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**(2011) 07 BOM CK 0041**

**In the Bombay High Court**

**Case No : Writ Petition No. 5332 of 2004**

Sudhanshu Ashok Mahajan

APPELLANT

Vs

Scheduled Tribe Caste Certificate and Others

RESPONDENT

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**Date of Decision : 20-07-2011**

**Acts Referred:**

**Citation :** (2011) 7 ALLMR 361 : (2012) 2 BomCR 401

**Hon'ble Judges :** Kode P.D., J; Dharmadhikari B.P., J

**Bench :** Division Bench

**Advocate :** S.R. Narnaware, for the Appellant; P.B. Patil, for respondent No. 1, A.S. Sonare, A.G.P., for respondent Nos. 3 and 4 and None, though served, for the Respondent

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## **Judgement**

Dharmadhikari B.P., J.—Heard Shri S.R. Narnaware, learned Counsel for the petitioner, Shri P.B. Patil, learned Counsel for respondent No. 1 - Committee and Shri A.S. Sonare, learned AGP for respondent Nos. 3 and 4. None for respondent No. 2 though served. The writ petition is already admitted for final hearing and interim order granted was continued while issuing Rule. The petitioner has, in this span of about seven years, already completed her studies in M.B.B.S. course. Civil Application (W) No. 1495/2011 has been filed for direction to respondent No. 2 college to issue her Degree of M.B.B.S. and Certificate of completion of internship. Considering the nature of the controversy, we have after hearing the parties for sometime on 12.7.2011, adjourned it for today with understanding to the parties that the petition may be disposed of finally.

2. Advocate Shri Narnaware points out that here Vigilance Cell report is not adverse to the petitioner and the Research Officer was not associated though claim for Scheduled Tribe status was being looked into. He has further pointed out that the document dated 4.2.1917 of grandfather was pressed into service to show that caste recorded at that time was "Halbi" with subsequent similar entries in relation to father and real uncle but these documents have been ignored because of document dated 19.6.1946 allegedly obtained by vigilance cell in

relation to cousin uncle of the petitioner.

3. Advocate Shri Narnaware states that Scrutiny Committee has not recorded accordingly and its report nowhere reflects discovery or receipt of said documents by them. He further contends that notice of such document or its copy was not made available to the petitioner and the petitioner did not get an opportunity to explain it or to urge that as the oldest document of 1917 recorded caste "Halbi" and there were similar entries of blood relatives, the entry of cousin uncle could not have been relied upon. He has further urged that in absence of proper vigilance cell enquiry and report of Research Officer, affinity test as applied is also not correct. He, therefore, prays for allowing the petition.

4. Shri Patil, learned Counsel for respondent No. 1 - Committee and learned AGP for respondent Nos. 3 and 4 are supporting the order. Advocate Shri Patil points out that due opportunity was given to the petitioner and that has been recorded by the Scrutiny Committee in its order at paragraph 12, in this situation, according to him, as affinity test is not satisfied, mere mention of caste "Halbi" in Certificate of grandfather in 1917 is not decisive.

5. With the assistance of respective Counsel, we have perused the records of petition. The petitioner has urged that he did not get any opportunity in relation to 1946 document of his cousin uncle. The consistent entries of grandfather of year 1917 and, thereafter, of father and uncle (blood relatives) of the petitioner are ignored because of this 1946 document. The petitioner did not get an opportunity of hearing in relation to that document and hence it is obvious that appreciation of controversy by the scrutiny committee is vitiated. Not only this, association of Research Officer with Vigilance Cell was must as per the judgment of Hon''ble Apex Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, as modified in the case of Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, .

6. Advocate Shri Patil, at this stage, has pointed out that as per original record available with him, Research Officer was associated with Vigilance Cell, however, copy annexed along with the petition as Annexure-9 does not support this and alleged copy of Vigilance Cell report dated 1.3.2004 is signed by Police Inspector on 24.5.2004. The remark which appears in original with respondent No. 1 are not appearing in that typed copy. There is no pleading on affidavit by respondent No. 1 in this respect. Hence, it is not necessary for us to delve more into this controversy.

7. We find that the petitioner did not get proper opportunity and hence impugned order of the Scrutiny Committee dated 30.9.2004 is unsustainable. The same is accordingly quashed and set aside. The matter is remanded before the Scrutiny Committee for giving the petitioner necessary opportunity in relation to alleged association of Research Officer, remarks if any, by him and 1946 document of his cousin uncle. Respondent No. 1 Committee is also free to obtain fresh vigilance

cell report if it finds the same necessary. After giving appropriate opportunity to the petitioner in accordance with the law and 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 (Act No. XXIII of 2001), the Committee shall proceed to take fresh decision in the matter at the earliest.

8. We direct the petitioner to appear before respondent No. 1 Committee on 24.8.2011 and to abide by its further instructions in the matter. The prayers made in CAW No. 1495/2011 are granted. Respondent No. 2 College shall issue to the petitioner the Degree and the Certificate of completing internship but then the same shall be subject to further orders in the matter of caste verification by respondent No. 1 Committee. Thus, Writ Petition as also CAW No. 1495/2011 are partly allowed. Rule is made absolute in the above terms. However, in the circumstances of the case, there shall be no order as to the costs.