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WP-7844-2019 (sr.904)

16.7.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7844 OF 2019

1. Yash Vilas Kale and anr. ...Petitioners
V/s.

1. State of Maharashtra and
Ors.Respondents

Mr. Ramchandra K. Mendadkar, Advocate for the
petitioner.

Mrs. A.A. Purav, AGP for the State, respondents
no.1, 2 and 4.

Mr. S.S. Patwardhan, Advocate for respondent no.3.

Ms. Manisha Varma-Principal Secretary, Tribal
Development Department present.

Mr. Laxmikant Dhoke, Deputy Secretary, Tribal
Development Department present.

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Mr. Anand Raite, Commissioner, CET present.

Mr. Shiv Prasad, M.L.O., Nashik present.

Mr. Arun Padekar, Assistant Law Officer, Nashik present.

Mr. Ajjay Sathe, Assistant Law Officer, Nadurbar present.

CORAM : S.C. DHARMADHIKARI, &

SANDEEP K. SHINDE, JJ.

Tuesday, 16th July, 2019.

P.C. :

1. This Writ Petition challenges the order passed by the Scrutiny Committee, copy of which is at Exhibit-A dated 10th July, 2019.

2. The writ petitioner is denied the

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Certificate of Validity validating his claim towards Thakur Schedule Tribe.

3. Petitioner no.1 is a minor and petitioner no.2 is his real sister. Petitioner no.1 has filed this petition through his natural guardian, Vilas Wamanrao Kale (the father). The respondents before us are the State of Maharashtra, through its Secretary, Tribal Development Department, Scheduled Tribe Certificate Scrutiny Committee-3, Nashik and third respondent is the State Common Entrance Test Cell.

4. This third respondent has been sued in order to obtain a relief concerning the admission to the Engineering Degree Course for the Academic Year 2019-20 in the fourth respondent College granted to

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petitioner no.1. The second petitioner has completed her degree course but is unable to pursue higher academic studies on account of non-furnishing of her degree certificate.

5. The learned Counsel appearing on behalf of the petitioner submits that, for seeking admissions to educational institutions against reserved seats, the first respondent is required to produce a Certificate of Validity. Petitioners no.1 and 2 were issued Caste Certificates on 6th October, 2001 and 20th January, 2006 respectively. The petitioners then forwarded these certificates for scrutiny and verification of underlying claim to the competent Scrutiny Committee. That Scrutiny Committee was aware of the fact that the petitioners have not only relied upon the genealogy and family

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tree but the entries pertaining to their common ancestor and the sons of common ancestor. One of the entries relied upon is in relation to Laxman Bala Kale. From the family tree, it is evident that the said Laxman was the real brother of the petitioners' grandfather. In relation to his school records, entry in the caste coloumn is Thakur i.e. dated 1st July, 2014. The petitioners then relied upon the Certificate of Validity granted to Vasant Wamanrao Kale. The said Vasant Wamanrao Kale is the paternal uncle of the petitioners. He is the real brother of their father. In his case, the Certificate of Validity was granted on 15th April, 2005. That Certificate of Validity has still not been cancelled.

6. Mr. Mendadkar, learned Counsel appearing

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for the petitioners would submit that the impugned order suffers from total non-application of mind. It is perverse for it omits from consideration, germane and relevant piece of evidence, that is the entry in relation to Laxman Bala as also the Certificate of Validity granted to Vasant Wamanrao Kale.

7. In order to satisfy ourselves about the correctness of these submissions, we called for the original record. The learned AGP appearing for respondents no.1 and 2 was kind enough to produce the original record. On perusal of the original record, we find that there is a genealogy and family tree. That genealogy is supported by Affidavit. That is the Affidavit of the applicant-petitioner no.1.

8. It is stated that, together with this, there is an affidavit of the petitioner stating that the said Vasant Wamanrao Kale is the paternal uncle. He is the real brother of the petitioner's father, Vilas.

9. It is stated that the grandfather, Waman Bala Kale had a brother, Laxman Bala Kale and the entry of pre-constitutional era (1st July, 1940) is in relation to this Vasant Bala Kale. We have from the original record ascertained this fact. There is indeed a genealogy and family tree supported by the Affidavit of Vasant Wamanrao Kale. He has very clearly stated that petitioner no.1 is his nephew whereas, petitioner no.2 is his niece.

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10. The only contention raised before us by the learned AGP is that, the Scrutiny Committee has assigned reasons for omitting this Certificate of Validity issued to Vasant Waman Kale. The file in relation to Vasant Waman Kale was called for and on perusal of that file by the Committee members reveals that, the family tree produced by the petitioners and the entries with regard to the other family members were not available or produced at that time. Further, Vasant Wamanrao Kale has been issued a Certificate of Validity following a judgment of this Court in Civil Appeal No. 4088 of 1998 i.e. the proceedings filed by Sunil Murlidhar Thakur. Now the Committee is re-examining the claim of Sunil Murlidhar Thakur. Therefore, the Certificate of validity issued to Vasant Wamanrao Kale based on the order of this Court has lost its

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probative value. Hence, the learned AGP supports the impugned order.

11. We have perused this order of Scrutiny Committee in its entirety. The Scrutiny Committee invariably proceeds to doubt every claim of a claimant relying on the entries, Thakur. It is stated that in relation to such persons entries in the caste coloumn are mixed. There are sometimes Hindu-Thakur, Thakur or Hindu-Maratha. Even in relation to the petitioners' close relatives, there are about five entries of which some are post-constitution where the caste/tribe is entered as Hindu-Thakur, whereas, there are atleast three entries in relation to the petitioners' cousins and particularly the petitioners' father where the caste is entered as Hindu-Maratha. Our attention



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has been invited to the entry in relation to the father of the petitioner, Vilas Wamanrao Kale i.e. Hindu-Maratha. That is the entry in the school records and he has entered the school on 24.6.1967. No attempt has been made to have this entry corrected even after the real brother of Vilas (Vasant) and uncle of the petitioners' was granted a Certificate of Validity on 15th April, 2005. Pertinently, in the case of Manojkumar Wamanrao Kale, the other uncle of the petitioners' from the paternal side, the entry in the school records is Hindu-Maratha and that is dated 12.6.1974. Even in relation to Eknath Wamanrao Kale, real brother of the petitioner's brother, the entry in the school records as on 18.6.1965 in the Tribe-A coloumn is Hindu-Maratha. We are therefore unable to accept Mr. Mendadkar's arguments that, relying upon the



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Certificate of Validity issued to Vasant Wamanrao Kale and although it is in further scrutiny and verification, we should issue a Certificate of Validity to the petitioners' certifying them as belonging to Hindu-Thakur, entry no.44.

12. It is common ground that the father gives a caste to the children and it cannot be the reverse. In this case, the son and daughter of Vilas are seeking Validity Certificate and validating their claim as Hindu-Thakur, whereas, their father is happy and content with the entry in the school records pertaining to his caste/tribe as Hindu-Maratha. Vilas Wamanrao Kale, father of the petitioners' is aware that, even in relation to his real brother, Eknath and Manojkumar, the entries are Hindu-Maratha and they are of the year 1965 and



1974. Thus, there are conflicting entries within the same family. This was enough for the Committee in the instant case to doubt the claim of the petitioners. The Committee has not discarded relevant piece of evidence as contended by Mr. Mendadkar. They have not discarded the Certificate of Validity issued to Vasant Wamanrao Kale but the Committee has carefully considered the materials and in their entirety. It has taken overall view of the mater. It has predominantly relied upon the fact that the petitioners' father is stated to be belonging to Hindu-Maratha. He is Hindu-Maratha and therefore the petitioners' cannot be Hindu-Thakur Schedule Tribe. The father has allowed the entry of 1967 to remain in the school records. Further, in relation to Manojkumar and Eknath the entry in the school records is Hindu-Maratha. The



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other brother of the petitioners father, Eknath Wamanrao Kale, also entered the school on 18.06.1965 and the entry in his caste coloumn is Hindu-Maratha. Therefore, this is a case of appreciation and appraisal of the documentary evidence placed on record. The perusal and appreciation is done by applying the correct legal principles. The petitioners have therefore challenged this adverse finding and that is by analytical process. We do not think that these reasons and particularly in para-8, suffer from such illegality, infirmity and perversity warranting our interference in writ jurisdiction. This is not a case where the Committee has omitted from consideration the relevant documents but it has taken that into consideration and appreciated its contents in the backdrop of other overwhelming



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evidence on record. Such a comparative process to our mind is not be faulted as if we are a further appellate Court. We do not think that the petitioners deserve a Certificate of Validity certifying them as Hindu-Thakur Schedule Tribe, entry no.44 under the Schedule Tribe Act, 1950. The Writ Petition is devoid of merits and is dismissed.

(SANDEEP K. SHINDE J.)

(S.C. DHARMADHIKARI, J.)