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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3735 OF 2022

Kum. Arya Vaibhav Umbarje
aged 22 years, residing at
Sunil Niwas, Bombay Poona Road,
Gadiya Colony, Kasarwadi,
Pune : 411 034.

.. Petitioner

v/s.

1. State of Maharashtra
Through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai- 400 032.

2. Scheduled Tribe Certificate
Scrutiny Committee, Pune
Division, Pune through its
Member Secretary, having its
Office at Kapil Towers, C Wing
Near RTO Office, Pune-411 001.

.. Respondents

....

Mr. R.K. Mendadkar, a/w. Mr. C.K. Bhangoji and Ms. Komal Gaikwad,
for the Petitioner.

Mr. S.B. Kalel, AGP, for State.

....

CORAM: SUNIL B. SHUKRE &
G.A. SANAP, JJ.

DATE : 31 MARCH 2022

JUDGMENT:- (Per S.B. Shukre, J.)

Heard.

2. Rule. Rule made returnable forthwith and heard finally by consent of parties.

3. Although there are several validities existing in the Petitioner's paternal family, she submitted two validity certificates to the Scrutiny Committee. They were the validities issued to Nilappa Mandleshwar Umbarje on 7 January 2010 and Rutvik Ramchandra Umbarje issued on 10 March 2014 by Committee at Pune.

4. The Scrutiny Committee, however, found that those validities issued earlier were based upon unreliable and untrustworthy school entries of some of the paternal relatives of those holders of the validity. The Scrutiny Committee did acknowledge the fact that the school record containing those entries, which had formed the foundation of the validity certificates issued to Nilappa and Rutvik was of the period prior to 1950, but, as there was a report dated 11 September 2019 of Education Officer of Zilla Parishad Primary School, which holds that the record of the school containing those entries was of doubtful nature, the Scrutiny Committee rejected the said validity certificates. With such reasoning, the Scrutiny Committee concluded that the earlier validities issued to Nilappa and Rutvik were the result

of suppression of facts and mis-representation by them.

5. Learned Counsel for the Petitioner has invited our attention to the judgment of another Co-ordinate Bench of this Court in **Nilappa Mangleshwar Umbarje vs. State of Maharashtra & Ors.**¹, in order to support the argument that validity certificate granted to Nilappa could not have been doubted in any manner and could not have been subjected to reconsideration subsequently by the Scrutiny Committee in view of the directions issued in the judgment to the Scrutiny Committee to validate the tribe certificate of the Petitioner showing her as belonging to Mahadev Koli Scheduled Tribe.

6. On going through this judgment, we find that direction had indeed been given by the Division Bench to issue thereby validity certificate to Nilappa. But, this validity certificate has now been doubted by the Scrutiny Committee. The doubt so expressed is on the backdrop of the fact that there is no dispute that the judgment dated 5 August 2009, rendered in the case of Nilappa Mangleshwar Umbarje, has attained its finality. A judgment of this Court, which has attained finality is binding on all subordinate authorities subject to control and superintendence of this Court, and, Respondent No.2 is one such authority. It, therefore, follows that Respondent No.2 had no authority to express any doubt about the correctness of said validity certificate and reject it. But, Respondent No.2 did it and illegally.

1 Writ Petition No.6561 of 2008, decided on 5 August 2009.

7. The law on the question of re-consideration and cancellation of validity certificates already issued is very clear. A useful reference in this regard may be made to the case of **Jyoti Sheshrao Mupde vs. State of Maharashtra**². There is one more case, the case of **Ms. Pratibha Gorakhnath Nikumbh vs. State of Maharashtra & Ors.**³, which needs to be referred to. In that case, Coordinate Bench of this Court has observed that when the High Court, on considering the order passed by the Scrutiny Committee, itself arrives at a conclusion about the caste of the Petitioner and directs the Committee to issue validity certificate to the Petitioner, then the order holds the field and entitles the Petitioner to the same benefit as his blood relative.

8. In this case, the facts disclosed that there was a direction issued to the Scrutiny Committee for issuing tribe validity certificate to Nilappa, the paternal relative of the Petitioner, and following that direction, the Scrutiny Committee issued a validity certificate to Nilappa. This validity certificate also attained finality. In such a case, the Scrutiny Committee could not have expressed doubt about the correctness of the validity certificate issued to Nilappa and could not have directed to issue show cause notice to Nilappa for cancellation of his validity certificate. But the Scrutiny Committee has done it. The Scrutiny Committee thus has sat in appeal over the judgment given by the High Court and has made itself vulnerable to contempt of Court

² Writ Petition No.1954 of 2009, decided on 22 August 2012.

³ Writ Petition No.7569 of 2008, decided on 12 April 2013,

action. It is different question whether that action be initiated or not, though the fact remains that the Scrutiny Committee has disregarded and disobeyed the binding judgment of this Court. This disobedience may be willful or otherwise. In this case, however, we do not wish to go into that aspect, lest interest of the Petitioner may suffer. We would, therefore, only remind the Scrutiny Committee of the observations made by us in the recent case of **Bharat Bhagwant Tayade vs. The State of Maharashtra & Ors.**⁴.

9. About the tribe validity certificate issued to Nilappa, which has attained finality, we must say that now it is a conclusive proof of social status of Nilappa, which was of Koli Mahadev Scheduled Tribe and so, it is also a conclusive proof of the social status claimed by the Petitioner because of the admitted fact of Nilappa being related to her from paternal side. The underlying principle is that paternal relatives take the same caste as their common ancestors on the basis of their consanguinity. In Writ Petition No.5155 of 1987, filed by one Govind Ratan Saindane, the Division Bench of this Court, in paragraphs 10 and 11 observed as under:-

“It is held that the existence of the claim of a paternal relation is a conclusion factor. No Court can come to the conclusion that a paternal relation belongs to one community and other paternal relation can be considered to be belonging to some other community. This is wholly

⁴ Writ Petition No.11617 of 2017 decided on 15 March 2022.

against the principles of consanguinity.”

10. In the case of **Apoorva D/o. Vinay Nichale vs. Divisional Caste Scrutiny Committee No.1 & Ors.**⁵, the Division Bench of this Court at Nagpur has held that if the caste claim of the candidate as belonging to Scheduled Tribe has been validated by the Committee, then the other close blood relatives cannot be denied the validation of the tribe certificate unless of course case of fraud, misrepresentation or suppression of facts is made. This judgment has been followed by another Co-ordinate Bench of this Court in the Case of **Shashikant Ganpatrao Kothule & Ors. vs. The State of Maharashtra & Ors.**⁶.

11. It is pertinent to mention here that the school record relied upon by the then Scrutiny Committee, while issuing validity certificates to Nilappa and Rutvik, which have now been found to be of doubtful nature by the present Committee, was examined and verified for its correctness by this Court in three writ petitions filed by the other relatives of the Petitioner, namely, Kanchan Chidanand Umbarje, Sharad Shrikrishna Umbarje and Kashinath Sangappa Umbarje in Writ Petition No.448 of 1993, Writ Petition No. 2360 of 1993 and Writ Petition No.2806 of 1994, decided by a common judgment rendered on 1 March 1996. The Division Bench then had called for the school record and examined the entry made in the name of Baslingappa

⁵ 2010 (6) Mh.LJ 401.

⁶ Writ Petition No.2225 of 2021 decided on 6 October 2021.

Ramchandra Umbarje. It found that the alteration made in the said entry so as to change the original entry, “Hindu Koli” into “Mahadev Koli” was genuine. After such a finding recorded by the High Court about the genuineness of the school entry in question, it was not open to the Education Officer to conclude in his report submitted in the year 2019, that the school entry or the school record was of doubtful nature. Respondent No.2 ought to have rejected the report of the Education Officer and ought to have relied upon the said validity certificates. But it followed an opposite course not permissible in law.

12. In the result, we are of the view that the Scrutiny Committee could not have expressed doubt on the genuineness of the validity certificates issued to Nilappa and Rutvik, and, therefore, could not have rejected the claim of the Petitioner as he belonging to Koli Mahadev Scheduled Tribe, she being a paternal relative of Nilappa and Rutvik. We also find that the Scrutiny Committee has no authority to issue any notice to Nilappa and Rutvik for representation of validities granted to them. The Scrutiny Committee has, by rejecting the validities of Nilappa and Rutvik, has put itself on the wrong side of law. However, we do not wish to issue notice for Contempt of this Court to the Scrutiny Committee in the hope that the Scrutiny Committee would withdraw the show-cause notices issued to Nilappa and Rutvik and in future would not commit any acts of indiscretion and would respect the orders and judgments of the High Court and the Supreme

Court delivered while judicially reviewing the exercise of jurisdiction under the Act of 23 of 2001 by the Scrutiny Committee.

13. Accordingly, we pass the following order:

- (i) The petition is, therefore, allowed. The impugned order is hereby quashed and set aside. The Scrutiny Committee is directed to issue tribe validity certificate to the Petitioner showing that she belongs to Koli Mahadev Scheduled Tribe within 24 hours' from the receipt of authenticated copy of this order;
- (ii) We direct Scrutiny Committee (Respondent No.2) to bear in mind the observations made hereinabove, to exercise utmost care and caution in scrutinising the Caste and Tribe claims, to refrain from indulging in any acts of judicial impropriety and to show due regard to and compliance with the orders and judgments of the superior Courts, which have attained finality while deciding caste and tribe claims in future;
- (iii) We direct the Registry to send the copy of the judgment to the Chief Secretary, State of Maharashtra, for being circulated amongst all Scrutiny Committees across the State of Maharashtra;

- (iv) The Scrutiny Committee shall act upon authenticated copy of this order.
- (v) Rule is made absolute in the above terms. No costs.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)