

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.1569/2024

Sau. Jyoti d/o Waman Kumbhare,
Aged about 56 years,
Occ.-Service in Bank of Maharashtra, Pune
Resident of Post J-1002, S.No.3876,
Queens Town, Front of Chinchwad Railway Station,
Pune-411 033.

.... Petitioner.

Versus

1. The Bank of Maharashtra,
Having its Head office at "Lokmangal" 1501,
Shivaji Nagar, Pune-411 005, through its Manager.

2. The Scheduled Tribe Caste Certificate
Scrutiny Committee, Chandrapur.

.... Respondents.

Mr. P.V. Dandwate, Advocate for the petitioner.
Ms. N.P. Mehta, Addl.GP for the respondent no.2.

CORAM : Nitin W. Sambre &
Abhay J. Mantri, JJ

Date : 08-04-2024.

J u d g m e n t (Per Abhay J Mantri, J.)

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned Counsel for the parties.

2. The challenge is raised to the order dated 21-06-2023 passed by respondent no.2- the Scheduled Tribe Caste Certificate Scrutiny Committee, Chandrapur (for short- *the Scrutiny Committee*), whereby, the claim of the petitioner that she belongs to *'Halba'* (Scheduled Tribe) has been rejected.

3. It is the case of the petitioner that she belongs to '*Halba*' (Scheduled Tribe'). Accordingly, on 28-09-1981, the Executive Magistrate, Chimur, issued a caste certificate in her favour that she belongs to '*Halba*' (Scheduled Tribe'). In the year 1991, the petitioner joined the post of Clerk to respondent No. 1 Bank under the '*Halba*' (Scheduled Tribe') category. To get a validity certificate petitioner had applied to the Scrutiny Committee, Nagpur, for verification of her caste validity Certificate, which was invalidated, that she belongs to '*Halba*' (Scheduled Tribe'). Therefore, the petitioner had challenged the order dated 30-12-1998 passed by the said Committee before this Court in Writ Petition No.1179/1999.

4. This Court by order dated 12-03-2014 quashed and set aside the said order and remitted the matter to the Committee to decide the same afresh in accordance with the law. The respondent no.2 Committee was also directed to complete the said proceedings within a period of one year.

5. As the respondent Committee has not decided the caste claim of the petitioner in time as directed, so she has moved Civil Application No.2950/2018 which came to be disposed of on 15-07-2019, thereby directing the respondent no.2 Committee to decide the claim of the petitioner within a period of six months.

6. During the pendency of the claim, the respondent Committee at Nagpur transferred the case of the petitioner to the

Caste Certificate Committee at Gadchiroli, and the said Committee issued notice to the petitioner. Despite the issuance of notices, the petitioner failed to appear before the Committee. Again in 2020-2021 despite giving several opportunities the petitioner failed to appear before the Committee. Then the matter was transferred to respondent No. 2 Committee, Chandrapur. Since the respondent no.2 Committee was of the view that the petitioner's claim was doubtful, the same was forwarded to the Vigilance Cell Department under Rule 12(2) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (for short, the 'Rules, 2003').

7. Accordingly, the Vigilance Cell Department conducted the enquiry and submitted its report on 27-12-2022 before the respondent no.2 Committee along with the documents discovered during the enquiry.

8. The respondent no.2 Committee after considering the Vigilance Cell report and documents, it seems that during the enquiry the Vigilance Cell found the pre-Constitutional era documents of her blood relatives having adverse entries of caste '*Koshti*'. So also, the Vigilance Cell found two blood relatives of her have obtained validity certificates that they belong to the '*Koshti*' caste. Therefore, the Committee called upon her to submit an explanation about the said documents and the validity certificate. After having offered an opportunity of hearing, the

respondent no.2 Committee after considering the document on record vide impugned order dated 21-06-2023, rejected the tribe claim of the petitioner. Hence, this petition.

9. Learned Counsel for the petitioner vehemently contended that respondent No. 2 Committee was not competent to decide the claim of the petitioner as the said Scrutiny Committee had not been constituted in accordance with the law. He submitted that as per the directions given by the Hon'ble Apex Court in the case of *Ku. Madhuri Patil and another vs Additional Commissioner, Tribal Development, Thane and others*, reported in *AIR 1997 SC 2581* and the judgment and order passed by this Court in *Writ Petition No.2527/2009 (Rohit Rathod vs the State of Maharashtra and others)*, the order impugned required to be quashed and set aside. He also invited our attention to the designation of the Chairman as Joint Commissioner. So, he submitted that the Committee was not constituted in accordance with the law. Hence the impugned order is not sustainable in the eyes of the law.

10. *Per contra*, learned Addi. Govt. Pleader strenuously argued that as per Rule 11 of the Rules, 2003, the Committee is constituted. Therefore, she urged that it cannot be said that the Committee was not constituted in accordance with the law.

11. Having considered the rival contentions of the parties, we would like to refer to Rule 11 of the Rules 2003, as under :-

"11. Constitution of Scrutiny Committee.

The Scrutiny Committee shall consist of the following members, namely-

(a)	Divisional Commissioner or Additional Divisional Commissioner (Revenue) or Collector or Additional Collector (I.A.S.) or Additional Collector (Selection Grade) or Joint Secretary of State Government or any officer not below the rank of Joint Secretary to State Government *[for "Additional Commissioner Social Welfare."]	Chairman.
(b)	Deputy Commissioner (Social Welfare) or Regional Deputy Commissioner (Social Welfare) or Divisional Social Welfare Officer.	Member.
(c)	Research Officer or Assistant Commissioner (Social Welfare) or Special District Social Welfare Officer *[or "Social Welfare Officer, Group B"].	Member Secretary.

A bare perusal of Rule 11(a) reveals that the Divisional Commissioner or Additional Divisional Commissioner (Revenue) or Collector or Additional Collector (I.A.S.) rank or Additional Collector (Selection Grade) or Joint Secretary of State Government or any officer not below the rank of Joint Secretary to State Government *[for "Additional Commissioner Social Welfare."] can be appointed as a chairman.

12. On perusal of the impugned order, it seems that same was passed by the **Joint Commissioner** and Vice Chairman of the Committee. Learned Counsel for the petitioner failed to

demonstrate that the said authority does not come under the purview of Rule 11(a) of the Rules 2003. Thus, he failed to show that the petitioner does not fulfill the criteria given in Rule 11(a) of the Rules, 2003. *Moreover*, nothing has been produced on record to show that the above-referred Authority was not competent to act as a Vice Chairman of the Committee. Therefore, the mere objection is not sufficient to hold that the Joint Commissioner cum Vice-Chairman was not competent Authority to pass the order.

13. Perused the Authority. It is disclosed that the said order was passed on 20-01-2010 i.e. before coming into force the Rules of 2012. However as per Rule 11(a) of the Rules, 2003, the Divisional Commissioner or Additional Divisional Commissioner (Revenue) or any officer not below the rank of Joint Secretary to State Government *[for "Additional Commissioner Social Welfare"] can be acted as a Chairman of the Committee. In the said judgment this Court has observed that the old Rule 9 does not impose any requirement that the Committee should comprise of Additional Commissioner (Revenue) as a chairman, as contemplated by the Hon'ble Apex Court and therefore held that the constitution of the Committee was contrary to the old Rules. However, subsequently, the Rules were framed in 2012. That being so, in our view, the observations made in the said Authority will be of hardly any assistance to the petitioner to substantiate her claim.

14. *Secondly*, the learned Counsel for the petitioner emphasized that the Committee had not taken a decision on three applications filed by the petitioner before passing the order. However, the said applications remain undecided in the proceedings. He has drawn our attention to those applications. Hence, he canvassed that non-passing the orders on these applications would vitiate the proceedings. To buttress his submissions, he has relied on the order passed in Writ Petition No.1942/2023 (*Motiram Vs Joint Commissioner and Vice Chairman*), decided on 08-11-2023 (One of us was Member -Abhay J. Manri), wherein this Court has directed the Scrutiny Committee to decide the application prior to the passing of the order. Therefore, he submitted that non-consideration of the applications tendered by the petitioner vitiates the entire proceedings. Thus, he urged that passing the impugned order is illegal and liable to be set aside.

15. As against above, the learned Addi. Govt. Pleader submitted that the petitioner failed to prove her case by producing the documents. Therefore, non-passing of the orders on these applications would not vitiate the proceedings entirely. Hence, urged for the rejection of said arguments.

16. On perusal of the record it seems that the petitioner has moved the application under Section 4(2) of 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 (for short, 'Act, 2000'), whereby requested the Committee to decide the matter as per provisions of Section 4 (2) of the Act. By the second application, the request was made to the Committee to permit her to examine the witnesses in support of her claim. The third application was filed by the petitioner under Section 12(2) of the Rules, 2003, contending that prior to sending the matter and documents to the Vigilance Cell, the Committee ought to have endorsed the objection on the documents of the petitioner by passing the order, but the respondent Committee failed to follow the mandate of Rule 12(2) of the Rules, 2003.

17. It is pertinent to note that the learned Counsel for the petitioner failed to make his submissions about the discovery of the documents during the Vigilance Cell enquiry pertaining to the petitioner's ancestors that belong to caste 'Koshti'. He has not made his submission on the said document. Likewise, while furnishing the explanation, he has not mentioned the issuance of two Caste Validity Certificates in favour of her close blood relatives who belong to the 'Koshti' caste. Moreover, she failed to make her submission on the existence of inconsistent documents with the petitioner's claim that her ancestors belong to the '*Koshti*' caste on which the Committee has relied.

18. Perusal of the impugned order, Vigilance Cell report, and documents on record it emerges, that during the Vigilance Cell enquiry, the Vigilance Cell found two documents of the pre-Constitutional era i.e. of 1946 and 1948 pertaining to her father and uncle which shows that they belong to '*Koshti*' caste. So also documents of 1946, 1948, 1954-55, 1956, and 1961-62 pertain to her grandfather, cousin uncle, and cousin grandfather, wherein their caste is mentioned as '*Koshti*'. The said documents were verified from the original record. The petitioner has not disputed these documents nor explained the entries therein. Those entries appear inconsistent with the petitioner's claim that she belongs to '*Halba*' (Scheduled Tribe).

19. During the Vigilance Cell enquiry, the Vigilance Cell found that Ku. Khushi, cousin sister, and Ravindra, cousin brother, have obtained the Validity Certificates that they belong to the '*Koshti*' caste. It is not disputed that during the recording of the statement of the grandfather of the petitioner i.e. Waman, he has given a family tree. Where he has admitted their relationship with Ku. Khushi and Ravindra. Therefore, it appears that Ku. Kushi and Ravindra are in blood relations with the petitioner, who obtained Validity Certificates that they belong to the '*Koshti*' caste.

20. It is pertinent to note that the '*Koshti*' caste is found at Entry No.66 of the Constitution (Scheduled Tribe) Order, 1950 (for short, '*the said order*') as 'Other Backward Class'

category and the '*Halba*' caste is found at Entry No.19 of the said order in 'Scheduled Tribe' category. The said fact itself shows that both the castes are different from each other.

21. A perusal of the reply cum explanation submitted by the petitioner to the Vigilance Cell report, no satisfactory explanation was given about the existence of these documents and validity certificates. But the petitioner was kept quiet. Non-filing of the explanation or denying the said fact itself shows that she has no grievance about these documents and the adverse entries therein.

22. On perusal of the documents, it seems that those documents are of the pre-Constitutional era as well as prior to the documents produced by the petitioner in support of her claim. These documents pertain to her ancestors i.e. father, grandfather, uncle, cousin uncle, and cousin grandfather. Therefore, these documents have more probative value than the subsequent documents. The entries in these documents speak that the ancestors of the petitioner belong to the '*Koshti*' caste. I would like to reproduce these documents as under :-

अक्र	नाव	उमेदवाराशी नाते	उपलब्ध पुरावा	पुराव्यात नमूद जात	पुराव्याचे वर्ष	शेरा
i	रामभाऊ मुकुंदा	काका	दाखल खारीज उत्तारा	कोष्टी	११/०३/१९४६	सदरचे पुरावे मुळ रेकार्डवरून तपासले
ii	बापूराव गोपाळा	चुलत काका	दाखल खारीज उत्तारा	कोष्टी	०२/०७/१९५६	

iii	वामन मुका	वडील	दाखल खारीज उत्तरा	कोष्टी	०९/०४/१९४८	आहेत. सदर नोंदी
iv	मुका घुटलू कोष्टी	आजोबा	कर आकारणी यादी	कोष्टी	१९५४-५५	जशाच्या तशा आहेत असा पोलीस दक्षता
v	गोपाळा घुटलू कुंभारे	चुलत आजोबा	कर आकारणी यादी	कोष्टी	१९६१-६२	पथकानी शेरा लिहीला आहे.
vi	खुशी संजय कुंभारे कुंभारे (विशेष मागास प्रवर्गाचे वैधता प्रमाणपत्र क्र ए-२११ २९३७)	चुलत भाची	जात वैधता प्रमाणपत्र	कोष्टी	३०.०९.२०१९	
vii	रविंद्र बाबुराव कुंभारे (विशेष मागास प्रवर्गाचे वैधता प्रमाणपत्र क्र ए-५७ २८४२)					

23. The petitioner in support of her claim has produced the documents of 1973, 1977, 1983, 1983, and 1985 pertain to herself. The oldest entry is in 1973. However, the five documents shown in the above table are prior to documents produced by the petitioner. *Besides*, these five documents are from the pre-constitutional era having more probative value than the documents produced by the petitioner. The fact of obtaining the validity certificates by the blood relatives of the petitioner that

they belong to the 'Koshti' caste does not support the claim of the petitioner that she belongs to '*Halba*' (Scheduled Tribe).

24. Having considered the aforesaid facts it seems that non-passing of the order on the applications as alleged by the petitioner, does not vitiate the proceedings as the petitioner failed to show that she belongs to the '*Halba*' (Scheduled Tribe) caste. So also, as per the judgment in the case of *Anand vs Committee for Scrutiny and Verification of Tribe Claims and others*, reported in *2011(6) Mh.L.J. 919*, the pre-Constitutional documents have more probative value than the subsequent documents. Therefore, the observations made in the case of *Anand* (supra) are not helpful for the petitioner in support of the claim on which she is relying. So also, the observations made in Writ Petition No.1942/2023 are not helpful for the petitioner in support of her claim. *Moreover*, the petitioner in above referred case has no concerns with the petitioner in the present case.

25. It is a settled principle of law that a person gets his caste by birth. As such, the pre-Independence era entries in relation to the father and uncle of the petitioner namely Waman and Rambhau, are recorded as '*Koshti*'. As such from the available documentary evidence it cannot be said that the petitioner has discharged the burden cast on her as provided under Section 8 of the Act, 2000, to prove that she belongs to '*Halba*' (Scheduled Tribe). Similarly, the petitioner failed to discharge the burden of

validity certificates obtained by her two blood relatives, as they belonged to the '*Koshti*' caste.

26. The adverse entries in the documents as mentioned in the table as well as the issuance of validity certificates in favour of her blood relatives, depicts that the ancestors of the petitioner belong to the '*Koshti*' caste. Despite offering an explanation the petitioner failed to explain the controversy that appears in the documents and has chosen not to respond to the Committee on the said point. As such, the petitioner has not controverted the Vigilance Cell report about the '*Koshti*' entries noticed in the record of blood relatives or issuance of validity certificates in favour of her blood relatives.

27. That being so, the aforesaid evidence collected by the Vigilance Cell which is relegated back to the pre-independent era has more probative value, and the same can be safely relied upon for rejecting the tribe claim of the petitioner.

28. Having considered the above fact on record, the judgment on which the petitioner is relying, will be of hardly any assistance to her to show that she belongs to 'Halba' (Scheduled Tribe). Therefore, it cannot be said that the impugned order is illegal and not sustainable in the eyes of the law.

29. As such, from the available documentary evidence on record it cannot be said that the petitioner has discharged her

burden, as provided under Section 8 of the Act of 2000 thereby proving that she belongs to 'Halba' (Scheduled Tribe). There is no convincing explanation for that effect coming out from the petitioner.

30. As far as the satisfaction of the affinity test is concerned, the record depicts that on 05-08-2022, the Vigilance Cell had recorded the statement of the father of the petitioner, wherein he categorically stated that he was appointed from the "OBC" category. Initially, he belonged to the '*Koshti*' caste, which came under the 'OBC' category. Subsequently, he obtained a caste certificate as that of the 'Halba' caste. He also stated that his mother tongue and language of communication are '*Koshti*' and 'Marathi'. The traditional occupation of his ancestors was '*weaving*'. He was not aware of the 'Jaat Panchayat'.

31. We have looked into the information furnished by the petitioner to the Vigilance Cell. Neither the '*Koshti*' language nor weaving was an occupation adopted by the '*Halba*' (Scheduled Tribe). '*Halba*' speaks the 'Halbi' language.

32. As such, there is no reason to disbelieve the documents found during the Vigilance Cell. As well the statement given by the father of the petitioner depicts that the petitioner's ancestors belong to the '*Koshti*' caste.

33. In this background, the petitioner, in our view, cannot be said to belong to '*Halba*' (Scheduled Tribe). Rather the Committee, in our opinion, is quite justified in recording a finding that the petitioner has failed to demonstrate that she belongs to '*Halba*' (Scheduled Tribe).

34. That being so, no case for causing interference in extraordinary jurisdiction is made out by the petitioner. As such, there is no substance in the petition and the same stands dismissed with no costs.

35. Rule is discharged.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J)