

(2023) 09 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No.10759 Of 2023

Tejashree Mangilal Dambale

APPELLANT

Vs

Scheduled Tribe Certificate Scrutiny Committee, Nashik And
Others

RESPONDENT

Date of Decision : 14-09-2023

Acts Referred:

Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Rules, 1995 —
Rule 12, 12(2)

Citation : (2023) 09 BOM CK 0028

Hon'ble Judges : Sunil B. Shukre, J; Firdosh P. Pooniwalla, J

Bench : Division Bench

Advocate : Vivek V. Salunkhe, S. B. Kalel

Final Decision : Dismissed

Judgement

Firdosh P. Pooniwalla, J

1. Heard.

2 RULE. Rule made returnable forthwith and with the consent of the parties heard finally at the admission stage.

3 The Petitioner is a student. The Petitioner has completed Diploma in Pharmacy and has participated in the admission process to direct Second Year of the full time Under Graduate Degree Course in Pharmacy for the Academic Year 2023-24. The Petitioner has participated in the said admission process initiated by the Government of Maharashtra through the State Common Entrance Test Cell, Maharashtra State, Mumbai. The Petitioner has secured admission in the aforesaid admission process from the ST reserved category and has to produce her Tribe Validity Certificate, failing which her admission would get automatically cancelled and she would be considered only under the open category.

4 By this Petition, the Petitioner challenges an Order dated 31st July, 2023 passed by the Scheduled Tribe Certificate Scrutiny Committee, Nashik i.e

Respondent No.1. ('impugned order') whereby Respondent No.1 invalidated the claim of the Petitioner that she belongs to the Koli Mahadev Scheduled Tribe. Further, by the impugned order, Respondent No.1 also cancelled the Tribe Certificate of Koli Mahadev Scheduled Tribe dated 12th December, 2018 issued to the Petitioner.

5 In the Petition, the Petitioner has challenged the impugned order on various grounds, however, the main ground of challenge of the Petitioner is that Respondent No.1 committed a serious error in discarding the Validity Certificates issued in favour of the father and cousin uncle of the Petitioner. It is the case of the Petitioner that Respondent No.1 committed a serious error in attempting to suo moto review the correctness of the said Validity Certificates which were not challenged by anybody and which were occupying the field. It is the case of the Petitioner that Respondent No.1 has completely exceeded its jurisdiction by going into the correctness of the grant of the said Validity Certificates. It is also the case of the Petitioner that it is a settled legal position that Respondent No.1 has no such suo moto power of review. Further, since no case of fraud was even remotely established, Respondent No.1 ought to have relied upon the said two Validity Certificates of the father and the cousin uncle of the Petitioner.

6 In the impugned order, Respondent No.1 has not relied upon the Validity Certificates of the father of the Petitioner, namely, Mangilal Trimbak Dambale, on the ground that no enquiry was conducted by the Vigilance Cell before the said Validity Certificate was issued to the father of the Petitioner and also on the ground that the father of the Petitioner had obtained the said Validity Certificate by suppressing material facts of contra entries such as Hindu Koli, Koli, Hindu Maha Koli in the case of his blood relatives, by submitting incorrect and incomplete information before the then Scrutiny Committee and thereby misleading the then Scrutiny Committee. As far as the Validity Certificate of the cousin uncle of the Petitioner, namely, Bharat Genu Dambale, is concerned, the same also seems to have been rejected on the same grounds except that, from the impugned order, it seems that Respondent No.1 is not very clear as to whether any vigilance enquiry was conducted before the said Validity Certificate was issued since the file of Bharat Genu Dambale was not found in the record room.

7 In our view, Respondent No.1 wrongly refused to accept the Validity Certificates of the father and the cousin uncle of the Petitioner. It is well settled law that Respondent No.1 could not have sat in review of the said Validity Certificates unless it came to the conclusion that the Committee which scrutinized the same did not have jurisdiction or that the Validity Certificates were obtained by the committing fraud on that Committee. It is well settled that, in the absence of the aforesaid two conditions, if a candidate submits a Caste or Tribe Validity Certificate granted to his/her blood relatives, then the Scrutiny Committee should accept the said Validity Certificates of the blood relatives and, on that basis, issue a Validity Certificate to that candidate. In this regard,

reliance can be placed on the judgment of this Court in Apoorva V. Nichale v/s. Divisional Caste Certificate Scrutiny Committee reported in 2010 (6) Mh.L.J. 401. Paragraphs 4,5, 7 and 9 of the said judgment are relevant and are reproduced herein below:-

"4:- We have considered the matter and we are of the view that the petitioner's caste claim that she belongs to Kanjar Bhat-Nomadic Tribe ought to have been accepted by the Committee merely on the basis that identical caste claim of her sister that she belongs to Kanjar Bhat has been allowed by the Committee, even apart from the Government Resolution. We are of the opinion that the guidelines provided by the said Govt. Resolution are sound and based on sound principles. It would indeed be chaotic otherwise. If the relationship by blood is established or not doubted, and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent in the committee testing the same evidence and making the same conclusion unless of course the Committee finds on the evidence that the validity of the certificate of such relation has been obtained by fraud.

5. The Division Bench of this Court in Mahesh Pralhadrao Lad v. State of Maharashtra - 2009(2) Mh.L.J. 90 has observed that in the absence of any power under the Rules conferred on the Government to issue a Govt. Resolution, the Govt. Resolution cannot be said to be binding on the committee nor the committee in exercise of its jurisdiction is bound to follow the same. The Division Bench further observed that the Government Resolution may be considered in the context of Rule 12 of the Rules and if the committee while exercising jurisdiction is satisfied that the caste validity certificate issued to a blood relative is genuine then instead of calling the Vigilance Cell Report it may proceed to issue the caste validity certificate. We are in respectful agreement with the view taken by the Division Bench. We would further add that the committee would be entitled to refuse to follow the caste validity certificate granted to a blood relative if it appears to the committee that the earlier caste certificate has been scrutinized by a Committee without jurisdiction or the validity order is obtained by committing fraud on the Committee.

7 We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.

9 In the present case, we find that the committee has disbelieved the petitioner's case that she belongs to Kanjar Bhat after calling the school leaving certificate of petitioner's father and noticing that the original caste written on it was 'Thakur' and that was subsequently changed to Kanjar Bhat. The committee observed that the caste has been changed without complying with the procedure

prescribed by Section 48(e) and 132(3) of Mumbai Primary Education Act. In fact, the caste has been changed on the basis of the affidavit. From the findings of the committee it appears that the committee has observed that the change of caste has been done illegally. Obviously, the committee which decided the caste claim of the petitioner's sister did not hold the same view, otherwise it would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the petitioner."

8 In the present case, it is not even the case of Respondent No.1 that the earlier Scrutiny Committees, which granted Validity Certificates to the father and the cousin uncle of the Petitioner, did not have jurisdiction. Therefore, it was not open to Respondent No.1 not to accept the said Validity Certificates on that ground.

9 The impugned order shows that the Scrutiny Committee has considered validity granted to Mangilal Dambale and Bharat Dambale, the father and cousin uncle of the Petitioner and rejected them on further grounds. They were that the validity granted to Mangilal Dambale was based upon no inquiry by Vigilance Cell and there was suppression of facts by Mangilal Dambale. The ground for rejection of validity granted to Bharat was that as his original file was not available, its existence could not be verified and confirmed. For these reasons, the Scrutiny Committee rejected both the validities and observed that it had taken a decision to issue a show cause notice to Mangilal Dambale as to why the validity certificate granted to him could not be recalled.

10 About the reason given by the Scrutiny Committee for not accepting the Validity Certificate of the father of the Petitioner that no enquiry was conducted by the Vigilance Cell before issuing the said Validity Certificates, the law is now well settled. It indicates that enquiry by a Vigilance Cell is not mandatory and if the Scrutiny Committee is otherwise satisfied, then it need not send the case for Vigilance Cell enquiry.

11 The aforesaid proposition finds support in the following judgment of the Hon'ble Supreme Court :-

Mah. Adiwasi Thakur Jamat Swarakshan Samiti v/s. The State of Maharashtra reported in [2023] 3 S.C.R. 1100. Paragraphs 29, 31, 32, 34 and 36 (a) of the said Judgment are relevant and are reproduced herein below:-

"29:- Now, we come to the decision in the case of Vijakumar. A perusal of the decision in the case of Vijakumar shows that a Bench of two Hon'ble Judges dealt with issue of a tribe claim arising from the State of Maharashtra. A careful perusal of the decision shows that there is not even a reference to the ST Rules in the said decision. The attention of the Court was not invited to sub-rule (2) of Rule 12, which lays down that the case can be referred to the Vigilance Cell only if the Scrutiny Committee is not satisfied with the material produced by the applicant. Without referring to the provisions of the 2000 Act as well as SC and ST Rules, in paragraph 9 of Vijakumar's case, it is held that:

"9. Having heard the learned counsel for the parties, we are of the considered opinion that there is hardly any merit in the contentions raised on behalf of the appellant. The affinity test was completed by the Vigilance Officer as well as by the Scrutiny Committee. The certificate has to be validated only after it proves factually and legally correct at the two stages; firstly, at the stage of issuance and secondly, at the stage of verification. If it fails the affinity test at either of these stages, the validity of the certificate cannot be sustained."

Hence, in view of the fact that the 2000 Act and Rules were not considered, the decision in the case of Vijakumar is certainly not a binding precedent for the proposition that in every case, the Scrutiny Committee is required to take recourse to the affinity test by referring the case to the Vigilance Cell.

31 Paragraph 19 of the decision in the case of Anand reiterates the position that Vigilance Cell enquiry can be ordered only when the Scrutiny Committee is not satisfied with the materials produced by the applicant. On this aspect, we may make useful reference to a decision of this Court in the case of District Collector, Satara. This decision is penned down by one of us (Sanjay Kishan Kaul, J.) which makes an indepth analysis of the ST Rules and in particular, Rule 12. In paragraph 9, this Court held thus:

"9.....

A reading of the aforesaid Rules shows that the role of the Vigilance Cell was restricted as compared to the role envisaged under Madhuri Patil case [Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349] , inasmuch as the assistance to be provided to the Scrutiny Committee was not in every case, but only if the Scrutiny Committee was not satisfied with the documentary evidence produced by the applicant." (emphasis added)

(emphasis supplied)

32 Therefore, as observed earlier, the decision in the case of Vijakumar cannot be read as a binding precedent laying down a legal principle that in every case of verification of caste claim, the Caste Scrutiny Committee is under a mandate to refer the case to the Vigilance Cell.

As under the scheme of ST Rules, affinity test is to be conducted by the Vigilance Cell, it follows that question of conducting of affinity test will arise only when a case is made out for referring the case to Vigilance Cell. If the Scrutiny Committee, after holding an enquiry is satisfied with the material produced on record, without referring the case to the Vigilance Cell, the Caste Scrutiny Committee is under a mandate to grant validity to the caste certificate. As noted earlier, in a given case, the Scrutiny Committee can order a limited inquiry by the Vigilance Cell. For example, if an applicant is relying upon a caste validity certificate granted to his blood relative and the Scrutiny Committee, after finding that the certificate is issued after due inquiry entertains a doubt about the relationship pleaded, it can direct the Vigilance Cell to make inquiry only about the relationship.

34 The conclusions of the Full Bench have been recorded in paragraph 40. In clause (i) of paragraph 40, the Full Bench of the High Court records that under Rule 12(2), the Scrutiny Committee, if it is not satisfied with the documentary evidence produced, has to forward the application to Vigilance Cell for holding a school, home and other enquiry. The Full Bench does not lay down that in every case where the Scrutiny Committee is dealing with a Scheduled Tribe claim, a reference must be made to the Vigilance Cell. In clause (ii) (a) of paragraph 40, the Full Bench records that the Scrutiny Committee must have regard to the entire body of evidence, including on the question as to whether the applicant has satisfied the affinity test. As held earlier, the question of taking recourse to the affinity test will arise only if the case is referred to Vigilance Cell. In fact, in clause (b) of paragraph 40, the Full Bench holds that even if an applicant does not have any documentary evidence it will not ipso facto result into invalidation of the caste claim. The reason is that in such a case, subrule (2) of Rule 12 will apply and the Vigilance Cell will have to hold an enquiry including affinity test. Even in such a case, affinity test will not be conclusive either way as held in clause (2) of paragraph 20 in Anand's case. In clause (c) of the same paragraph, the Full Bench of the High Court also holds that even if the applicant partially satisfies the affinity test, depending upon the nature of the evidence on record, the Scrutiny Committee has power to validate the claim. Thus, even clause (c) proceeds on the footing that the affinity test is not conclusive.

36 Thus, to conclude, we hold that:

(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance

Cell for making enquiry, an occasion for the conduct of affinity test will arise.”

12 About the second reason given by the Scrutiny Committee to reject the validity certificate granted to Mangilal Dambale, the father of the Petitioner, we find that the validity is yet to be cancelled by the concerned committee on the ground that Mangilal obtained it by suppressing material facts. It is also not known if any show cause notice has been given to him so far or not. So, the fact remains that the validity granted to Mangilal Dambale stands today and as long as it remains in existence, it would constitute a validly strong proof of social status claimed by the Petitioner with Mangilal Dambale admittedly being her father. A useful reference in this regard could be made to the following case:-

Santosh s/o. Patiram Gaikwad v/s. State of Maharashtra & Others reported in 2019 SCC OnLine (Bom.) 1460 (to which one of us was a party). Paragraph 5 of the said judgment is relevant and is reproduced herein below:-

“5:- Ordinarily, we would have chosen to remand the matter back to the Scrutiny Committee for a fresh consideration, but for the availability of validity in the family. Yuvraj Sakharam Gaikwad is admittedly a paternal uncle of the petitioner and he has been granted validity by the Scrutiny Committee on 30th March, 2010 as he belonging to “Mana” Scheduled Tribe. When the relationship is admitted, we see no reason for the Scrutiny Committee to have rejected the tribe claim of the petitioner only on the ground that while granting validity to Yuvraj Sakharam Gaikwad no vigilance enquiry was made before issuing the validity certificate was issued to him. In fact, validity certificate has been issued to him as per the Apex Court’s decision in C. A. No.5270 of 2004. So, this validity has attained finality. A validity certainly which has attained finality, is a conclusive proof of the social status of that persons and when that person is in blood relationship with the claimant i.e. present petitioner, the social status of such claimant gets the same identity as a person having a valid caste/tribe certificate in his name. For these reasons, we are of the view that now this petition can be allowed by issuing suitable directions to the Scrutiny Committee.”

13 About the Validity Certificate of Bharat, the cousin uncle of the Petitioner, we would say, even if it is ignored because its original file is untraceable, still, Validity Certificate granted to the father of the Petitioner is there, which can be relied upon, it having not been cancelled so far, and, necessary care can be taken while issuing a direction to the Scrutiny Committee to grant the Validity Certificate to the Petitioner.

14 Thus, in the light of the settled position in law, Respondent No.1 was wrong in not accepting the Validity Certificate of at-least the father of the Petitioner on the two grounds it stated in the impugned order.

15 In the aforesaid circumstances, and for all the reasons given hereinabove, the impugned order dated 31st July, 2023 passed by Respondent No.1 is hereby quashed and set aside and Respondent No.1 is directed to issue to the Petitioner a Tribe Validity Certificate stating that the Petitioner belongs to the Koli Mahadev

Scheduled Tribe and that it shall be subject to the result of the show cause notice proposed to be issued or issued to Mangilal Dambale.

16 Rule issued is made absolute in the aforesaid terms.

17 In the facts and circumstances of the case, there shall be no order as to costs.