



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

WRIT PETITION NO. 2889 OF 2023

Anil S/o Dattatray Kusare
Age 62 years, occupation : Labour,
R/o. At & Post – Dhanki,
Tah. Umarkhed, Dist. Yavatmal.

.. **Petitioner**

Versus

The Scheduled Tribe Caste
Certificate Scrutiny Committee,
through its Member Secretary and
Deputy Director, Yavatmal.

.. **Respondents**

Mr. Ashwin Deshpande, Advocate for the Petitioner.

Mr. V.A.Thakre, Assistant Government Pleader for respondent.

CORAM : **AVINASH G. GHAROTE &**
ABHAY J. MANTRI, JJ.

DATED : **NOVEMBER 21, 2024**

ORAL JUDGMENT (Per : Abhay J. Mantri, J.)

Rule. Rule is made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

(2) The challenge is raised to the order dated 12/07/2022 passed by the respondent Scheduled Tribe Caste Scrutiny Committee (for short- 'the Committee'), thereby invalidating the claim of the petitioner that he belongs to "Halbi/Halba" Scheduled Tribe.

(3) The petitioner claimed that he belongs to the “Halbi” Scheduled Tribe; accordingly, the Sub Divisional Officer, Umarkhed, issued a caste certificate in his favour. The petitioner, being qualified to contest election as Councillor, submitted a nomination form from Ward No.13, Nagar Panchayat, Dhanki, District Yavatmal, from the Scheduled Tribe category. The petitioner also submitted his caste certificate along with the nomination form. The nomination form was accepted on the ground that the petitioner would submit his caste claim for verification; accordingly, through Election Officer Dhanki, the petitioner submitted his proposal for verification of the caste to the respondent Committee in the prescribed form.

(4) The same was pending with the Committee; therefore, he filed a Writ Petition No.2410/2020 before this Court seeking direction against the respondent Committee to decide his tribe claim. Pursuant to the same, vide order dated 01/12/2021, this Court directed the respondent Committee to decide the tribe Claim of the petitioner within four months from the date of order.

(5) The respondent Committee was dissatisfied with the documents produced by the petitioner and, therefore, forwarded his proposal to the Vigilance Cell for a detailed enquiry. The Vigilance Cell thoroughly inquired into the matter and submitted its report dated 28/06/2022,

observing that some adverse entries, i.e. "*Marathi, Koshti and Sadi*," had been found against the petitioner. Accordingly, the Committee issued a show-cause notice to the petitioner, calling upon his explanation about the said adverse entries. Pursuant to the said notice, the petitioner submitted his explanation to the Committee on 05/07/2022 and denied the observations made by the Vigilance Cell in its report. After considering the Vigilance Cell report, explanation and documents on record, the Committee invalidated the petitioner's claim that he belongs to the "*Halbi*" Scheduled Tribe, hence this petition.

(6) Mr.Ashwin Deshpande, learned Counsel for the petitioner, vehemently argued that the petitioner, in support of his claim, has produced 21 documents, out of which 05 documents are pre-Constitutional era documents from 1912 to 1937 pertaining to his grandfather, great-grandfather and cousin grandfather wherein their caste has been recorded as "*Halbi*". Those documents are the oldest ones. However, the Committee has not considered the said documents in its proper perspective, gave undue weightage to the subsequent documents and erred in discarding the tribe claim of the petitioner.

(7) He further canvassed that pursuant to the order of this Court on 14/03/2018, 29/08/2019 and 15/01/2020, the Committee has issued Validity Certificates in favour of his Niece – Shweta, Nephew – Rishikesh and Son – Kunal. Therefore, as per the law laid down in the

case of ***Apoorva d/o Vinay Nichale vs. Divisional Committee 2010 (6) Mh.L.J. page 401***, the petitioner is entitled to get the Validity Certificate.

Lastly, he submitted that the affinity test cannot be found to be the basis for rejecting the claim, as it cannot be termed as a litmus test. Therefore, he propounded that the petitioner is entitled to a Validity Certificate based on the oldest pre-Constitutional documents from 1912 to 1918, which have more probative value than the subsequent documents. Hence, he urged for allowing the petition.

(8) *Per contra*, Mr. Thakre, learned Assistant Government Pleader, submitted that during the Vigilance Cell enquiry, the Vigilance Cell had discovered 13 pre-Constitutional documents from 1918 to 1947 wherein the caste of the ancestor of the petitioner has been recorded as "Sadi, Marathi and Koshti", those entries are adverse to the claim of the petitioner. Therefore, the Committee has rightly discarded the documents from 1912 to 1918. He further disputes the authenticity of document 1915, as the said entry shows that his great-grandfather was born in 1915. Therefore, the Committee has discarded the said entry.

(9) He further canvassed the Validity Certificate issued in favour of the Niece of the petitioner, namely, Shweta, based on the order passed by this Court in Writ Petition No.6953/2017. However, the petitioner suppressed the cancellation of the Validity Certificate issued in favour

of Priyanka, and based on the issuance of the certificate, this Court has granted validity to the petitioner. Therefore, the same cannot be taken into consideration.

(10) Lastly, it is submitted that the documents on record categorically show that the petitioner belongs to the "*Koshti*" caste, which is declared as the Special Backward Class (SBC) at Sr.No.3 in the SBC list. Therefore, the invalidation of the petitioner's tribe claim as "*Halbi*" passed by the Committee is just and proper. Hence, no interference is required in writ jurisdiction. Thus, he prayed for the dismissal of the petition.

(11) We have appreciated the rival contentions of the learned Counsel for the parties and perused the impugned order. We have also gone through the original record and returned it.

(12) At the outset, it appears that the petitioner, in support of his claim, has produced 21 documents, out of which 05 documents are from the pre-Constitutional era from 1912 to 1937 pertaining to his grandfather, great-grandfather and cousin-grandfather, wherein their caste has been recorded as "*Halbi*". It is pertinent to note that neither the Vigilance Cell nor the Committee has disputed or denied the said document or entries therein as "*Halbi*"; therefore, there is no reason to discard those documents solely because those entries are solitary. It is

undisputed that the documents of 1912, 1914 and 20/08/1918 are prior to those discovered by the Vigilance Cell from 12/11/2018 to 1947.

(13) The Hon'ble Apex Court, in catena of judgments, has held that the oldest document has more probative value. Based on the mandate laid down by the Hon'ble Apex Court, the Committee has to consider these oldest documents while considering the claim of the petitioner. They discarded the old documents based solely on the subsequent entries from 12/11/1918 to 1947. The Committee's findings appear contrary to the mandate laid down by the Hon'ble Apex Court. Therefore, the said findings cannot be sustained in the eyes of the law. On the contrary, in our view, those undisputed oldest entries pertaining to the petitioner's great-grandfather, grandfather, and cousin-grandfather have more probative value. They cannot be discarded on the grounds that they are singular entries. Therefore, the said finding cannot be sustained in the eyes of the law.

(14) Apart from the above, the petitioner has produced three Validity Certificates granted in favour of his Niece, Nephew and Son based on the order passed by this Court. Therefore, as per the law laid down in the case of **Apoorva** (supra), the Committee ought not to have refused the same status to the petitioner without assigning any cogent reason, but it was incumbent on the respondent Committee to issue a Validity

Certificate in favour of the petitioner unless the Scrutiny Committee finds that the Validity Certificates of the relatives had been obtained by fraud or were issued without any jurisdiction. In such an eventuality, there is no reason for the Scrutiny Committee to discard those certificates. Therefore, as per the mandate laid down in the case of **Apoorva** (supra), the petitioner is entitled to get the Validity Certificate.

(15) Perused the order passed in **Writ Petition No.6953/2017**, in the case of **Shweta D/o Sunil Kusare vs. The Scheduled Tribe Caste Certificate Scrutiny Committee and others**, while considering the claim of the petitioner therein, this Court has considered the documents of 1912, 1914, 1918 and 1919, and also considered the judgment and order passed in the case of **Ku.Priyanka Anil Kusare**. This court has dealt with the decision in the case of **Priyanka** and other documents, and the Court held that *'these undisputed documents pertain to the ancestors of the petitioner therein, have greater probative value and set aside the findings of the Committee on the said point for discarding those documents'*. To this date, the judgement in the case of **Shweta** has not been set aside. Therefore, the findings and observations recorded in the case of **Shweta** can be considered, as the same has not been reversed by the Hon'ble Apex Court.

(16) Also, based on the oldest documents, the petitioner has demonstrated that his ancestor belonged to the **Halbi/Halba** Scheduled

Tribe. So also, the Committee initially granted a validity certificate in favour of **Priyanka**. However, the Committee later reversed the same without recording any cogent reason for not relying on the crucial evidence in the form of Validity Certificates issued in favour of other relatives. In the said case, the Committee has not given due weight to the oldest documents of 1912, 1914, 1918, and 1919, which have great probative value and have brushed aside these material documents. The committee had given undue importance to the subsequent entries/documents, which apparently do not pertain to the petitioner's ancestors. The documents unearthed by the Committee do not appear to be with respect to the relatives of the petitioner. In fact, the oldest documents would prevail over the entries later in point of time. Therefore, the findings given by the Committee in the case of **Priyanka Anil Kusare** would not hamper the petitioner's case.

(17) The respondent has not brought on record any material to show that the order passed by this Court was challenged by them or set aside by the Hon'ble Apex Court. Therefore, the order passed by this Court is binding on the Committee until the same is set aside. However, ignoring the mandate laid down in the said order, the Committee has again rejected the claim of the petitioner based on the adverse entries in the subsequent documents. Therefore, the impugned order cannot be sustained in the eyes of the law.

(18) The Hon'ble Apex Court in the case of **Adiwasi Thakur Jamat Swarakshan Samiti vs. The State of Maharashtra and others (2023) 3 S.C.R. 1100**. has held that *"an affinity test cannot be termed a litmus test, particularly when the pre-constitutional documents exist and are placed on record."* Likewise, *"the oldest pre-Constitutional documents have more probative value than the subsequent documents"*; therefore, the Committee's findings regarding the affinity test cannot be sustained in the eyes of the law.

(19) Considering the discussion above and documents on record, to sum up, it is evident that the petitioner, in support of his claim, has relied upon 05 pre-Constitutional documents from 1912 to 1918 pertaining to his great-grandfather, grandfather and cousin grandfather, wherein their caste has been recorded as *"Halbi"*. The authenticity of the said documents and entries made therein is neither disputed by the Committee nor by the Vigilance Cell; therefore, there is no reason to disbelieve the same, as they have greater probative value. Similarly, as per the mandate laid down in the case of **Apoorva** (supra), the petitioner is entitled to get a Validity Certificate. Consequently, we are of the opinion that the petitioner has demonstrated that he belongs to the *"Halbi"* Scheduled Tribe. Thus, it seems that the findings given by the respondent Committee are contrary to the documents and the law laid down by the Apex Court, as well as this Court in the case of **Apoorva** (supra). As a result, based on the said findings, the impugned

order cannot be sustained in the eyes of the law, and the order is liable to be quashed and set aside.

(20) In this backdrop above, we deem it appropriate to allow the petition in the following terms:-

- a) The petition stands allowed.
- b) The impugned order dated 12/07/2022 passed by the respondent Committee is hereby quashed and set aside.
- c) It is hereby declared that the petitioner belongs to the "**Halbi**" Scheduled Tribe.
- d) The respondent Committee is directed to issue a Validity Certificate in favour of the petitioner within four weeks from the date of production of a copy of this judgment.
- e) Rule is made absolute in the above terms.

[ABHAY J. MANTRI, J.]

[AVINASH G. GHAROTE, J.]

KOLHE