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

Writ Petition No.6331 of 2012

Suresh S/o Maroti Mundare,
Aged about 48 yrs, Occ. Service,
R/o Borgaon, Tah. Warora,
Distt. Chandrapur Petitioner.

Versus

- 1] The Scheduled Tribe Caste
Certificate Scrutiny Committee,
Gadchiroli.
- 2] The Chief Executive Officer,
Zilla Parishad, Chandrapur.
- 3] The District Health Officer,
Zilla Parishad, Chandrapur.
- 4] The Medical Officer,
Primary Health Centre,
Saori (Bid), Tah. Chimur,
Distt Chandrapur. .. Respondents
...

Mr. H. R. Gadhia, Advocate for petitioner.
Mr. N. W. Sambre, Advocate for respondent no.1.
Ms. B. Dangre, Additional Government Pleader for
respondents 2 to 4.

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**CORAM : B. R. GAVAI &
Z.A. Haq, JJ**
DATE : 24th October, 2013.

ORAL JUDGMENT : (Per Z.A. Haq, J.) :

1] Heard Mr. Gadhia, learned Advocate for the petitioner, Mr. Sambre, learned Advocate for respondent No.1 and Ms. Dangre, learned Additional Government Pleader for respondent Nos. 2 to 4.

2] Rule. Rule is made returnable forthwith.

3] The petitioner has challenged the decision of the Scrutiny Committee invalidating the caste certificate of the petitioner.

4] Mr. Gadhia, learned Advocate for the petitioner has submitted that the caste certificate of the petitioner is invalidated on the following grounds:-

- (i) that ordinary place of the residence of the petitioner does not fall in the area, which has been scheduled for “Mana Scheduled Community”;
- (ii) that the petitioner has failed to substantiate his claim on the basis of documents;
- (iii) that the petitioner has failed to substantiate his claim by affinity test.

5] The learned Advocate for the petitioner submits that the grounds on which the claim of the petitioner is invalidated are unsustainable in law. Moreover, according to the petitioner, the caste certificate of Prakash Marotrao Mundare, real brother of the petitioner, is validated by the Scrutiny Committee and, therefore, the claim of the petitioner could not have been rejected by the Scrutiny Committee.

6] The submission on behalf of the Caste Scrutiny Committee is that the documents on which the petitioner is relying, does not show the entry of "Mana Scheduled Tribe". Learned Advocate for the Caste Scrutiny Committee has submitted that the petitioner has failed to justify his claim on the basis of the affinity test and he states that each case has to be decided on the facts and the merits of that case and, therefore, impugned order passed by the Scrutiny Committee is just and proper.

7] We have considered the submissions of the respective parties.

8] As far as the conclusion of the Caste Scrutiny

Committee on the basis of the ordinary place of the residence of the petitioner is concerned, the area restrictions have been removed by the Scheduled Caste and Scheduled Tribes Order (Amendment) Act 1976 and we have no hesitation to hold that the reasons given by the Caste Scrutiny Committee on the basis of the area restrictions are unsustainable in law.

9] It is undisputed that the caste certificate of Prakash Marotrao Mundare, real brother of the petitioner, is validated. It is not the case of the Caste Scrutiny Committee that Prakash Marotrao Mundare, real brother of the petitioner, has obtained caste validity certificate either by fraud or misrepresentation.

10] In the judgment reported in **2011 (2) BCR 824 (Apoorva Vinay Nichale Versus Divisional Caste Scrutiny Committee No.1 & others)**, identical issue fell for consideration of this Court and the Division Bench has considered it in paragraph 9 as follows:-

“Para 9 : “..... 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 (employment), 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.”

11] As far as the submission of the Caste Scrutiny Committee about the affinity test is concerned, it is laid down by the Hon'ble Supreme Court in the case of **Anand V/s. Committee for Scrutiny and Verification of Tribe Claims and others** reported in **2011(6) Mh.L.J.919** that affinity test should not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe.

The Hon'ble Supreme Court has laid down that the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

12] In view of the above, we hold that the order passed by the Caste Scrutiny Committee is contrary to the law laid down by the Hon'ble Supreme Court and this Court. The impugned order is unsustainable in law.

13] In view of the above, we pass the following order:-

- (i) The impugned order passed by the Caste Scrutiny Committee is quashed.
 - (ii) The Scrutiny Committee is directed to issue caste validity certificate to the petitioner certifying that the petitioner belongs to "Mana" Scheduled Tribe, within a period of four weeks.
- No costs.

JUDGE

Ambulkar

JUDGE