

Gauri D/O Mohan Nadge Vs Scheduled Tribe Caste Certificate Scrutiny Commi. Thr. Member Secretary And Dy. Director And Anr

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Jan. 27, 2025

Acts Referred: Constitution of India, 1950 " Article 342(1)

Hon'ble Judges: Avinash G. Gharote, J; Abhay J. Mantri, J

Bench: Division Bench

Advocate: Mohan Sudame, Ashwin Deshpande, A.V.Palshikar

Final Decision: Allowed

Judgement

Abhay J. Mantri, J

(1) Rule. Rule is made returnable forthwith. Heard finally, with the consent of the learned counsel, appearing for the parties.

(2) The petitioner, being aggrieved by the order dated 17/09/2019 passed by respondent No.1, the Scheduled Tribe Caste Certificate Scrutiny

Committee, Amravati (for short- "the Committee"), thereby rejecting her claim that she belongs to "Halba", Scheduled Tribe, has preferred

this petition.

(3) It is the case of the petitioner that she belongs to the "Halba", Scheduled Tribe, which is a notified scheduled tribe. The Sub-Divisional Officer

of Achalpur had issued a Tribe certificate in her favour. The petitioner for pursuing her education in respondent No.2 College of Engineering has

produced her Tribe certificate along with relevant documents for its verification. However, her tribe claim was rejected by the then respondent No.1

Committee vide its order dated 15/07/2017. She challenged the said order before this Court in Writ Petition No.5471/2017. This Court, vide order

dated 24/09/2018, quashed and set aside the order of invalidation of her claim and remanded the matter back to respondent No.1 Committee for its

fresh consideration as per law by protecting her admission in respondent No.2 College.

(4) The respondent No.1 Committee, pursuant to the order dated 24/09/2018 passed in Writ Petition No.5471/2017, forwarded the petitioner's proposal

to the Vigilance Cell for a detailed enquiry. The Vigilance Cell thoroughly inquired into the matter and submitted its report to the Committee on

11/09/2019, observing that some adverse entries, i.e. "Sali, Bunkar, Koshti and Halbi", had been found against the tribe claim of the petitioner.

Accordingly, the respondent No.1 Committee issued a show-cause notice dated 11/09/2019 to the petitioner, calling upon her to explain the adverse

entries and the observations made in the Vigilance Cell report. Pursuant to the said notice, the petitioner appeared before the respondent No.1

Committee and submitted her explanation to the said notice. While replying to the notice, she categorically stated that she has no relation with Baliram,

as her grandfather, as shown in document Sr.No.5 dated 09/01/1920. Therefore, she categorically denied the same. After considering the Vigilance

Cell report, explanation of the petitioner and documents on record, the respondent No.1 Committee invalidated the tribe claim of the petitioner.

(5) Mr.Mohan Sudame, learned Senior Counsel along with Mr.Ashwin Deshpande, learned Counsel for the petitioner, vehemently argued that the

petitioner, in support of her tribe claim, has produced in all 09 documents, out of which 03 documents are of the pre-Constitutional era from 26/04/1920

to September 1921 pertaining to her great-great-grandfather and cousin grandfather, wherein their caste has been recorded as "Halbi", those

documents are oldest one. However, the respondent No.1 Committee has not considered those oldest entries in its proper perspective, gave undue

weightage to the subsequent documents and erred in discarding the tribe claim of the petitioner.

(6) He further canvassed that as per the order dated 03/08/2004 passed by this Court in Writ Petition No.4574/2003, the respondent No.1 Committee

has granted a validity certificate in favour of her father Mohan Nagorao Nadge on 30/08/2004. The said validity certificate has not been cancelled till

this date. Therefore, based on the said validity certificate and in view of the mandate laid down in the case of Apoorva d/o Vinay Nichale vs.

Divisional Committee 2010 (6) Mh.L.J. page 401, the petitioner is also entitled to get the validity certificate.

(7) He further drew our attention to the document dated 09/01/1920, which pertains to one Baliram resident of Raipura, whose caste has been

mentioned as "Koshti". He contended that the petitioner's ancestors belong to Samraspura and not Raipura. Therefore, the document discovered

by the Vigilance Cell during the enquiry pertains to Balrim, a resident of Raipura, who has no concern with the ancestors of the petitioner, but her

ancestors were residents of Samraspura. He further pointed out the document in that regard, as well as the Vigilance Cell report, and submitted that

based on the oldest document from 1920 to 1921 and the validity certificate granted in favour of the petitioner's father, she is entitled to get a validity

certificate.

(8) Per contra, Mr. Palshikar, learned Assistant Government Pleader, strenuously argued that during the enquiry, the Vigilance Cell found 06 pre-

Constitutional era documents from 1920 to 1936 pertaining to ancestors of the petitioner, wherein their caste has been recorded as 'Bunkar, Koshti,

Sali and Halbi'. However, the petitioner failed to explain the adverse entries during her explanation. The said entries appear contrary to the

petitioner's claim. Therefore, based on the said entries, the respondent No.1 Committee has rightly discarded the documents produced by the

petitioner and rejected her Tribe claim.

(9) He further canvassed that the entry dated 26/04/1920 on which the petitioner relies is an extract of the land revenue record. The petitioner failed

to produce any other corroborative evidence supporting her claim; therefore, in the absence of any other corroborative evidence, the tribe claim of the

petitioner cannot be considered based on the solitary document. Moreover, the said document is in decrepit/torn condition. Therefore, he submitted

that the petitioner failed to prove that she belongs to the 'Halba' Scheduled Tribe and, thus, no interference is required in the impugned order.

Hence, he prayed for the dismissal of the petition.

(10) 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.

(11) At the outset, it appears that the petitioner, in order to substantiate her claim, has produced 09 documents, out of which 03 documents are from

the pre-Constitutional era from 26/04/1920 to September 1921 pertains to her great-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 respondent No.1 Committee has disputed or denied the said

documents or entries therein as 'Halbi'; therefore, there is no reason to discard those documents as the other entries found by the Vigilance Cell

adverse to the said entries are subsequent.

(12) It further reveals that during the Vigilance Cell enquiry, the respondent No.1 Committee discovered the entry dated 09/01/1920 in one document,

i.e. a birth Register of Raipura. The said entry pertains to one Baliram, wherein his caste had been recorded as 'Koshti' and resident of Raipura;

however, the Vigilance Cell report and other documents produced by the petitioner denote that her ancestors were residents of Samraspura and not

Raipura. Moreover, the petitioner has categorically denied the said entry. In such an eventuality, it was incumbent on the Vigilance Cell and

respondent No.1 Committee to show that the said Baliram resident of Raipura was in relation with the petitioner's family. However, nothing has

been produced on record by the Vigilance Cell or the respondent No.1 Committee to substantiate their contention. As against, the documents

produced by the petitioner along with the Vigilance Cell report categorically depict that the petitioner's ancestors were residents of Samraspura

and not Raipura.

(13) The next oldest document after the document of 09/01/1920 is the document at Sr.No.8 dated 26/04/1920, which pertains to the great-grandfather

of the petitioner, Baliram Ratanaji Nadge. A perusal of the copy of this Sale Deed indicates that it mentions that Baliram Ratanaji Nadge belongs to

the "Halbi" caste and has sold his property to Gajanan Parasramji, a resident of Samraspura.

(14) The Hon'ble Apex Court, in catena of judgments, including Adiwasi Thakur Jamat Swarakshan Samiti vs. The State of Maharashtra and

others (2023) 3 S.C.R. 1100 has held that "the entry in the oldest pre-constitutional documents have greater probative value than subsequent

documents. Based on the mandate laid down by the Hon'ble Apex Court, the respondent No.1 Committee ought to have considered the oldest

pre-constitutional documents while considering the tribe claim of the petitioner instead of discarding the said documents based on the subsequent

adverse entries. However, the finding recorded by the respondent No.1 Committee appears contrary to the mandate laid down by the Hon'ble

Apex Court in Adiwasi Thakur Jamat (supra). Therefore, the finding of discarding the oldest document based on the subsequent document cannot be

sustained in the eyes of the law. The undisputed entry pertaining to the petitioner's great-grandfather has more probative value. Therefore, it

would not be proper to discard the same while considering the tribe claim of the petitioner.

(15) Apart from the above, the petitioner has produced the caste validity certificate of her father, namely, Mohan Nagorao Nadge issued by

the respondent No.1 Committee on 30/08/2004 pursuant to the order dated 03/08/2004 passed by this Court in Writ Petition No.4574/2003; the said

validity certificate has not been cancelled till this date. Therefore, as per the law laid down in Apoorva Nichle (supra), the respondent No.1 Committee

ought not to have refused the same status to the petitioner without assigning any cogent reason, but it was incumbent on the respondent No.1

Committee to issue validity certificate in favour of the petitioner unless the Scrutiny Committee finds that the validity certificate of the petitioner's

father has been obtained by fraud or issued without any jurisdiction. In such an eventuality, there is no reason for the Scrutiny Committee to discard

the said validity certificate.

(16) The Hon'ble Apex Court, in Adiwasi Thakur Jama t(supra) 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.

(17) It appears that the petitioner, to substantiate her claim, has relied upon 03 pre-Constitutional era documents pertaining to her great-grandfather

and cousin-grandfather, wherein it has been recorded that they belong to the "Halbi" scheduled Tribe. The authenticity of the said documents and

entries made therein is not disputed by the respondent No.1 Committee nor by the Vigilance Cell; therefore, there is no reason to disbelieve the same;

on the contrary, they have greater probative value than the subsequent document.

(18) As a result, we are of the opinion that the petitioner has demonstrated that she belongs to the "Halbi" Scheduled Tribe, which is an entry at

Sr.No.19 of the Constitutional Scheduled Tribe Order, 1950, in relation to the State of Maharashtra. Thus, it seems that the findings given by the

respondent No.1 Committee are contrary to the documents and law laid down by the Hon'ble Apex Court in various decisions, as well as the

judgment of this Court in Apoorva Nichle (supra). Based on the said finding, the impugned order cannot be sustained in the eyes of the law, and the

order is liable to be quashed and set aside in the backdrop of the above, and it will have to be held that the petitioner belongs to the Scheduled Tribe

"Halbi".

(19) It is, however, material to note that the father of the petitioner has been granted a validity certificate in his favour, which holds him to belong to

"Halbi", Scheduled Tribe (pg.46), which still holds the field. However, since a claim has been made that the petitioner belongs to the

"Halbi" Scheduled Tribe and in view of our discussion above based upon the entries in the oldest documents since we found that the petitioner

belongs not to the "Halbi" Scheduled Tribe but to the "Halbi" Scheduled Tribe, in view of which, though by the order dated 25/11/2024,

we had pronounced the decision of allowing the petition, reasons to follow later on, the same came to be withdrawn by the order dated 20/12/2024, as

this Court found that there was a distinction between the Scheduled Tribe "Halbi" and "Halbi" and the documents filed by the Petitioner

indicated her to belong to the "Halbi" Scheduled Tribe. In contrast, the claim was made of belonging to the "Halbi" Scheduled Tribe, and

the matter was again heard on 20/12/2024 itself.

(20) On that day, Mr. Sudame, learned Senior Counsel, along with Mr. Ashwin Deshpande, learned Counsel for the Petitioner, has addressed us on

the issue that Entry No.19 in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 Part IX which is applicable to Maharashtra,

would indicate that both the Tribes are synonymous with each other, for which he also relies upon Entry No.13 in the Scheduled Castes and Scheduled

Tribes Orders (Amendment) Act, 1956 dated 25/09/1956, which indicates the entry to be 'Āṣā, -ĒṣHalbaĀṣā, -ā,,ç or Āṣā, -ĒṣHalbiĀṣā, -ā,,ç, in support of which

contention that there is no difference in both the entries and they are in fact one and the same, which according to him, is indicated from the fact that

both are placed at serial No.13.

(21) The tribe 'Āṣā, -ĒṣHalbaĀṣā, -ā,,ç was a singular entry at serial No. 13 in Part IV of the Schedule to the Constitution (Scheduled Tribes) Order, 1950,

which was issued by the Hon'ble President of India in the exercise of the powers under Article 342(1) of the Constitution, for the State of

Madhya Pradesh. By way of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956, w.e.f. 25/09/1956 Part IV of the Schedule

for the State of Madhya Pradesh was amended by replacing entry No.13 'Āṣā, -ĒṣHalbaĀṣā, -ā,,ç with entry 13 'Āṣā, -ĒṣHalba or HalbiĀṣā, -ā,,ç. By the Scheduled

Castes and Scheduled Tribes Orders (Amendment) Act, 1976 w.e.f. 18/09/1976, the ScheduleĀṣā, -"IX came to be amended by deleting the original

Entry 'Āṣā, -" 13 and inserting Entry -19 as 'Āṣā, -ĒṣHalba, HalbiĀṣā, -ā,,ç for the State of Maharashtra, pursuant to the States Reorganization Act. Thus, what is

material to note is that Entry No.19 in Schedule 'Āṣā, -" IX of the Constitution (Scheduled Tribes) Order, 1950, stood amended as Entry No.19 'Āṣā, -ĒṣHalba,

HalbiĀṣā, -ā,,ç.

(22) The punctuation mark COMMA (,) was inserted between the two Tribes 'Āṣā, -ĒṣHalba and HalbiĀṣā, -ā,,ç, in Entry No.19 Part IX in the second schedule

of the Constitution (Scheduled Tribes) Order, 1950 by virtue of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 w.e.f.

18/09/1976. As held by the Full Bench of this Court in Maroti S/o Vyankati Gaikwad and others Vs. Deputy Director and Member Secretary,

The Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati and others, [reported in 2023 SCC OnLine Bom. 1991], the punctuation

mark COMMA (,) occurring the name of each tribe, functions as a tool to indicate to readers a certain separation of words, phrases or ideas in order

to prevent misleading the writer's intended meaning. This has been considered by the Hon'ble Apex Court in the State of Maharashtra and

others Vs. Mana Adim Jamat Mandal (2006) 4 SCC 98, in which it has been held that the punctuation mark COMMA (,) between one entry and

another in the group signifies that each one of them is deemed to be a separate Scheduled Tribe itself. It would therefore be apparent that the

contention of Mr. Sudame learned Senior Counsel, for the petitioner, that the entries 'Khatwa Halba' and 'Halbi Khatwa', though separated by punctuation mark

COMMA (,) are synonyms with each other, is clearly misconceived as each of the Scheduled Tribe 'Khatwa Halba' and 'Halbi Khatwa', as contained in entry

No.19 of Scheduled IX of the Constitution (Scheduled Tribes) Order, 1950 are separate and distinct. All the judgments cited by Mr. Sudame, learned

Senior Counsel for the petitioner, have already been considered by the Full Bench in Maroti Vyankati Gaikwad (supra) and, therefore, in our

considered opinion, do not need any reconsideration.

(23) We, therefore, are constrained to hold that the tribes 'Khatwa Halba' and 'Halbi Khatwa' are different Scheduled Tribes. The father of the petitioner has

already been granted the validity of belonging to the Scheduled Tribe 'Khatwa Halbi Khatwa' (pg.46). In view of the discussion above, we do not see how the

petitioner can claim to belong to the Scheduled Tribe 'Khatwa Halba Khatwa'. Therefore, we reject the petitioner's claim of belonging to Scheduled Tribe

'Khatwa Halba Khatwa' and hold that the petitioner belongs to the Scheduled Tribe 'Khatwa Halbi Khatwa'.

(24) We deem it appropriate to pass the following order :-

a) The petition is allowed as under.

b) The impugned order dated 17/09/2019 passed by the respondent No.1 Committee is hereby quashed and set aside.

c) It is hereby declared that the petitioner belongs to the 'Khatwa Halbi Khatwa' Scheduled Tribe.

d) The respondent No.1 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.