

Badalsingh and Others Vs. Divisional Caste Certificate Scrutiny Committee No.3 and Others

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Court : Mumbai Nagpur

Decided On : Oct-30-2015

Judge : B.P. Dharmadhikari & P.N. Deshmukh

Appeal No. : Writ Petition Nos. 6889 of 2014, 2591 of 2014 & 6586 of 2014

Appellant : Badalsingh and Others

Respondent : Divisional Caste Certificate Scrutiny Committee No.3 and Others

Advocate for Pet/Ap. : Shri. Narnavare, Shri. Madkholkar, Shri. Agrawal

Judgement :

P.N. Deshmukh, J.

1. Rule returnable forthwith. Heard finally by consent of learned Counsel for the parties.
2. All these petitions are disposed of by this common judgment as substantial question involved therein to a large extent is common.
3. In Writ Petition No.6889/2014, petitioner has challenged order dated 17/1/2014 passed by respondent no.1 Caste Scrutiny Committee invalidating his caste claim of belonging to 'Mahar' (Scheduled Caste) and prayed for quashing of the same.

In Writ Petition No.2591/2014, petitioner has challenged order dated 1/8/2013 passed by respondent no.2 Caste Scrutiny Committee invalidating her caste claim of belonging to 'Mahar' (Scheduled Caste) and prayed for quashing of the same.

In Writ Petition No.6586/2014, petitioner has challenged order dated 4/7/2013 passed by respondent no.1 invalidating her caste claim of belonging to 'Korku' (Scheduled Tribe) and prayed for quashing of the same.

4. In nutshell, it is the case of petitioner Badalsingh s/o Bharosa Rawale in Writ Petition No.6889/2014 that he belongs to 'Mahar' (Scheduled Caste) on the basis of voluminous documents of his father and forefathers pertaining to pre-independence period submitted by him and he has obtained his primary education at Nagpur. He has relied upon School Leaving Certificate indicating his said caste. According to him, Executive Magistrate, Nagpur in the year 1981 had issued caste certificate on the basis of such documents. He was appointed on 8/1/1981 as Helper by respondent no.2 against the post reserved for Scheduled Caste category candidate and was thereafter promoted from time to time and was given higher pay scale. On completion of 32 years of service, petitioner was required to produce documents in order to prove his caste claim of belonging to 'Mahar' (Scheduled Caste) and accordingly he produced all such necessary documents. The Police Vigilance Cell conducted enquiry and submitted report in favour of the petitioner. However, respondent no.1 invalidated the caste claim of the petitioner on the ground that he could not submit the documents pertaining to the period prior to 10/8/1950 of State of Maharashtra and that petitioner and his forefathers originally hailed from village Shingdai, Tahsil and District Rajnandgaon (Chhatisgarh State). According to petitioner, though respondent no.1 has admitted that petitioner belongs to 'Mahar' (Scheduled Caste), the dispute is only regarding caste claim of petitioner in the Maharashtra State.

5. Shri Narnavare, learned Counsel for petitioner Badalsingh, submits that on being appointed in the year 1981 and on completion of 32 years of service, the petitioner deserves protection of his service. The learned Counsel has invited our attention to interim order dated 9/3/2015 passed by this Court vide which petitioner was granted interim relief in terms of prayer clauses (ii) and (iii) of the petition, i.e.

stay to the impugned order dated 17/1/2014 passed by respondent no.1 Caste Scrutiny Committee and protection of service of petitioner.

6. In Writ Petition No.2591/2014, it is the case of petitioner Ku. Sakshi d/o Rajendrakumar Satankar that after passing 12th Standard examination, she was admitted in First Year Bachelor of Engineering (Information Technology) course in CAP round against the seat reserved for Scheduled Caste candidate in respondent no.3 College. When she was prosecuting her studies, proposal for verification of her caste certificate was sent to respondent no.2 Committee to which she submitted documents in support of her caste 'Mahar' (Scheduled Caste). The documents produced by the petitioner are referred in para 4 of the petition. On submitting such documents and on obtaining Police Vigilance Cell report, the Caste Scrutiny Committee found that the petitioner failed to file any document in respect of showing her relation with her grandfather and rejected her caste claim by passing the impugned order dated 1/8/2013 on the ground that she has failed to demonstrate that her father and forefathers were residing in State of Maharashtra prior to 1950 and also failed to prove her relation with forefathers, i.e. great-grand parents.

7. Shri Madkholkar, learned Counsel for petitioner Ku. Sakshi, has submitted that queries put to petitioner related to pre-independence period and father and forefathers of petitioner being illiterate knowing no importance of documents, could not maintain the documents and as such, it was practically impossible to produce any such document, which required petitioner to file affidavit before respondent no.2 Committee stating therein that though petitioner's father was born in C.P. and Berar, she and her family migrated to Nagpur (Maharashtra) and are presently residing at Nagpur. It is further submitted that father and forefathers of petitioner are originally residents of Navargaon in Bhandara District in Maharashtra State and on growing family needs, forefathers of petitioner migrated to Betul and started residing there. It is thus submitted that the ground that petitioner's forefathers were not residing in State of Maharashtra prior to 1950 is unsustainable for the reason that place where petitioner's forefathers were residing, i.e. village Sadar, District Betul was originally part and parcel of Central Provinces and Berar of which Nagpur was capital. It is contended that after

reorganisation and formation of State of Maharashtra in the year 1960, the said region became part and parcel of State of Madhya Pradesh. As such, claim of respondent no.2 Caste Scrutiny Committee that petitioner failed to produce any document establishing stay of her father and forefathers in Maharashtra prior to year 1950 is incorrect as State of Maharashtra was formed in the year 1960. It is further submitted that petitioner was protected by interim order dated 24/6/2014 passed by this Court in terms of prayer clauses 'C' and 'D' of the petition, thereby staying the impugned order dated 1/8/2013 passed by respondent no.2 and protecting her studies of B.E. Course including declaration of result during pendency of the petition.

8. In Writ Petition No.6586/2014, it is the case of petitioner Sau. Ramkali w/o Bisram Zamarkar that she was born in the year 1971 at village Amulla Kala, Taluq Khaknar, District Burhanpur (Madhya Pradesh) and belongs to 'Korku', which is recognized as Scheduled Tribe in State of Maharashtra and Madhya Pradesh. The petitioner got married on 15/5/1994 with Shri Bisram Zamarkar, who also belongs to 'Korku' (Scheduled Tribe) and is a permanent resident of village Ambadi, Taluq Dharni, District Amravati. On 4/9/2001, Sub-Divisional Officer, Melghat, Taluq Dharni, District Amravati issued certificate to petitioner as belonging to 'Korku' (Scheduled Tribe).

9. Shri Agrawal, learned Counsel for petitioner Sau. Ramkali, has submitted that in the year 2012, petitioner filed her nomination form for contesting election of Panchayat Samiti, Dharni from Shirpur constituency reserved for Scheduled Tribe (woman) and she came to be elected. On 4/7/2013, the respondent no.1 Caste Scrutiny Committee rejected her caste certificate dated 4/9/2001, which fact came to the notice of petitioner for the first time in March 2014 when she received communication from the office of Divisional Commissioner, Amravati by which she was directed to remain present for hearing in the said office as her caste claim was invalidated by the Caste Scrutiny Committee. It is submitted that petitioner is protected by interim order passed by this Court on 30/1/2015 in terms of prayer clause (ii) of petition, thereby staying the effect and operation of the impugned order dated 4/7/2013 passed by respondent no.1 Caste Scrutiny Committee.

10. Thus, according to learned Counsel Shri Narnaware, the caste claim of petitioner in Writ Petition No.6889/2014 is invalidated only on the ground that petitioner and his forefathers though originally hailed from village Shingdai, Tahsil and District Rajnandgaon (Chhatisgarh State), the petitioner could not submit documents pertaining to the period prior to 10/8/1950 of the State of Maharashtra to respondent no.1 Caste Scrutiny Committee. It is further submitted that petitioner belongs to 'Mahar' (Scheduled Caste) and there is no dispute regarding status of the caste claim, but dispute is only regarding State. In support of his contentions, learned Counsel has relied upon the judgment of this Court in the case of **Hitesh Dasiram Murkute vs. State of Maharashtra and others** (2007 (5) Mh.L.J. 454).

11. Shri Madkholkar, learned Counsel for petitioner in Writ Petition No.2591/2014, has contended that after sending petitioner's proposal for caste verification, though petitioner submitted necessary documents to respondent no.2 Caste Scrutiny Committee in support of her claim of belonging to 'Mahar' (Scheduled Caste), respondent no.2 Caste Scrutiny Committee after calling Police Vigilance Cell's report has held that petitioner failed to file any document showing her relation with grandfather Mahadeo and also failed to establish her relations with great grandfather Rama Ranu, resident of Navargaon, District Bhandara, which queries, according to learned Counsel, are relating to pre-independence period and petitioner's parents being illiterate failed to maintain any document and as such, petitioner filed affidavit before the Caste Scrutiny Committee stating therein that though petitioner's father was born in C.P. and Berar, she and her family migrated to Nagpur (Maharashtra) and are presently residents of Nagpur. In spite of that, respondent no.2 Caste Scrutiny Committee rejected the caste claim of the petitioner finding her to have failed to demonstrate that she and her forefathers were residents of Maharashtra prior to 1950 and also on the ground that she failed to prove her relation with her forefathers.

12. Similarly, it is submitted by Shri Agrawal, learned Counsel for petitioner in Writ Petition No.6586/2014, that petitioner was born on 1/1/1971 at village Amulla Kala, Taluka Khaknar, District Burhanpur (Madhya Pradesh) and belongs to 'Korku', which is recognized as Scheduled Tribe in State of Maharashtra as well as State of Madhya Pradesh. It is contended that after her marriage in 1994, she started

residing with her husband at village Ambadi, Taluka Dharni, District Amravati and in spite of Sub-Divisional Officer, Melghat, Taluka Dharni, District Amravati issuing caste certificate in favour of petitioner as 'Korku' (Scheduled Tribe), respondent no.1 by the impugned order dated 4/7/2013 rejected the caste claim of the petitioner and cancelled the caste certificate issued by the Sub-Divisional Officer contrary to the settled law.

13. The learned Counsel for the petitioners, in nutshell, have contended that it was only after re-organization of States, some parts of C.P. and Berar went to newly formed State of Maharashtra and some parts merged in State of Madhya Pradesh. It is submitted that even after re-organization of States, caste 'Mahar' continues to be recognized as Scheduled Caste in State of Maharashtra and State of Madhya Pradesh and, therefore, the case of petitioners would be squarely covered by the decision of the Apex Court in the case of **Sudhakar Vithal Kumbhare vs. State of Maharashtra and others** {(2004) 9 SCC 481} and judgment of this Court in **Bharat s/o Bhimrao Malakwade vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur and another** {(2013(5) Mh.L.J. 946).

14. Smt. Dangre, learned Government Pleader, by filing affidavit-in-reply, has opposed respective petitions and supported the impugned orders. She has contended that burden to prove caste is on the petitioners and thus, it was necessary for the petitioners to support their caste claims, which they have failed to do so by not placing necessary documentary evidence and as such, have failed to establish that they and their forefathers are originally residents of State of Maharashtra prior to 1950. In support of her contentions, learned Government Pleader has relied upon the judgment in the case of **Bankimchandra Mankanbhai Patel vs. State of Maharashtra and others** (2006 (2) Mh.L.J. 664) wherein it is held that applicant, who is original resident of a particular State, will get caste benefits of that State and benefits of caste are not admissible in migrated State. She has also relied upon the judgment of Full Bench of this Court in **Shweta Santalal Lal vs. State of Maharashtra and others** (2010 (2) Mh.L.J. 904) and submitted that migrant is not entitled for benefit of his caste in the State of migration and he can enjoy caste benefits only in the State of his origin. The learned Government Pleader has by referring to the case of **Madhuri Patil vs.**

Additional Commissioner, Tribal Development Department (AIR 1995 SC 94) contended that each case has to be decided on its truthfulness and merits and that Caste Scrutiny Committee had verified the caste claim of each petitioner on its own merits as per directions issued by the Hon'ble Apex Court and has also relied upon the judgments of the Hon'ble Apex Court in **Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College and others** {(1990 (3) SCC 130) and **Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another vs. Union of India and another** (1994 (5) SCC 244) and submitted that since petitioners have failed to make out their case, the Caste Scrutiny Committee has rightly issued impugned orders. It is, therefore, prayed that the petitions are devoid of merits and may be dismissed.

15. On perusal of impugned order in Writ Petition No.6889/2014 issued by respondent Caste Scrutiny Committee, it is revealed that petitioner to prove his caste as 'Mahar' had produced caste certificate issued by the Executive Magistrate, Nagpur, his School Leaving Certificates for Class III and VII, copy of service book and abstract of birth register of Rajnandgaon District (Chhatisgarh State) in respect of one son and one daughter having been born to father of petitioner, which documents are duly considered by the Caste Scrutiny Committee and it has found that documents at serial nos. 2, 3 and 4 in the impugned order are pertaining to the period after 1950 and other documents do not establish caste claim of petitioner nor these documents establish that father, grandfather and great grand-father were residents of Maharashtra prior to 1950 or from that year. The Vigilance Cell's report establishes that father of petitioner is original resident of village Shingdai, Tahsil and District Rajnandgaon (Chhatisgarh State) and no evidence could be obtained to establish that prior to 1950, petitioner or his father was resident of Maharashtra. The Vigilance Cell's report was communicated to petitioner. However, in spite of that, petitioner could not produce any material to establish his caste claim and as such, as there was no evidence establishing fact of petitioner or his father, grandfather or great grand-father being resident of Maharashtra prior to 1950, but since documents established them to be original residents of Chhatisgarh State, caste claim of petitioner came to be rejected.

16. In Writ Petition No.2591/2014, the caste claim of petitioner as belonging to caste `Mahar' (Scheduled Caste) was sent for verification to Caste Scrutiny Committee and to establish caste claim, petitioner had produced caste certificate issued by the Deputy Collector, Nagpur, her School Leaving Certificates issued by Bipin Krishna Bos Vidya Bhavan, Nagpur and Saraswati Vidyalaya, Nagpur and School Leaving Certificate of her father issued by Mission Primary School, Sadar, Taluq and District Betul (Madhya Pradesh). The Caste Scrutiny Committee having considered documents along with Vigilance Cell's report found that there was no sufficient evidence to establish that father, grand-father or great grandfather of petitioner was resident of Maharashtra prior to 1950 or from that year and thus, on the basis of available documents, rejected the caste claim of the petitioner as she could not establish that her family was residing in Maharashtra State prior to 1950 and as per Government Resolution dated 24/8/1995, for Scheduled Caste or Other Backward Class persons, who migrated from other State to State of Maharashtra, concessions on account of their caste are not available.

17. Similarly, in Writ Petition No. 6586/2014, in a detailed order passed by the Caste Scrutiny Committee, on having duly considered documents submitted by petitioner, which are mentioned at serial nos. i to viii, the Caste Scrutiny Committee has concluded that -

the applicant has migrated from Madhya Pradesh to the Maharashtra State after the date of notification, i.e. 6/9/1950. Hence, she is not entitled to get the concession of Scheduled Tribe in Maharashtra State. She is entitled to get a Scheduled Tribe certificate in Migrant's format C-1. She can be issued a Caste Certificate in the form of migrant only after her producing the Caste Certificate of her father. The applicant did not produce the Scheduled Tribe certificate issued to her father or grand-father by the concerned Competent Authority of Madhya Pradesh State, i.e. the competent Authority in whose jurisdiction they were residing on the date of Notification.?

The Caste Scrutiny Committee thus cancelled and confiscated the caste certificate issued by the Sub-Divisional Officer, Melghat, Taluq Dharni, District Amravati and as such, held that petitioner is not entitled for concessions of Scheduled Tribe in

State of Maharashtra since migrated from State of Madhya Pradesh to Maharashtra after 6/9/1950.

18. In the case of **Sudhakar Vithal Kumbhare** (cited supra), the Hon'ble Apex Court has observed that where any particular area of the country is required to be given protection is a matter, which requires detailed investigation having regard to the fact that both Pandhurna in District Chhindwara and the part of the area of Chandrapur District (State of Maharashtra) at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood, the tribe Halba? or Halbi? of that region, may be given the same protection. The Hon'ble Apex Court also held that in a case of this nature, the degree of disadvantages of various elements, which constitute the input for recognition as a Scheduled Tribe, may not be totally different. It would be convenient to reproduce the relevant observations of the Hon'ble Apex Court appearing in paragraph No.5 as under:

But the question which arises for consideration herein appears to have not been raised in any other case. It is not in dispute that the Scheduled Castes and Scheduled Tribes have suffered disadvantages and been denied facilities for development and growth in several States. They require protective preferences, facilities and benefits inter alia in the form of reservation, so as to enable them to compete on equal terms with the more advantaged and developed sections of the community. The question is as to whether the appellant being a Scheduled Tribe known as Halba/Halbi which stands recognized both in the State of Madhya Pradesh as well as in the State of Maharashtra having their origin in Chhindwara region, a part of which, on State's reorganization, has come to the State of Maharashtra, was entitled to the benefit of reservation. It is one thing to say that the expression in relation to that State? occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State whose Governor has not been consulted; but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region, which has been bifurcated, the members would

not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States Reorganization Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the District of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood the tribe Halba/Halbi of that region may be given the same protection. In a case of this nature, the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganization might have agreed for inclusion of the said tribe Halba/Halbi as a Scheduled Tribe in the State of Maharashtra having regard to the said fact in mind.?

19. In the case of **Hitesh Dasiram Murkute** (cited supra), referring to the observations of the Hon'ble Apex Court in the case of Sudhakar Vithal Kumbhare (cited supra), in para 41 of the judgment it is concluded as under:

41. To sum up :

(i) It is necessary to give full effect to both the expressions for the purpose of this Constitution? as well as in relation to the State?, appearing in Articles 341 and 342 of the Constitution and Clause 2 of the Constitution Scheduled Tribe and Scheduled Castes Orders, 1950, in order to identify the beneficiary correctly, i.e. by ensuring that he belongs to caste identified with reference to a State as Scheduled Caste or Tribe.

(ii) The object of including a caste or a tribe in the schedules to the orders was to do away with their disadvantaged position in the areas where they resided vis-a-vis other population. The crucial test would therefore be whether the person concerned suffers the same degree of disadvantage vis--vis other segments, as other local people of his caste suffer or whether as a migrant, he is placed on a higher pedestal.

(iii) Extending benefits to a migrant does no offence to the expression 'in relation to the State' in Articles 341/342 of the Constitution or Clause 2 of Scheduled Caste/Scheduled Tribes Orders, 1950, since entitlement of such a person would have to be still decided with reference to the origin of such migrant and identification of migrant's caste as backward in relation to such State.

(iv) Date too is equally relevant in order to identify the person as belonging to caste included in the schedule on the date of such inclusion with reference to locality identified in the schedule.

Therefore, a person claiming benefit would have to show that his ancestors hailed on the date of inclusion of caste in schedule from a place identified in the schedule. In other words, the relevant date is not date of migration but date of inclusion of caste or tribe in the schedule.

(v) Reorganization of States did not proceed on the basis of castes or tribes but on linguistic basis and, therefore, localities of persons entitled to the benefit of reservation got divided in different States.

(vi) If upon removal of area restrictions, in the entire area of the State as originally existed on the date of notification of Constitution (Scheduled Castes/Scheduled Tribes) Orders, the persons concerned could avail of the benefits of reservation, there is no reason why they should be denied such benefits upon reorganization of the States, in which a part of their locality was included.

(vii) The ratio of the decision in Marri Chandra is only that a migrant would be disentitled for reservation in the State of migration, if his caste is not notified as Scheduled Caste or Scheduled Tribe in the State of migration. (Since in Marri Chandra's case the caste Gouda? was notified in the State of Andhra Pradesh, but not in Maharashtra). It would be impermissible to conclude that even though his caste is so notified in the State of migration, he would be disentitled to benefits, since such conclusion would frustrate the very object of providing benefits enumerated at (ii) above.

(viii) In Action Committee while explaining and following the ratio in Marri Chandra's case, the Apex Court must be held to have merely sought to deny benefits to migrant belonging to a caste of same nomenclature, by consciously choosing the expression same nomenclature? and avoiding the use of words same caste?. This implies that if persons belong to the 'same caste', they were not to be denied the benefits.

(ix) Sections 26 and 27 of the Bombay State Reorganization Act merely amend the schedules as a corollary to creation of State of Maharashtra and have no bearing on the question of entitlement of the migrants to reservation with reference to date on which the State was created.

(x) As held by the Apex Court in Sudhakar vs. State, if a migrant belonged to a community which was recognised as Scheduled Caste or Scheduled Tribe in any locality which has been divided upon reorganization of States and his caste is recognized as Scheduled Caste/Scheduled Tribe even in such newly formed States, the migrant would be entitled to benefit of reservation even in the State in which part of the locality other than his place of origin has gone.?

20. In the case of **Shweta Santalal Lal** (cited supra), the issue for consideration before Full Bench of this Court was as under:

Whether a person who was not ordinarily resident as on the date of the relevant Presidential Notification in the area that now constitutes the State of Maharashtra will be entitled to the benefit of reservation in the State?? and on considering the judgments in the cases of Marri Chandra Shekhar Rao, Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another and Bankimchandra Makanbhai Patel (cited supra), has answered the reference as under:

In case of a migrant belonging to a Scheduled Caste, not ordinarily resident as on 10/3/1950 in the area that now constitutes the State of Maharashtra and in a case of S.T., considering Rule 5, on 6/9/1950, would not be entitled to benefits of reservation as S.C./S.T. in the State of Maharashtra. They and their progeny will continue to get the benefits of reservation in the State of origin. Reference

answered accordingly.?

21. Thus, considering the ratio of the judgment in Marri Chandra Shekhar Rao (cited supra) as affirmed in Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra, the position of law would be that if a person migrates to a geographical area forming part of another State after the date of Presidential Notification, such a person will be treated as a migrant. So also, the children of such migrants born after the date of Presidential Notification will be entitled to benefits of reservation in the State where their parents were ordinarily resident. Marri Chandra Shekhar Rao (cited supra) makes that position clear. Further more, the Full Bench on considering the conclusions drawn in the case of Hitesh Dasiram Murkute (cited supra) as laid down in para 41, has by dealing with each of the conclusions (i) to (x) individually, distinguished the position of law laid down in the case of Sudhakar Vithal Kumbhare (cited supra).

The relevant conclusion in Clause (x) in the case of Hitesh Dasiram Murkute (cited supra) is reproduced hereunder :

(x) As held by the Apex Court in Sudhakar vs. State, if a migrant belonged to a community which was recognised as Scheduled Caste or Scheduled Tribe in any locality which has been divided upon reorganization of States and his caste is recognized as Scheduled Caste/Scheduled Tribe even in such newly formed States, the migrant would be entitled to benefit of reservation even in the State in which part of the locality other than his place of origin has gone.?

Above conclusion has been duly considered by the Full Bench in the case of Shweta Santalal Lal (cited supra) and it is thus held -

(x) Insofar as conclusion (x) is concerned, having explained the Judgment in Sudhakar's case, which is the Judgment of the Bench of three Judges and the two Constitution Bench Judgments in Marri Chandrashekhar and Action Committee, the scheduled castes and scheduled tribes from any locality which has been divided upon Reorganization of States and such caste or tribe is also recognized as Scheduled Caste and Scheduled Tribe in the newly formed State, such migrant

would not be entitled to benefit of reservation in the State of migration, but would be entitled only of benefit in the State of origin.?

Having considered so, the conclusion and the view taken in the case of Hitesh Dasiram Murkute (cited supra) have been disapproved and is overruled.

22. In the case of **Sau. Kusum vs. State of Maharashtra and others** {(2009) 2 SCC 109}, petitioner had claimed to belong to 'Carpenter' caste. She hailed from Vidarbha area having border area of Madhya Pradesh and Maharashtra. Carpenters in the State of Madhya Pradesh were known as 'badhai' whereas in State of Maharashtra, they were known as 'sutar'. In both the States, people belonging to said caste were entitled to be considered as Other Backward Class. It is not known when the family of petitioner migrated from Madhya Pradesh to State of Maharashtra. The petitioner in that case contested election for the post of Sarpanch reserved for Other Backward Class candidate and was elected. An application was filed before the Caste Scrutiny Committee by respondent no.4 therein contending that she does not belong to the OBC category. In the light of above facts, the Caste Scrutiny Committee finding that said petitioner was born in 1962 in Chhindwara District and since she is not resident of Maharashtra prior to 1967, relying upon Circular dated 21/8/1996 issued by State of Maharashtra in respect of candidates, who are not residents of Maharashtra prior to 1967, refused to verify the caste claim of petitioner. Being aggrieved by the said order, writ petition came to be filed wherein direction was issued to Caste Scrutiny Committee to scrutinise the caste claim of the petitioner and give its finding. The matter was considered afresh by the Caste Scrutiny Committee and it was held that petitioner is of 'badhai' caste being 'sutar' in Maharashtra and maintained its decision that she was not a resident of Maharashtra. On the basis of above observations, her petition was dismissed, which order was assailed before the Apex Court, which partly allowed the appeal giving directions to Caste Scrutiny Committee to consider the claim of the petitioner afresh by allowing petitioner to adduce additional evidence on the question as to when she migrated.

Thus, in the case of **Sau. Kusum** (cited supra), it is held that if it is a fact that people belonging to said caste are recognized as OBC both in Madhya Pradesh

and Maharashtra being 'badhai' in Madhya Pradesh and 'sutar' in Maharashtra and keeping in view that the Caste Scrutiny Committee found her belonging to 'sutar' caste, the matter requires re-consideration since nothing was on record to show as to when petitioner migrated to State of Maharashtra. On that count, the matter was directed to be considered afresh with further observation that if petitioner is aggrieved by the finding of the Caste Scrutiny Committee in regard to her parentage, she would be entitled to file a suit for appropriate declaration.

23. In the instant petitions, there is no reason for us to disbelieve the evidence collected by the Vigilance Cell, which is an independent Agency meant for collecting documentary and other evidence in order to find out whether the person really belongs to caste which he/she claims as well as the place from which such person hails. In the impugned orders passed by the Caste Scrutiny Committee, it is held that the petitioners in the instant petitions or their forefathers were not the residents of Maharashtra State prior to 1950 and as such, their caste claims are invalidated.

24. We are, therefore, of the opinion that in the interest of justice, the impugned orders are liable to be set aside by remitting matters back for fresh consideration by the Caste Scrutiny Committee wherein petitioners shall be permitted to adduce evidence on the question as to when petitioners or their forefathers had migrated to State of Maharashtra. The respondent Caste Scrutiny Committee is, herefore, directed to decide the caste claims of petitioners within three months from the date of their appearance before it. The petitioners shall appear before the Caste Scrutiny Committee on 1/12/2015 and tender evidence before it in order to show that he/she belongs to the same caste/tribe, which has been notified as Scheduled Caste/Scheduled Tribe both in State of origin and State of Maharashtra. The Caste Scrutiny Committee will be entitled to examine all relevant aspects of the matter while considering petitioners' prayer for issuance of caste validity certificates.

Accordingly -

(i) Writ Petition No.6889/2014 is partly allowed. The impugned order dated 17/1/2014 passed by respondent no.1 Caste Scrutiny Committee is quashed and

set aside. The respondent no.2 is directed not to disturb the employment of petitioner till his caste claim is decided.

(ii) Writ Petition No.2591/2014 is partly allowed. The impugned order dated 1/8/2013 passed by respondent no.2 Caste Scrutiny Committee is quashed and set aside.

The respondent nos.3 and 4 are directed to allow petitioner to continue her B.E. Course subject to result of her caste claim and declare results of examinations, which may take place in the intervening period.

(iii) Writ Petition No.6586/2014 is partly allowed. The impugned order dated 4/7/2013 passed by respondent no.1 Caste Scrutiny Committee is quashed and set aside.

Rule is made absolute in above terms in all the three petitions. No order as to costs.

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