



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

WRIT PETITION No.4058 OF 2019

Mahendra Amrutrao Balsaraf,
Aged about 44 years, Occ. Service as Sectional
Engineer, Irrigation Department (Water
Resources), Resident of Arjun Empire,
Near Shitala Mata Mandir, Shilangan
Road, Krushnarpan Colony, Amravati.

... PETITIONER

...VERSUS...

1. State of Maharashtra through its
Secretary, Ministry of Irrigation and
Water Resources, Mantralaya,
Mumbai-400032.
2. Executive Engineer, Amravati Irrigation
Project Division, Shivaji Nagar,
Amravati.
3. Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati Division,
Amravati through its Research Officer
and Member-Secretary.

...RESPONDENTS

Shri N.C. Phadnis, Advocate for Petitioner.
Ms M.H. Deshmukh, A.G.P. for respondent Nos. 1 & 3.
Shri K.R. Lule, Advocate for respondent No.2

**CORAM : A.S.CHANDURKAR AND
SMT. M.S. JAWALKAR, JJ.**

DATE : 15th MARCH, 2022.

ORAL JUDGMENT : (Per : Smt. M.S. Jawalkar, J.)

. Heard.

2. Rule. Rule made returnable forthwith. Considering the urgency, the matter is taken up for final hearing at the stage of admission by consent of parties.

3. The petitioner is aggrieved by invalidation of his tribe claim that of belonging to 'Halba' Scheduled Tribe by respondent no.3 – Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati Division, Amravati (for brevity "Scrutiny Committee") by its order dated 31/05/2019.

4. Learned Counsel for the petitioner Shri Phadnis submitted that the petitioner claims to be belonging to 'Halba' Scheduled Tribe at Entry Sr. no.19 in the Constitution (Scheduled Tribe) Order, 1950. He further submitted that the petitioner was

initially appointed vide order dated 30/08/1997 as a Junior Engineer. Subsequently he was promoted as a Section Engineer and since then the petitioner is working on the post of Section Engineer till this date.

5. While submitting the proposal to the Scrutiny Committee, petitioner submitted an affidavit in respect of his genealogy. Along with the reply to the Vigilance Cell report, petitioner submitted more detailed genealogy and validity certificate and declaration granted to the paternal side relatives. The competent authority issued caste certificate dated 11/05/1990 that the petitioner belongs to 'Halba', Scheduled Tribe. The petitioner had submitted various certificates, school entries to the committee which are relevant and also old documents. Following documents were submitted by the petitioner of period prior to 1950. The documents are as under :

- (i) Extract of 'Dakhal Kharij Register of Amrut (father of petitioner) where 'Halbi' (Caste/Tribe) is mentioned dated 14/04/1948.
- (ii) The 'School Transfer Certificate' of Amrut (father of petitioner) dated 14/04/1948.

6. He also placed on record declaration granted to paternal side relatives by name Prashant Ukandrao Balsaraf in Writ Petition No. 2019/2012, vide order dated 23/10/2012. Another paternal side relative by name Harishchandra Tukaram Balsaraf had been granted declaration by the Principal Bench of this Court in Writ Petition No. 539/2002, vide its judgment dated 07/03/2002 and the validity certificate was issued by the Nagpur Scrutiny Committee to Harishchandra Balsaraf. There is another validity certificate issue by respondent no. 3 – Scrutiny Committee itself in respect of Rajesh Devidas Balsaraf placed on record which is dated 06/02/2017. He also placed on record affidavits of Prashant, Harishchandra and Rajesh confirming the paternal side relationship.

7. The Vigilance Cell also collected three ‘Halba’ entries of Narendra, Mahendra and Surendra and obtained some of the ‘Koshti’ entries of ‘Dakhal Kharij Register’. Petitioner filed his detailed reply to the affidavit of Police Vigilance Cell. Along with this reply petitioner submitted detailed genealogy and also validity certificate, details of traits and characteristics of ‘Halba’ Scheduled Tribe. The Scrutiny Committee ignoring the oldest document of

1948 of petitioner's father and paternal side relative's validity certificate, invalidated the claim of 'Halba' Scheduled Tribe of the petitioner under the same impugned order in this petition. Caste Scrutiny Committee while rejecting the claim held that 'Halba' and 'Halbi' are two different Scheduled Tribes and therefore, in one family there cannot be two different types of Scheduled Tribe persons. The Scrutiny Committee while discarding the entry of 1948, considered the 'Koshti' entries obtained by the Vigilance Cell and recorded finding that 'Halba Koshti' and 'Halbi Koshti' are the sub castes of 'Koshti'. The committee further held that earlier 'Koshti' was in Other Backward Classes and subsequently it was included in the Special Backward Classes.

8. Petitioner further submitted that such reasoning cannot be sustained in the eye of law, in view of the judgment passed by this Court and validity certificate granted by the committee. Further, 'Halba' and 'Halbi' are included at Presidential Order, 1958 at Sr. No. 19 and 'Koshti' was included in Other Backward Classes and Special Backward Classes subsequently. Therefore, the old inclusion of 'Halba' will prevail over and therefore decision of the committee deserves to be quashed and set aside. The learned

Counsel for the petitioner relied upon :

1. *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others, reported in 2011 (6) Mh.L.J. 919.*
2. *State of Maharashtra Vs. Milind and others, reported in (2001) 1 SCC 4.*
3. *Writ Petition no. 2019/2012 (Prashant Ukandrao Balsaraf Vs. The State of Maharashtra, through its Secretary Tribal Development Department, Mantralaya, Mumbai dated 23/10/2012.*
4. *Writ Petition no. 539/2002 (Shri Harishchandra Tukaram Balsaraf Vs. State of Maharashtra & others) dated 07/03/2002.*

9. As against this, Ms M.H. Deshmukh, learned Assistant Government Pleader submitted that though caste validity certificates were issued to the relatives of the petitioner, the Scrutiny Committee has to conduct enquiry through Vigilance Cell and then come to the conclusion about validity. However, she fairly conceded that the issue is covered by judgment of this Court.

10. Now rival contentions fall for our determination. There is no dispute about the names stated in the family tree placed before the Scrutiny Committee. The oldest entry is of the father of petitioner i.e. Amrutrao Shivram Balsaraf. He is shown belonging to 'Halbi'. It is extract of school transfer certificate. Another document is also in respect of Amrutrao father of petitioner of the same date which is extract of admit cancel register. There is validity declared in favour of Harishchandra Balsaraf by this Court vide order dated 07/03/2002 in Writ Petition No. 539/2002 (Shri Harishchandra Tukaram Balsaraf Vs. State of Maharashtra and others). While granting such declaration, the documents in respect of father of the petitioner of the year 1948 were considered by this Court. While giving declaration this Court also relied on State of Maharashtra Vs. Milind (*Supra*). Petitioner also placed on record declaration/validity granted to his cousin relative Sharad/Prashant in Writ Petition No. 2019/2012 (Prashant Ukandrao Balsaraf Vs. The State of Maharashtra and others), vide order dated 23/10/2012. This Court relying on the judgment of the Apex Court in Anand (*Supra*) has taken a view that affinity test cannot be considered as a litmus test and more probative value has to be given to the pre-Constitutional

documents. In the judgment of this Court in Prashant Balsaraf (*Supra*), this Court while giving reference of Writ Petition No. 2571/2001 held thus :

“In the said judgment, we have also held that taking into consideration the Gazetteer of Amravati District and the Authority of R.V. Russell on Tribes and Castes of the Central Provinces of India, the Halbas/Halbis, who have migrated from certain parts of Maharashtra including Ellichpur and Anjangaon Surji areas of Amravati have taken the profession of weaving and as such, merely because “Koshti” is written in some of their documents, same cannot be a ground to discard their documentary evidence of pre-constitutional era.”

11. In the said judgment this Court also found that there is a document in respect of grandfather of petitioner (Prashant Ukandrao Balsaraf). Vigilance Cell found that the document is of the year 1948, showing his caste as ‘Halbi’. He also placed on record the validity certificate issued by respondent Scrutiny Committee in respect of his blood relative Rajesh Devidas Balsaraf dated 06/02/2017, as he belongs to ‘Halba’ Scheduled Tribe. In view of these documents we do not see any reason to invalidate the caste claim of the petitioner. He also placed on record affidavit of

his near relatives. In view of the judgment, State of Maharashtra Vs.

Milind (*Supra*) the Apex Court has observed thus :

1. *It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even through it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) order, 1950.*

2. *The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.*

3. *A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribe issued under clause (1) of Article 342 only by Parliament by law and by no other authority.*

4. *It is not open to State Governments or courts or tribunals or any other authority to modify, amend or*

alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.

12. Thus there is total non-application of mind by the Scrutiny Committee. Subsequently, when there are documents of pre-independence period and declaration in respect of relatives of the petitioner as belonging to 'Halba' Scheduled Tribe by this Court, the Scrutiny Committee ought to have validated tribe claim of the petitioner. So far as caste 'Koshti' is mentioned in one of the document, this Court in Writ Petition No. 2019/2012, Prashant Balsaraf (*Supra*) held that the same cannot be a ground to discard their documentary evidence of pre-Constitutional era. The document in respect of father of present petitioner was also relied upon in the judgment of this Court in Prashant's matter while declaring that he belongs to 'Halbi'. There is one more document which was relied by this Court in the case of Prashant. The said document pertaining to the grandfather of Prashant of the year 1925, shows his caste as 'Halbi'. Thus, there is sufficient evidence on record having great probative value and in view thereof, the petitioner has duly established his claim that he belongs to Halba/Halbi Scheduled tribe.

13. In the result the impugned order passed by the Scrutiny Committee is required to be quashed and set aside and we pass the following order:

The order of Scrutiny Committee dated 31.05.2019 is set aside. It is declared that the petitioner belongs to Halba Scheduled Tribe and is entitled to the benefits on the basis of such declaration. The Scrutiny Committee shall within a period of six weeks from the date of receipt of copy of this judgment issue a validity certificate in favour of the petitioner.

Rule is made absolute in the above terms. No order as to costs.

(Smt. M.S. Jawalkar, J.)

(A.S.Chandurkar, J.)

Jayashree..