IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10442 OF 2017

Sairaj @ Parth s/o Gangadhar Kalyankar ...Petitioner
vs.
The State of Maharashtra and Others ...Respondents

Mr. Satish Talekar a/w. Mr. Ashwin V. Sakolkar i/b. Mr.Shyam B. Patil, for the Petitioner.
Mr. A.A. Kumbhkoni, Advocate General a/w. Mr. Akshay Shinde, Special Counsel and Mr. Sandeep Babar, AGP, for the Respondent.

CORAM : SHANTANU KEMKAR &
G.S. KULKARNI, JJ.

DATE : OCTOBER 05, 2017

P.C.:

Parties through their counsel.

2. Through this Petition filed under Article 226 of the Constitution of India, the Petitioner has assailed the order dated 31st August, 2017 passed by the Scrutiny Committee (Respondent No.2) whereby the Petitioner's claim for validation of his caste certificate as of “Koli Mahadev” has been rejected.

3. The grievance of the petitioner is that though he had submitted Caste Validity Certificates granted by the Committee in favour of his father, sister and cousin sister, but the Committee has

discarded the same on the ground that the same would not be conclusive proof and would not absolve the Petitioner from discharging the burden cast on him to produce the relevant evidence. According to the learned counsel appearing for Petitioner, the impugned order runs contrary to the Division Bench judgment of this Court in the case of **Apoorva Vinay Nichale v/s Divisional Caste Certificate Scrutiny Committee No.1 and others, reported in 2010(6) Mh.L.J. 401** which was based upon the Supreme Court judgment passed in the case of **Raju Ramsing Vasave v/s Mahesh Deorao Bhivapurkar and others, reported in (2008) 9 SCC 54**.

4. On the other hand, the learned AGP has supported the impugned order.

5. Having considered the submissions and having gone through the order passed by the Division Bench of this Court in the case of **Apoorva Vinay Nichale** (supra), we find that the Division Bench has in paragraphs 7 and 9 observed thus :

> *"7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is*

granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.

9. In the present case, we find that the committee has disbelieved the petitioner's case that she belongs to Kanjar Bhat after calling the school leaving certificate of Petitioner's father and noticing that the original caste written on it was 'Thakur' and that was subsequently changed to Kanjar Bhat. The committee observed that the caste has been changed without complying with the procedure prescribed by section 48(e) and 132(3) of Mumbai Primary Education Act. In fact, the caste has been changed on the basis of the affidavit. From the findings of the committee it appears that the committee has observed that the change of caste has been one illegally. Obviously, the committee which decided the caste claim of the petitioner's sister did not hold the same view, otherwise it would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. 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, 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 cast 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."

6. For discarding the caste validity certificate of the

Petitioner's father's real sister and cousin sisters, the Scrutiny Committee has observed that the Petitioner's uncle's wife Gangabai's caste validation has been rejected on 5th April, 2017 as in the Vigilance Inquiry conducted the entries in respect of the blood relatives of Gangabai from the paternal side of the same were found to be of "*Koli*". The said blood relative of the Petitioners uncle's wife Gangabai were named as Satvaji Ramji of Nagarao Ramji.

7. We failed to understand as to how the rejection of Petitioner's uncle's wife i.e. aunts caste validation claimed on the basis of entries of "*Koli*" in relation of her paternal side relatives would be relevant to reject the Petitioner's claim. It is also not in dispute that the Petitioner had submitted the caste validity certificate of his aforesaid close relatives, issued after due Vigilance Inquiry. It is also noticed that the Petitioner's 2 real cousin brothers and cousin uncle have also been granted caste validity certificate. The contention of the Respondent that though the Vigilance Inquiry was conducted in the case of Petitioner's father but the affinity test was not conducted and therefore caste validity certificate issued in respect of Petitioner's father is of no consequence and cannot be accepted, in view of the law laid down by

the Supreme Court in the case of **Anand vs. Committee for Scrutiny and Verification of Tribe Claims & Ors.** reported in **(2012) 1 Supreme Court Cases 113** in which it has been held that affinity test cannot be regarded as litmus test for establishing the link of the applicant with a Scheduled Tribe. In view of the fact that there are migrations, modernization and contact with other communities which tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe.

8. Thus in our considered view, the reason assigned by the Respondent No.2 – Committee for rejection of the Petitioner's claim cannot be sustained as it runs contrary to the view taken by the Division Bench of this Court in the case of **Apoorva Nichale** (supra) and **Anand** (supra).

9. Accordingly, the Petition is allowed and the impugned order is set aside. The Respondent No. 2 – Committee is directed to issue the caste validity certificate to the petitioner forthwith on receipt of an authenticated copy of this order.

10. Needless to observe that in case any show cause notice has been issued by the Committee for cancellation of Caste Certificate of

the petitioner's relatives, this order will not come in the way of Committee while deciding the show cause notice.

(G.S. KULKARNI, J.) (SHANTANU KEMKAR, J.)