

Anand vs Committee For S.&V. Of Tribe Claims &Ors on 8 November, 2011

Equivalent citations: AIR 2012 SUPREME COURT 314, 2012 (1) SCC 113, 2011 AIR SCW 6559, (2011) 6 ALLMR 929 (SC), 2011 (6) ALL MR 929, 2011 (6) BOM CR 752, 2011 (12) SCALE 446, (2011) 108 ALLINDCAS 76 (SC), 2012 (1) SERVLJ 83 SC, (2012) 1 SERVLJ 83, 2012 (2) ALL WC 1235, 2012 (2) SERVLR 241, AIR 2012 SC (CIVIL) 1, 2012 (90) ALL LR 2 SOC, (2011) 6 MAH LJ 919, (2011) 12 SCALE 446, (2012) 1 MAD LJ 830

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Bench: Asok Kumar Ganguly, D.K. Jain

REPORT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6340 OF 2004

ANAND

-- APPELLANT

VERSUS

COMMITTEE FOR SCRUTINY &

-- RESPONDENTS

VERIFICATION OF TRIBE CLAIMS & ORS.

JUDGMENT

D.K. JAIN, J.:

1. This appeal is directed against the judgment of the High Court of Judicature at Bombay, Nagpur Bench, delivered on 5th May 2004, in W.P. No.1687 of 2004. By the impugned judgment, the High Court has affirmed the order passed by the Committee for Scrutiny and Verification of Tribe Claims, Amravati, (for short "the Caste Scrutiny Committee"), respondent No.1 in this appeal, cancelling the caste certificate dated 2nd January, 2002, issued to the appellant by the Sub-

Divisional Magistrate, Pusad, District Yavatmal, certifying that the appellant belongs to the 'Halbi' Scheduled tribe, notified in terms of the Constitution (Scheduled Tribes) Order, 1950.

2. Succinctly put, the material facts giving rise to the present appeal are as follows:

The appellant, who holds a degree of Bachelor of Engineering (BE), was appointed as a field officer by the Maharashtra Pollution Control Board, respondent No.2 herein, against a post reserved for "Scheduled Tribe", on probation with effect from 16th March, 1998. The appointment was subject to production of the Caste Validity Certificate. On a failure to produce the same, respondent No.2 issued a notice of termination of service to the appellant. Aggrieved thereby, the appellant approached the High Court by way of W.P. No. 4688 of 2003 inter alia, praying for a direction to respondent No.1 to decide the caste claim of the appellant. The High Court allowed the writ petition and vide order dated 2nd December 2003, directed respondent No.1 to decide the caste claim of the appellant within eight weeks of the date of receipt of the copy of the order. Respondent No.2 was also directed not to act upon the termination notice.

3. In furtherance of the said order, the appellant made an application to the Caste Scrutiny Committee under Rule 11 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (for short "the Rules"). Along with the application, the appellant submitted several documents, including a copy of his grandfather's school leaving certificate dated 8th April, 1929; a copy of school leaving certificate dated 6th July, 1955, issued to his father, Nilkantha Maruti Katole; a caste certificate issued to his father on 19th June, 1969; copies of the school leaving certificates issued to the appellant on 8th May, 1978, 5th July, 1988 and 9th August, 1983; a college leaving certificate dated 9th July, 1990 and a copy of school leaving certificate issued to the real brother of his grandfather on 21st June, 1933 etc. All these documents recorded the Caste of those persons as 'Halbi'.

4. Not being satisfied with the documentary evidence produced by the appellant, the Caste Scrutiny Committee forwarded the application to the Vigilance Cell in terms of Rule 12(2) of the Rules for conducting school, home and other enquiry. The Vigilance Officer interviewed the appellant, collected information about the characteristics of his caste, which included information in relation to his family's ancestral profession; mother tongue; family idols and deities etc. and also verified the school records of his relatives. On the basis of the information so collected, the Vigilance Officer submitted its report inter alia, reporting that the characteristics, as noticed during enquiry did not resemble that of 'Halbi' Scheduled Tribe. In so far as the documentary evidence was concerned,

referring to the school record of the maternal brother of his father and aunt of the appellant, which showed that as on 13th June, 1958 and 1st June, 1953, their caste was recorded as 'Koshti (which is scored off) Halba' (Koshti), the Vigilance Officer submitted a report unfavourable to the appellant.

The Vigilance Cell found that the appellant was a member of 'Halbi' sub-caste of the 'Koshti' caste but does not belong to 'Halbi' Scheduled Tribe.

5. A copy of the report of Vigilance Cell was supplied to the appellant by the Caste Scrutiny Committee and personal hearing was also granted.

By order dated 20th March, 2004, the Caste Scrutiny Committee came to the conclusion that the appellant does not belong to 'Halbi' Scheduled Tribe. The caste certificate issued by the Competent Authority, viz. the Sub-Divisional Magistrate, Pusad, Distt. Yavatmal, was thus, cancelled and confiscated by the Caste Scrutiny Committee, inter alia observing as follows:-

"B. The documents quoted at Sr. No. 2, 4, 5, 6, 13, 26, 28 & 33 are school records in respect of relative of the candidate in which Caste is recorded as Halbi. In view of enquiry report, documents collected by enquiry office and affinity test these documents are rejected.

G. The document quoted at Sr. No.17,19,21, 22, 23, 24 & 34 are the Xerox copies of validity certificates in respect of relatives of the candidate. The ratio of this Validity Certificate cannot be given to the candidate because the concerned person at that time may have deliberately suppressed to bring information now found out by the Inquiry Officer. Thus where there is material suppression of facts, ratio of such order cannot be applied to other. As directed by the Hon'ble Supreme Court, each and every case should be decided on its own. Hence in the light of Vigilance Cell Report, this document is rejected.

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11. The candidate's mother tongue is Marathi which is not so in Halbi, Scheduled Tribe. The Surnames of relatives from their community are reported as Katole, Parate, Naike, Dhakte, Sorate, Nandarwar, Kumbhare etc. These surnames are not associated with the people belonging to Halbi, Scheduled Tribe. The information about family & community deities do not resemble with Halbi, Scheduled Tribe. The marital ceremonies, ceremonies observed after birth, rites performed after death, customary dances, great personalities within their community etc. as stated do not resemble with that of Halbi, Scheduled Tribe. Thus, in view of this information, candidate failed to establish his affinity towards Halbi Scheduled Tribe."

6. It is manifest that the claim of the appellant was rejected mainly on the ground that he had failed to establish his affinity towards 'Halbi' Scheduled Tribe.

7. Being aggrieved with the said order, the appellant once again approached the High Court by preferring W.P. No.1687 of 2004. As aforesaid, the High Court vide impugned judgment upheld the order of Caste Scrutiny Committee, observing thus :

"In so far as the documents are concerned, it is true that most of the documents on which reliance is placed by the petitioner do (sic) state the caste as Halbi but that by itself is not sufficient to uphold the caste claim of the petitioner unless the petitioner is able to establish his ethnic linkage with the so- called Scheduled Tribe. The Research Officer and Member of the Caste Scrutiny Committee interviewed the petitioner on these aspects and it was found that the petitioner was not able to satisfy the Scrutiny Committee on this aspect of the matter. The particulars furnished by the petitioner claiming to be belonging to caste Halbi Scheduled Tribe do not match with the characteristics, traits, customs, ethnic linkage on anthropological enquiry into the caste status of the petitioner. Therefore, though the petitioner is in possession of certain documents even of prior to the Presidential notification showing the caste claim of his relatives as Halbi, the same are not enough to certify him as belonging to caste Halbi Scheduled Tribe. In the order, it has been observed by the Scrutiny Committee that in some parts of Vidarbha the old M.P. Region, in old records the Sub Caste Halbi of the caste Koshti is recorded as Halbi which is popularly known as Halba Koshti and, therefore, this cannot be treated as such."

8. Thus, according to the High Court also, unless an applicant establishes his ethnic linkage with a Scheduled Tribe, his caste claim cannot be accepted merely on the strength of documentary evidence.

9. Hence the present appeal.

10. Assailing the impugned judgment, Mr. V.A. Mohta, learned senior counsel, appearing on behalf of the appellant, strenuously contended that the report of the Vigilance Cell, on which the Caste Scrutiny Committee had placed heavy reliance, was vitiated because they failed to take into consideration the vital documents, which included school leaving certificate relating to appellant's grand-father issued in the year 1929. According to the learned counsel, these documents clearly show that the appellant belongs to the Scheduled Tribe 'Halbi'. It was urged that the High Court also fell into the same error by ignoring these documents and by solely applying the affinity test. Drawing support from the decision of this Court in Sayanna Vs. State of Maharashtra & Ors.¹, learned counsel submitted that in the light of the documents showing that all the close relatives of the appellant were treated as belonging to 'Halbi' Scheduled Tribe, appellant's claim could not be negated on the sole ground that he did not possess the basic characteristics, knowledge of customs and culture of the said tribe. In aid of the proposition that probative value of all the documents ought to have been taken into consideration by the Caste Scrutiny Committee as also the High Court, reliance was placed on the decision of this Court in Gayatrilaxmi Bapurao Nagpure Vs. State

of Maharashtra & Ors.2.

11. Per contra, learned counsel appearing on behalf of the Caste Scrutiny Committee, supporting the decision of the High Court, submitted that in the light of the dictum of this Court in Kumari Madhuri Patil & Anr. Vs. Addl. Commissioner, Tribal Development & Ors.3, neither the Caste Scrutiny Committee nor the High Court committed any error or illegality in relying upon the affinity test for invalidating the claim of the appellant. It was asserted that having regard to the findings by the Caste Scrutiny Committee, which in turn, were based on Vigilance 1 (2009) 10 SCC 268 2 (1996) 3 SCC 685 3 (1994) 6 SCC 241 Cell's report, which took into account the ethnological perspective, the impugned judgment cannot be faulted with.

12. Thus, the question that falls for consideration is what parameters are to be applied in determining whether an applicant belongs to a notified Scheduled Tribe?

13. Article 342 of the Constitution of India empowers the President of India to specify the tribes or tribal communities or parts or groups within them which shall for the purposes of the Constitution be deemed to be Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Under clause (2) of Article 342, the power to include in or exclude from the lists of Scheduled Tribes specified in a notification, issued under clause (1) of Article 342 of the Constitution, vests in the Parliament. In exercise of the powers conferred by Article 342 of the Constitution, the President issued an order, called the Constitution (Scheduled Tribes) Order, 1950. This was followed by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956. In the year 1976, the Parliament enacted the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976. Part IX of the Third Schedule to the Amending Act specifies Scheduled Tribes for the State of Maharashtra. One of the Scheduled Tribes so specified therein is "Halba", "Halbi".

14. In Kumari Madhuri Patil (supra), this Court took note of the fact that the benefit of reservation of seats in educational institutions, and other appointments were being denied to the genuine tribals on the basis of false caste certificates. Terming such caste claims as "pseudo status", the Court observed that spurious tribes had become a threat to the genuine tribals. Emphasising the need to ensure that the benefit of reservation must be made available only to genuine persons, who belong to the notified caste or tribe, the Court said that such claims should be judged on legal and ethnological basis. Highlighting the relevance of affinity test while considering a caste claim, the Court observed thus:

"The anthropological moorings and ethnological kinship affirmity (sic) gets genetically ingrained in the blood and no one would shake off from past, in particular, when one is conscious of the need of preserving its relevance to seek the status of Scheduled Tribe or Scheduled Caste recognised by the Constitution for their upliftment in the Society. The ingrained Tribal traits peculiar to each tribe and anthropological features all the more become relevant when the social status is in acute controversy and needs a decision. The correct projectives furnished in pro forma and the material would lend credence and give an assurance to properly consider the claims of the social status and the officer or authority concerned would

get an opportunity to test the claim for social status of particular caste or tribe or tribal community or group or part of such caste, tribe or tribal community. It or he would reach a satisfactory conclusion on the claimed social status."

15. Again in Director of Tribal Welfare, Government of A.P. Vs. Laveti Giri & Anr.⁴, while reiterating the guidelines laid down in Kumari Madhuri Patil (supra), this Court observed that it was high time that the Government of India should have the matter examined in greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences on persons who flout the Constitution and corner the benefits reserved for the real tribals, etc., so that the menace of fabricating records to gain unconstitutional advantages could be prevented.

16. In the light of the aforesaid observations, the State of Maharashtra enacted the Maharashtra Scheduled Castes, Scheduled Tribes, De-

notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short "the Act"). The Act made statutory provisions for verification and scrutiny of caste claims by the Competent Authority and subsequently by the Caste Scrutiny Committee. In exercise of its rule making power under the Act, the State notified the Rules laying down a complete procedure for obtaining and verification of Scheduled Tribes Certificate. Therefore, insofar as the State of Maharashtra is concerned, the verification and grant and/or rejection of Scheduled Tribe Certificate by the Caste 4 (1995) 4 SCC 32 Scrutiny Committee has to be as per the procedure prescribed in the Rules.

17. Rule 11(2) enumerates a list of documents to be filed along with the application to the Caste Scrutiny Committee. Rule 12 prescribes the procedure to be followed by the Caste Scrutiny Committee on receipt of such application in the prescribed format. It provides that if the Caste Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it shall forward the application to the Vigilance Cell for conducting the school, home and other enquiry.

Sub-rule (3) of Rule 12 requires the Vigilance Officer to visit the local place of residence and the original place from where the applicant hails and usually resides. The rules further stipulate that the Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or guardians, as the case may be. He is also required to examine the parents or the guardians or the applicant for the purpose of verification of their tribe. It is evident that the scope of enquiry by the Vigilance Officer is broad-based and is not confined only to the verification of documents filed by the applicant with the application or the disclosures made therein.

Obviously, the enquiry, supposed to be conducted by the Vigilance Officer, would include the affinity test of the applicant to a particular tribe to which he claims to belong. In other words, an enquiry into the kinship and affinity of the applicant to a particular Scheduled Tribe is not alien to the scheme of the Act and the Rules. In fact, it is relevant and germane to the determination of social status of an applicant. We are of the view that for the purpose of examining the caste claim under

the Rules, the following observations of this Court in Kumari Madhuri Patil (supra), still hold the field:-

"...The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc."

18. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-

Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) 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, 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 tribes' 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.

19. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim.

20. Having examined the present case on the touchstone of the aforesaid broad parameters, we are of the opinion that the claim of the appellant has not been examined properly. We feel that the documentary evidence produced by the appellant in support of his claim had been lightly brushed aside by the Vigilance Officer as also by the Caste Scrutiny Committee. Insofar as the High Court is concerned, it has rejected the claim solely on the basis of the affinity test. It is pertinent to note that some of these documents date back to the pre-

Independence era, issued to appellant's grandfather and thus, hold great probative value as there can be no reason for suppression of facts to claim a non-existent benefit to the 'Halbi' Scheduled Tribe at that point of time. From the documents produced by the appellant, it appears that his near paternal relatives had been regarded as belonging to the 'Halbi' Scheduled Tribe. The Vigilance Officer's report does not indicate that the documents produced by the appellant in support of his claim are false. It merely refers to the comments made by the Head Master with reference to the school records of appellant's father's maternal brother and his aunt, which had been alleged to be tampered with, to change the entry from Koshti Halba to Halba and nothing more. Neither the Head Master was examined, nor any further enquiry was conducted to verify the veracity of Head Master's statement. It is of some importance to note at this juncture that in similar cases, involving appellant's first cousin and his paternal uncle, the High Court, while observing non-application of mind by the Caste Scrutiny Committee, had decided a similar claim in their favour. We are convinced that the documentary evidence produced by the appellant was not examined and appreciated in its proper perspective and the High Court laid undue stress on the affinity test. Thus, the decision of the Caste Scrutiny Committee to cancel and confiscate the caste certificate as well as the decision of the High Court, affirming the said decision is untenable. We are, therefore, of the opinion that the claim of the appellant deserves to be re-examined by the Caste Scrutiny Committee. For the view we have taken on facts in hand, we deem it unnecessary to refer to the decisions cited at the bar.

21. Resultantly, the appeal is allowed; the decisions of Caste Scrutiny Committee and the High Court are set aside and the case is remitted back to the Caste Scrutiny Committee for fresh consideration in accordance with the relevant rules and the aforesaid broad guidelines.

22. However, the parties are left to bear their own costs.

.....J. (D.K. JAIN)J. (ASOK KUMAR GANGULY)
NEW DELHI;

NOVEMBER 8, 2011.

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