



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

WRIT PETITION NO. 2113/2017

Rushikesh S/o. Satish Bakde,
Aged about 21 yrs., Occ.
Student, R/o. Govind Nagar, Mill
Colony, Tah. & Post _Achalpur,
Distt. Amravati - 444 806.

....**PETITIONER**

....**VERSUS**....

Joint Commissioner & Vice-
Chairman,
Scheduled Tribe Caste
Certificate Scrutiny Committee,
Irwin Chowk, Amravati.

....**RESPONDENT**

Shri S.R.Narnaware, Advocate for petitioner.
Shri H.R.Dhumale, AGP for respondent.

CORAM : **ANIL S. KILOR AND**
SMT. M.S. JAWALKAR, JJ.

DATE OF RESERVING THE JUDGMENT: **19/03/2024**
DATE OF PRONOUNCING THE JUDGMENT : **05/04/2024**

JUDGMENT (PER: SMT. M.S. JAWALKAR, J.)

Rule. Rule made returnable forthwith.

2. Heard finally by the consent of learned counsel
appearing for the parties.

3. The petitioner had submitted proposal on 16/12/2013 to the respondent - Caste Scrutiny Committee in order to claim and substantiate that he belongs to Halbi, Scheduled Tribe on the basis of voluminous documents of his father and forefathers pertaining to the pre-independence period belonging to Halbi, Scheduled Tribe from Achalpur, Distt. Amravati.

4. The petitioner is a student and appearing in competitive exams and required validity certificate for the purpose of education and government service in future and therefore, has approached before this Court for issuance of direction to the Scrutiny Committee to decide his caste claim and issue the validity certificate belonging to 'Halbi' Scheduled Tribe.

5. It is submitted by the petitioner that, this Court has already decided this issue in the number of judgments granting validity certificate including in the case of *Apoorva Nichale* reported in 2010(6) *Mh.L.J.* 401 and *Priya Parate* reported in 2013(1) *Mh.L.J.* 180.

6. This Court has directed the Scrutiny Committee to decide his caste claim within stipulated time period on 05/02/2016 in Writ Petition No. 365/2016. The respondent passed the invalidation order ignoring the judgment delivered by this Court in the case of real sister **Ku. Sonal Prakash Bakade** and also certificate of validity issued by the Amravati Committee to the cousin sister.

7. The respondent has passed contemptuous order disobeying the judgments passed in the case of *Apoorva Nichale* reported in 2010(6) *Mh.L.J.* 401, *Priya Parate* reported in 2013(1) *Mh.L.J.* 180, *Anand V/s. Committee for Scrutiny and Verification of Tribe Claims* reported in 2011(6) *Mh.L.J.* 919 and *Ku. Sonal Prakash Bakade*, reported in 2016(5) *Mh.L.J.* 907.

8. The petitioner has also placed on record the documents of his blood relatives as follows:-

Name	Relation	Document	Date of document	Caste
Shri Baliram Tanbaji Bakde	Great Grandfather	Birth-Death Extract	29/03/30	Halbi

Shri Nagorao Baliramji Bakde	Paternal Grandfather	Extract of School Admission Register	24/09/25	Halbi
Shri Ramchandra Baliramji Bakde	Paternal Grandfather	Extract of School Admission Register	19/06/1936	Halbi
Shri Shankarrao Baliramji Bakde	Grandfather	Extract of School Admission Register	03/04/1940	Halbi
Shri Satish Shankarrao Bakde	Father	Extract of School Admission Register	08/11/1962	Hindu
Shri Sunil Shankarrao Bakde	Uncle	Extract of School Admission Register	Year of Birth – 1964 Year of Admission – 1970 Year of School Leaving – 1975	Halbi

9. Also, the petitioner relied on the Government Resolution dated 22/08/2007.

10. The Police Vigilance Cell has conducted the inquiry in respect of home, school and other aspects and submitted the report to the respondent-Scrutiny Committee and also supplied the copy to the petitioner. The respondent has issued show cause notice dated 05/04/2016 to the petitioner asking for explanation to the said Police Vigilance Cell report. As a matter of fact, the Police Vigilance Cell

report is totally in favour of the petitioner because almost all the entries of the fathers and forefathers are shown as 'Halbi' Scheduled Tribe. In spite of the report favouring to the petitioner, the respondent has invalidated the caste claim of the petitioner discarding the oldest documents and ignoring the judgment delivered by this Court dated 22/08/2016 in case of *Sonal Prakash Bakde* and also ignored the certificate of validity issued by the same Scrutiny Committee of Amravati in the case of real cousin sister **Ku. Sonal Prakash Bakade** declaring her as 'Halbi' Scheduled Tribe on 21/09/2016. The petitioner has given detailed reply dated 06/05/2016 to the Police Vigilance Cell report explaining each and every point in respect of the caste claim. The Police Vigilance Cell report is not against the caste claim of the petitioner belonging to the 'Halbi' Scheduled Tribe and in fact, it is in favour of the petitioner. It is, therefore, expected that the respondent ought to have validated the caste claim of the petitioner belonging to 'Halbi' Scheduled Tribe.

11. When the Scrutiny Committee had not decided

the caste claim of the petitioner, the petitioner had filed contempt petition no. 358/2016 and this Court issued contempt notice to the respondent. In the meanwhile, the respondent had invalidated the caste claim of the petitioner on 22/02/2017. The caste claim was invalidated only on the ground of affinity test. The birth extract of Baliram who has been shown as great grandfather as 'Koshti' at Sr. No. 5 at para 5 of the impugned invalidation order, is not in relation to the petitioner and the petitioner has already given reply to the Police Vigilance Cell report wherein it was already clarified in para 3 that as per the office of Collector, Amravati, the date of death of Baliram was shown as 16/11/1922 and date of birth of Ramchandra is 1930 and date of birth of Shankar is 1933. After considering these figures, it is highly impossible to relate these documents with the petitioner. Therefore, these documents are not relevant and applicable in case of the petitioner.

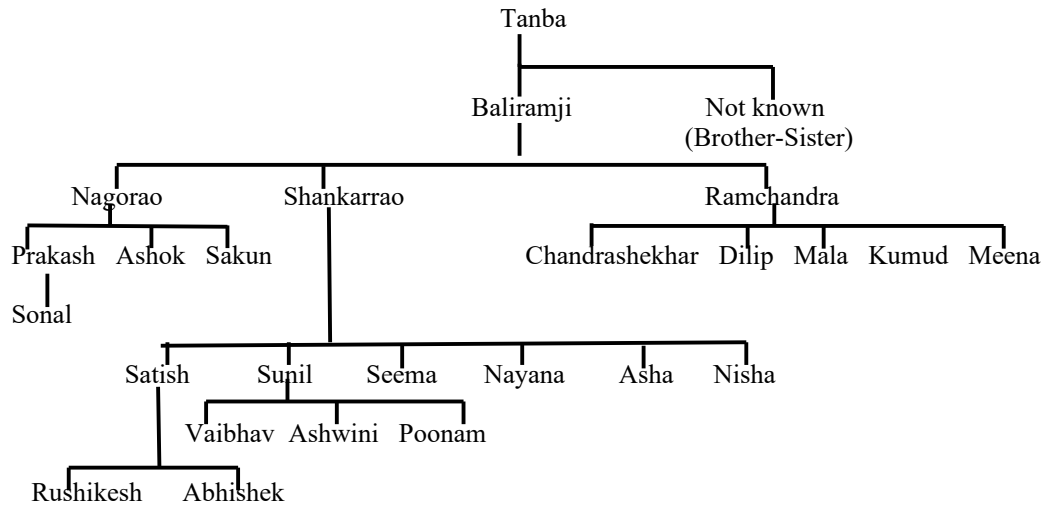
12. The learned counsel for the petitioner relied on the following judgments/citations:-

- 1) *Rajwardha S/o. Ishwardas Metekar V/s. State of Maharashtra (judgment of this Court passed on 14/03/2024 in Writ Petition No. 4906/2021).*
- 2) *Ku. Sonal Prakash Bakade V/s. Joint Commissioner and Vic Chairman, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati, reported in 2016(5) Mh.L.J. 907.*
- 3) *Apoorva d/o. Vinay Nichale V/s. Divisional Caste Certificate Scrutiny Committee No. 1, Nagpur and others (judgment of this Court passed on 27/07/2010 in Writ Petition No. 1504/2010).*
- 4) *Priya d/o. Pravin Parate V/s. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur and ors. reported in 2013(1) Mh.L.J. 180.*

13. As against this, the learned Assistant Government Pleader appearing for respondent-Caste Scrutiny Committee supported the order passed by the Scrutiny Committee. It is submitted that, the document pertaining to great grandfather of the petitioner namely Baliram is shown as 'Koshti'. His date of death is shown as 16/11/1922. It is also contended that the daughter of Tanba is shown as 'Sali'.

14. Heard both the parties at length. Perused the record and proceedings of the Scrutiny Committee with the assistance of learned AGP. It would be appropriate to reproduce the family tree, which is as under:-

FAMILY TREE



15. There is no dispute about the family tree. It is also beneficial to produce the list of documents placed on record by the petitioner as well as documents collected by the Vigilance Cell.

16. As per the Constitution Scheduled Tribes Order, 1950 read with Para 9 of Second Scheduled to the Scheduled Caste, Scheduled Tribe Order (Amendment) Act, 1976,

‘Halba’ has been declared the Scheduled Tribe in the State of Maharashtra and is appeared at Sr. No. 19 in the Constitution (Scheduled Tribes) Order, 1950.

17. In view of the above amendment, it would be appropriate to peruse the documents, which are prior to 1976.

Name	Relation	Document	Date of document	Caste
Satish Shankarrao Bakde	Father	School Leaving Certificate	8/7/1969	Hindu Halbi
Satish Shankarrao Bakde	Father	An extract of the School admission register	8/11/1962	Hindu Halbi
Shankar Baliram Bakde	Grandfather	School Leaving Certificate	3/4/1940	Halbi
Shankar Baliram Bakde	Grandfather	An extract of the School admission register	3/4/1940	Halbi
Ramchandra Baliram Bakde	Paternal Grandfather	School Leaving Certificate	19/6/1936	Halbi
Ramchandra Baliram Bakde	Paternal Grandfather	An extract of the School admission register	19/6/1936	Halbi
Nago Baliram Bakde	Paternal Grandfather	School Leaving Certificate	24/9/1925	Halbi
Nago Baliramji	Paternal Grandfather	Extract of the School admission register	24/9/1925	Halbi

Sunil Shankarrao Bakde	Applicant's uncle	School Leaving Certificate	6/7/1970	Halba
A male child is shown to have born to Baliram Tanba	Great Grandfather	Birth Extract	29/3/1930	Halbi
Sunil Shankarrao Bakde	Applicant's uncle	An extract of the School admission register	6/7/1970	Hindu (Halba)

18. As against these, the following three documents are obtained by the Vigilance Cell:-

Name	Relation	Document	Date of document	Caste
Sudam Ramchandra	Paternal Cousin Uncle	Birth Extract	24/11/1944	Sadi
Aloki Tanba	Great Great Grandmother	Death Extract	06/10/1928	--
Baliram	Great Grandfather	Birth Extract	18/12/1920	Koshti

19. It appears that the Caste Scrutiny Committee considered the documents placed on record by Vigilance Cell and came to the conclusion that the petitioner has not succeeded in establishing the affinity test and these entries are contrary to the entries produced by the petitioner on record.

20. After going through the entire order of the Scrutiny Committee, it appears that the erroneous reasons have been given by the Committee for discarding the caste

claim of the petitioner. It needs to be noted here that, this Court allowed the Writ Petition No. 289/2016 on 22/08/2016 in the case of one **Sonal Prakash Bakade**, cousin of the petitioner and validity certificate has been issued in her favour by the Scrutiny Committee as per the order of this Court. The Scrutiny Committee denied to extend the ratio of validity certificate to the applicant/petitioner because the facts of the said case were not presented before the Committee. The Scrutiny Committee relied on the documents collected by the Vigilance Cell. It is observed that as the documents are obtained from the Government record and are Pre-Presidential Notification period, entries are having high probative value of evidence. The same analogy would apply to the documents placed by the petitioner on record. It is nowhere claimed that the documents presented by the petitioner are false or bogus. Moreover, there is no material/other details on record to conclude that the said Baliram was relative of present petitioner. Except the same name, there are no further details.

21. There is extract of register of school in respect of Ramchandra Baliram wherein Baliram is shown as son of Tanba, 'Halbi'. If Admit Cancel Register in respect of Nago Baliram is seen, his father's name is appearing as Baliram Tanba, his caste is shown as 'Halbi', his business is shown as weaving, the date of admission is shown as 24/09/1925 and date of school leaving is shown as 20/02/1929.

22. The Caste Scrutiny Committee relied on the documents collected by Vigilance Cell. There are three documents on which the Caste Scrutiny Committee relied on. First document is birth extract of Baliram who is shown as 'Koshti'. There is specific explanation given by the petitioner to that, the said Baliram is no way in relation with the petitioner. It is common knowledge that, several persons could be found of the similar name in one village. When the Committee came with a specific case that these adverse entries are regarding family members of the petitioner, the Committee has to show its connection. Moreover, there are no further details of his father's name. As such, the Scrutiny

Committee patently committed error relying on these documents and discarded the documents wherein the name of Baliram along with his father's name as Tanba is reflecting as well as it is also reflecting that he belongs to 'Halbi.' So far as Alok is concerned, it is specifically denied by the petitioner that she is in relation with the petitioner. For the reasons stated above, these documents also need to be discarded. Moreover, there is nowhere mentioned whether 'Sali' is her caste. On the contrary, it appears that it is surname. There has to be some material to connect the said Alok with the petitioner. So far as third document is concerned, it is in respect of one Sudam Ramchandra who is shown to be belonging to 'Sadi'. However, it is specifically denied that he is in relation with the petitioner. Moreover, the Vigilance Cell also prepared a family tree wherein no such name by 'Sudam' is appearing as a son of Ramchandra. As such, all the above three documents relied by the Caste Scrutiny Committee are without any sufficient evidence. On the contrary, as discussed above, the old documents with all

details including father's name produced by the petitioner are without any reason discarded by the Caste Scrutiny Committee.

23. This Court in the case of *Sonal Prakash Bakade* (supra) relied on the judgment in the case of *Priya d/o. Pravin Parate V/s. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur and ors., 2013(1) Mh.L.J. 180* and also relied on the judgment of the Hon'ble Apex Court in the case of *Anand V/s. Committee for Scrutiny and Verification of Tribe Claims and others, 2011(6) Mh.L.J. 919*. It is observed that the facts in the case of **Priya Parate** and in the case of **Sonal Bakade** are almost identical. **Priya Parate** as well as the petitioner **Sonal Bakade** belong to the same town i.e. Achalpur. It is observed as under:-

"7. While deciding Priya Parate's case, after taking into consideration judgment in the case of Anand, (supra) this Court has, in unequivocal terms, held that the pre-independence documents will have more probative value. It has been held that merely because a candidate fails in the affinity test, the pr-eindependence documents cannot be allowed to be ignored.

8. Insofar as the reasoning given by the Scrutiny Committee regarding occupation of the petitioner's forefathers being written as Weaver (Koshti) is concerned, the Division Bench relying on the Gazetteer for Amravati District as well as from the authority of R. V. Russell on Tribes and Castes of the Central Provinces of India published in 1916, found that the original Halba/Halbi who had migrated from Bastar to various parts of Berrar including Elichpur had take the profession of weaving. It was further held that merely because some stray entries as Koshti are recorded in respect of the caste, that cannot be considered contrary to their claim of belonging to Halba-Scheduled Tribe."

24. In the present matter, it can be seen that the various documents pertaining to the petitioner's grandfather, cousin, great grandfather are produced by the petitioner, wherein consistently the entries are shown as 'Halbi'. The Scrutiny Committee while discussing issue no. 10 has not established that the three documents are in any way connected with the petitioner. Once a validity certificate is given to one Sonal Bakade as per the order of this Court, who is cousin of the present petitioner, the petitioner is entitled on the basis of old documents pertaining to years 1925, 1930, 1936, 1940 as well as validity issued in favour of Sonal Bakade

to declare as 'Halbi' community. It is duly established that the petitioner belongs to 'Halbi' community. So far as the affinity test and area restriction are concerned, they are only to support the caste claim if old documents are not available. If old documents are available, area restriction or affinity loses its significance.

25. In the case of *Mah. Adiwasi Thakur Jamat Swarakshan Samiti V/s. State of Maharashtra and others* reported in **2023 SCC OnLine SC 326**, the constitution bench of three judges of the Hon'ble Supreme Court relied on the judgment in the case of *Anand (2012) 1 SCC 113* wherein it held that,

"While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a

litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

26. The Hon'ble Apex Court also recorded similar reasons earlier for coming to the conclusion that the affinity test will not always be mandatory and/or conclusive. Only when the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, inquiry through Vigilance Cell can be ordered.

27. There is no claim by the Scrutiny Committee that there is any fraud played by the petitioner.

28. In view of *Apoorva d/o. Vinay Nichale* (supra), the validity certificate ought to have been granted in favour of the petitioner. In para 7 of the said judgment, it is held as under:-

"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."

It is also held that,

"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 caste claim to reject it."

29. As such, when **Sonal Bakade** who is cousin of the petitioner was granted validity certificate, there is no reason to deny the validity certificate to the petitioner. In view of the above discussion, we proceed to pass the following order:-

ORDER

- i) The Writ Petition is allowed.
- ii) The order dated 22/02/2017 passed by the respondent - the Scheduled Tribe Certificate Scrutiny

Committee, Amravati in the matter of the petitioner-
Rushikesh Satish Bakde in Case No.
JC/TCSC/AMT/5-ST/2013/12052 is hereby quashed and set
aside.

iii) It is declared that the petitioner belongs to “Halbi”
Scheduled Tribe, which is entry No. 19 in the Constitution
(Scheduled Tribes) Order, 1950 r/w. para 9 of Second
Scheduled to the Scheduled Caste and Scheduled Tribe Order
(Amendment) Act, 1976.

iv) The respondent - Scheduled Tribe Certificate Scrutiny
Committee, Amravati shall issue validity certificate to the
petitioner within a period of four weeks from today.

The record be returned immediately.

Rule is made absolute in above terms. No costs.

(Judge)

(Judge)

B.T.Khapekar