

(2018) 01 BOM CK 0014
In the Bombay High Court
Case No : 2329 of 2004

**Vijay s/o Ramrao Dhakite Vs The Scheduled Tribes Caste?Certificate
Scrutiny Committee**

Date of Decision : 11-01-2018

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 8 - Burden of proof

Citation : (2018) 01 BOM CK 0014

Hon'ble Judges : B.P. Dharmadhikari, Swapna Joshi

Bench : Division Bench

Advocate : A. Deshpande, A.R. Kulkarni, Amol Patil

Judgement

1. Heard Shri A. Deshpande, learned counsel for the petitioner, Ms. A. Kulkarni, learned A.G.P. for respondent nos.1, 3 to 6 and Shri A. Patil, learned Counsel for respondent no.2. Shri A. Deshpande, learned Counsel appearing for petitioner while assailing order of the Scrutiny Committee dated 17.05.2004, invalidating caste claim of petitioner as belonging to "Halba Scheduled Tribe", has submitted that none of the documents has been disbelieved, and all old documents right from the year 1949 consistently mention caste as Halba. It is pointed out to us that the documents at Sr. Nos. 18 and 19 which are the oldest one i.e. School Leaving Certificate and Dakhal Kharij, record caste as Halbi.

2. In this background, contention is merely because of a finding that answers given by the petitioner during enquiry after vigilance cell report are on bookish knowledge and without recording any finding that traits or customs disclosed by him even in home enquiry, are that of Halba Koshti, Special Backward Classes, only because of existence of a subcaste Halba in caste Koshti, is recognized as SBC, the caste certificate has been invalidated. He has invited our attention to some judgments to urge that when there are documents, the documents only clinch the issue and affinity test is not decisive.

3. The arguments are opposed by learned A.G.P. appearing on behalf of

respondent no.1 Committee and on behalf of respondent nos. 3 to 6.

4. Shri A. Patil, learned counsel appearing on behalf of respondent no.2 has also opposed the petition. Learned counsel for respondent submits that existence of subcaste Halba in caste Koshti and its recognition as Special Backward Class by the State Government is not in dispute. The Committee has specifically recorded a finding that in Vidarbha and Madhya Pradesh Region, persons belonging to Koshti caste [subcaste Halba] have taken advantage of subcaste mentioned in their records and pose themselves as persons belonging to Halba Scheduled Tribe. This finding is not demonstrated as either erroneous or perverse by the petitioner.

5. Shri Patil, learned counsel submits that when there are two communities/caste by same name, documents by itself cannot be decisive and hence, recourse to affinity test is must. He contends that in this situation, even recourse to affinity test was not challenged at any point of time and petitioner submitted to it. He attempts to distinguish the judgments on which reliance has been placed by Shri Deshpande, learned counsel for petitioner.

6. Looking to the course which this Court finds necessary in present matter to adopt, we need not comment at length on the judgments on which reliance has been placed. Here there is a specific finding that traits or customs disclosed by petitioner do not match with Halba Scheduled Tribe. Thereafter, existence of caste Koshti [subcaste Halba], and therefore, problems created due to it, has been looked into by the Committee, and the Committee has then made a general observation that characteristics, customs of these people do not resemble with that of Halba Scheduled Tribe.

7. Home enquiry was conducted on 24/26.05.2003 when provisions of The Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, (Act No. 23 of 2001) were very much in force. It appears that only questions were put to the petitioner and answers were recorded at that juncture. The report of Scrutiny Committee is dated 24.05.2003 and Research Officer has agreed with it on 29.05.2003. It is therefore, not clear that whether Research Officer was with Vigilance Cell when this enquiry was conducted.

8. The Scrutiny Committee has after receipt of the Vigilance Cell Report called the petitioner and his parents for hearing, and gave them opportunity. The petitioner alone attended and submitted his say in writing. He did not adduce any evidence to substantiate his caste claim. He stated that he has produced sufficient documentary evidence. It appears that in written statement then submitted, he also mentioned certain customs and traits.

9. Disclosure of these customs and traits before it is discarded by the Committee as "bookish knowledge", as it found that same were not stated during home enquiry. Material or particularly Vigilance report does not substantiate this

"bookish knowledge" finding. Merely because, a person has disclosed certain traits or customs, it cannot be said that he proves his caste claim, but, then for discarding traits/customs, there should have been some other reason. The traits and customs also need to be established through proper evidence.

10. We find that after disregarding said disclosure as bookish, the Committee has found that the petitioner could not prove his affinity to the group of people to whom he claims to belong. Thereafter the Committee has in paragraph no.11 [b] pointed out availability of subcaste Halba in caste Koshti. It has in that paragraph also observed that characteristics, customs of these Koshti/Halba people do not resemble with Halba Scheduled Tribe and they do not have any ethnic linkage with Scheduled Tribe. This mention cannot be said to be wrong. Similarly, the State Government itself has accepted that Koshti Halba exists and they have been given status as Special Backward Class. They are therefore not Scheduled Tribes. But, then the Committee in its entire order nowhere says that traits or customs pointed out by petitioner match with Koshti Halba people i.e. S.B.C.

11. In this situation, taking over all view of the matter, we find that the petitioner as also Committee needs to be given an opportunity to look into the matter once again. For this purpose only the orders passed by the Scrutiny Committee dated 17.05.2004, impugned in this petition, is quashed and set aside. The matter is remanded back to the Scrutiny Committee. We grant leave to petitioner to produce necessary oral evidence in support of traits, customs etc., to establish affinity, if he so desire as per Section 8 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, (Act No. 23 of 2001).

12. The Committee shall accordingly extend a reasonable opportunity to the petitioner in this respect. After granting such an opportunity, Committee shall take fresh decision on the caste claim. We direct the petitioner to appear before the Scrutiny Committee on 05.03.2018 and to abide by its further instructions in the matter. The Scrutiny Committee shall attempt to complete the verification as per law within next 6 months.

13. Needless to mention that as caste claim is pending, no steps to affect his services only because of his caste can be taken till then. Writ Petition is thus, partly allowed and disposed of. Rule is made absolute in aforesaid terms with no order as to costs.