not "Madhya" or "Ganya". Therefore petitioners' attempt to rely on absence of record in the municipal school about any Madhya Ganya born on 18-6-1940 in order to justify his claim is to say the least, unfortunate. It is a facile attempt to erase Hindu identity and go in for an aboriginal mark.

22. Petitioner Sanjay Primparikar in Writ Petition No. 2578 of 2007 could not prove his caste claim because the caste of his father and uncle was shown to be "Koshti" in the school record which is produced at page No. 55. This was sought to be falsified by the petitioner applying to the school and getting certificate from the school that the school could not locate record in respect of Balchandra Dhondya Primparikar and Rambhau Dhondya Primparikar. Certificate at Exh. 65 is in respect of Balchandra Dhondya Primparikar and Rambhau Dhondba which was issued by the same Head Master of the school. The petitioner has described himself as "Primparikar" and not "Primparikar". If the petitioner choose to give a wrong name and did not furnish particulars about the date of birth and the

admission register number, it would be obviously difficult for the school to locate the record and provide information. Petitioner Sanjay Primparikar mentioned the customary occupation of the community as pounding ice on the basis of information about ethnic linkage furnished by the candidates is based on what the petitioners have come to believe and does not necessarily have a nexus to the reality. Since other petitioners are clear that the profession of the community is weaving, they are miles away from tribal Halbas on the basis of reports relied on by them.

23. Claim of petitioner Bhimrao Nandanwar in Writ Petition No. 2753 of 2007 was negated by the committee because the caste of petitioner's grandfather, uncle etc. were all recorded as "Koshti". Instead of rebutting this information gathered by the Vigilance Cell, the petitioner went on to apply to the Head Master of the School alleging that the Headmaster had given false report. He had gone on to state that he and his father not at all from village Beena as may be seen from page 63, Annexure-I. It appears from perusal of the record of the committee that when officers of Vigilance Cell went to make home inquiries they were told that they would not be given any information and should leave in peace. They were threatened that their clothes would be torn if they continued to be there. Now, if this is the nature of co-operation which the petitioner provided, he has to blame himself for the result which was returned by the committee.

24. Same is the case of petitioner Bhaskar Burade in Writ Petition No. 2754 of 2007. When the Vigilance Cell went to make inquiry the members of the petitioner's family refused to give any statement and were told that only Bhaskar will give requisite statement. Caste of petitioner's grandfather was recorded as "Gadhewal Koshti" in the record of Municipal Corporation in respect of the property held by the petitioner's grandfather. Instead of commenting upon the evidence collected the petitioner dragged his feet and attempted to kill time by his letter dated 26th April, 2007. Subsequently on 14-12-2007 the petitioner informed the Committee that he had no concern whatsoever with the person whose property record was secured by the committee. However, all along the petitioner forgot that the burden to prove that he belongs to the tribe which he claimed was on him and there is absolutely no attempt whatsoever to tender any evidence to show that he belonged to Halba Scheduled Tribe. As regards document at page No. 29, it is in respect of "Hori Guthya", who is shown to be Halba. It would be sufficient to mention that relation of this Hori Guthya with the petitioner has not been established by appropriate evidence. In any case the petitioner cannot take advantage of belonging to caste which is synonymous with a Scheduled Tribe. Hence, even in respect of this petitioner committee's finding cannot, be faulted.

25. In respect of petitioner Sharad Bhanarkar in Writ Petition No. 2757 of 2007 the committee found that petitioner's brothers Shankar and Ghanshyam were shown to be belonged to "Koshti" caste as per record of the Municipal School. The petitioner refused to give statement to the Committee, believing that it was

for the committee to collect evidence to prove or disprove petitioner's caste claim. Since the committee would have had no reason to disbelieve the information collected by the Vigilance Cell, in the absence of any contrary evidence coming from the petitioner, the committee must be held to have come to the right conclusion that the petitioner failed to prove that he belongs to Halba Scheduled Tribe. Reference to caste Halba in petitioner's school register at Annexure-E does not show that he belongs to Halba Scheduled Tribe in the light of what has been observed on the basis of ethnological record in the form of census documents produced by the petitioners themselves.

26. In case of petitioner Parashram Chudaman Bokde in Writ Petition No. 2758 of 2007 his father's sister is shown to belong to "Koshti" caste as per school register. She was admitted to school on 29-6-1949, so the caste mentioned in the register refers to her father's caste and not her husband's caste. The petitioner has stated that Smt. Leelabai is not at all related to him. The Vigilance Cell had gathered that Smt. Leelabai was daughter of Balaji from the statement of petitioner's uncle Jagan. That the petitioner's father was son of Balaji would be clear from School Leaving Certificate of petitioner's brother Hiranman (at Page 49) on which the petitioner relies. But he has not produced any document to show that the information gathered by the Vigilance Cell was not correct. The petitioner states that Jagan's signature was taken by force as per letter Annexure-1. In that case it was necessary for the petitioner to tender before the Committee evidence of Jagan to show that his statement was recorded by force.

27. The committee has brought to the force petitioner Parasram Bokade's predicament as to his religion, by pointing out that the petitioner had claimed before the Tahsildar that the petitioner's religion was "Adiwasi", as may be seen from page 3 of the record of the committee, but had claimed in his affidavit dated 29-12-2006 that he was Hindu by religion. We also find that it is not necessary to repeat the reasons given by this Court while disposing of Writ Petition No. 2576 of 2007 regarding constitution of Vigilance Cell and qualification of Research Officer. Suffice it to say that those reasons would show that the petitioners do not have any concrete objection to the constitution of the Vigilance Cell or qualification of Research Officer.

28. As regards the demand to cross-examine officers of Vigilance Cell, it may be sufficient to observe that in no proceeding to which CPC applies can a person be cross-examined. If he has not first been examined by the party calling such person. Since Vigilance Cell is an arm of the Committee itself, there is no question of officers of such cell being examined before the Committee. In any case, Vigilance Cell merely collects evidence, steps taken in collecting evidence could be equated to evidence of facts in issue.

29. This Court has discussed in foregoing paras facts as brought on record by each petitioner and analysis thereof. Various other submissions which were advanced as common to all petitions heard together have been dealt with by us in the judgment in Writ Petition No. 2576 of 2007 pertaining to Shri Deorao

Umredkar and therefore, it is not necessary to deal with all points in this judgment again.

The reliance on various books, census record etc. is common in all cases. We have also discussed what emerges from these documents in said common judgment.

30. In view of what is discussed above and on perusal of the decision of Scrutiny Committee we find that in all these cases the committee has also applied affinity test and held that the petitioner had not proved any linkage to the tribe or to the area to which the tribe belonged. In view of this, rather than being able to establish their caste claims with certainty, the petitioners exposed before the Committee their own vacillations about their origin, religion, occupation etc. True it is that if documents relied on by petitioners show that they belong to a particular caste there should be no reason to doubt such entry. But when there are two distinct communities sharing the same name, persons belonging to a caste which only shares the same name would not be entitled to usurp the benefits meant for a tribe carrying that label. Nothing can undoubtedly added to or deducted from an entry in the constitution (Scheduled Tribes) Order, 1950. But it does not follow that an enquiry into the question whether person claiming to belong to such a tribe really belongs to it or hails from another community sharing the same name. Mercifully, the petitioners have themselves placed on record copies of report of 1891 Census which shows that since then there have been two distinct communities sharing the same name "Halaba". Petitioners were therefore, obliged to establish their identity with the tribe to which they claimed to belong and have not even made any attempt worth name. We have discussed facts emerging from census of 1891 as well from 1961 and other books on Tribes etc. relied upon by petitioners in our judgment in W.P. No. 2576/2007, which was main petition in which all Advocates were heard.

31. In view of this, on the facts as unfolded in the cases of these petitioners we find that the decision of the committee to invalidate the petitioners' claim as belonging to Halba Scheduled Tribe has to be upheld and so would be the case in respect of their being unseated.

32. It has also to be noticed and hence found that the petitioners had only been attempting to drag the proceeding by seeking further time. A person who desires to contest for an electoral office would normally be expected to secure validation of his caste claim well before he decides to descend in the arena. In any case, after election such person should be in hurry to have the caste claim examined and validated. Instead, the petitioners have come up with the grievance that the committee had taken up examination of their caste claims out of turn, though other proceedings were pending before the Committee for over ten years. This indicates a desire to continue to hold electoral office, taking advantage of the fact that the caste claim is not decided. This, in turn, would imply that the petitioners believed that they were not entitled to the status which they claimed and therefore, were dragging their feet. A bona fide claimant of status would have

rather been in a hurry to have his status examined and position cleared, instead of continuing with eternal uncertainty. This aspect has also been highlighted in the judgment in Writ Petition No. 2576 of 2007.

33. In view of this, for the reasons mentioned above, as also mentioned in Writ Petition No. 2576 of 2007 *Deorao Umredkar v. State of Maharashtra and Ors.*, these petitions are dismissed. Rule is discharged with costs.