

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7096 OF 2014

1. Apurva Narendra Pardeshi
Age: 22 years, Occu.: Education
R/o. 37, Milind Society, Sakri Road,
Dhule, Tq. and Dist. Dhule.
2. Shri Narendra S/o Gotu Pardeshi
Age: 50 Years, Occu.: Agriculture,
R/o. 37, Milind Society, Sakri Road,
Dhule, Tq. and Dist. Dhule.

- PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai – 32.
2. The Collector,
Dhule, District Dhule.
3. The Commissioner,
State Caste Scrutiny Department,
Maharashtra State, Pune.
4. The Divisional Caste Certificate
Verification Committee No.2,
Head Office, Dhule, District Dhule
Through its President/Secretary.
5. Smt.Gita Hareshkumar Nagdeo @
Smt.Kashish Gulshan Udasi,
Age: Major, Occu.: Household,
R/o. Block No.P-3, Room No.1,
Kumar Nagar, Sakri Road, Dhule,
District Dhule.

- RESPONDENTS

Mr.A.B.Girase with Mr.E.S.Murge, Advocates for
Petitioners;
Mr.G.R.Ingole, AGP for Respondent Nos. 1 to 4;
Mr. Amol S.Sawant, Advocate for Respondent No.5.

**CORAM : S.S.SHINDE &
P.R.BORA, JJ.**

DATE OF RESERVING JUDGMENT : 17th MARCH, 2015.

DATE OF PRONOUNCING JUDGMENT: 9th June, 2015.

JUDGMENT (PER:-P.R.BORA, J.)

1) Heard. Rule. Rule made returnable forthwith with the consent of learned Counsel appearing for parties.

2) Petitioners have filed the present petition under Article 226 of Constitution of India for quashment of Order dated 18th November, 2012 passed by Divisional Caste Certificate Verification Committee No.2, Dhule (for short, the said Committee) whereby the said Committee has validated the Caste Certificate of Respondent No.5 herein certifying that she belongs to "Jagiyasi" caste, which falls in Other Backward Class.

3) As is revealing from the averments in the petition, Respondent No.5 has been elected as

a Corporator from Ward No.16-A in the general elections held of Dhule Municipal Corporation (for short, the corporation) in the year 2013.. Petitioner No.1 had also contested the said election and she has been defeated by Respondent No.5. The seat, from which petitioner No.1 and Respondent No.5 contested the elections of the corporation, was reserved for a candidate belonging to Other Backward Class (OBC). Petitioner No.2 claims to be social worker. It is the contention of the petitioners that Respondent No.5 does not belong to "Jagiyasi" caste, which is declared as Other Backward Class and finds place at Serial No. 49 in the concerned Notification.

4) After having elected as Corporator of the Corporation, Respondent No.5 preferred an application under the provisions of Maharashtra ST/DT NT(VJ)/OBC/SBC(Regulation of Issuance and Verification of Caste Certificates) Act, 2000 (for short, the Act of 2000) for verification of

her caste claim to the Respondent No.4-Committee, having its Head Office at Dhule. The said application was opposed by the present petitioners before the said Committee. Respondent No.5 filed necessary documentary evidence in order to prove that she belongs to "Jagiyasi" caste. Home inquiry was conducted and report was submitted to the Committee. The Vigilance Cell report was also received to the Committee. On appreciation of documentary evidence submitted by Respondent No.5 coupled with the Vigilance Cell report of Home Inquiry, the Committee was pleased to issue validity certificate in favour of Respondent No.5, certifying that she belongs to "Jagiyasi" caste, which falls under OBC category. Aggrieved by the decision of the Committee, the petitioners have filed the present petition.

5) Shri Girase, learned Counsel for petitioners, invited out attention to the Caste Certificate of Respondent No.5 filed at page 34 of the paper book and marked at Exhibit-C.

Learned counsel submitted that the documents, on the basis of which the said Caste Certificate has been issued by Sub Divisional officer, Bhusawal, do not show the caste of Respondent No.5 as Jagiyasi. Learned Counsel invited our attention to the School Leaving certificate of Respondent No.5 issued by Head Master of R.S.Adarsh High School, Bhusawal, which is marked at annexure-B at page 337 of the petition. Learned Counsel pointed out that in the said School Leaving certificate, the caste of Respondent No.5 is shown as "Hindu Sindhi". Learned Counsel then brought to our notice the school leaving certificate issued by Head Master, D.L.Hindi High School, Bhusawal pertaining to father of Respondent No.5, wherein caste of father of Respondent No.5 is shown as "Jagyasi". Learned Counsel submitted that when in both the documents caste shown is different, than the caste "Jagiyasi", the Sub Divisional Officer, Bhusawal could not have issued the Caste Certificate in favour of Respondent No.5 showing her caste as

"Jagiyasi". Learned Counsel alleged that the said Caste Certificate has been obtained by playing fraud and no reliance can be placed on such certificate. Learned Counsel further submitted that without verifying the fact as to the document on the basis of which a wrong caste certificate has been issued by Sub Divisional officer, Bhusawal in favour of Respondent No.5, the Caste Scrutiny Committee has wrongly validated the caste claim of Respondent No.5 and certified her to be belonging to "Jagiyasi" caste.

6) Shri Girase further argued that Scheduled Tribe Order must be read as it is. As per Entry No. 49 of the Scheduled Tribe Order, caste "Jagiyasi" falls under Other Backward Class (OBC) and it has to be read as "Jagiyasi" only and the caste "Jagyasi" cannot be held to be "Jagiyasi". To substantiate his contention, learned Counsel relied upon the judgment of the Hon'ble Apex court in the case of State of

Maharashtra Vs. Milind and Ors. - (2001) 1 SCC 4.

Learned Counsel invited our attention to the observations made by the Hon'ble Apex court in paragraph 36 of the said judgment to the effect that, it is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order, if they are not so specifically mentioned in it. Referring to the observations so made by the Hon'ble Apex court, Shri Girase argued that no such argument can be entertained that Caste "Jagyasi" and "Jagiyasi" are one and the same.

7) Learned Counsel further placed his reliance on another judgment of the Hon'ble Apex court in the case of Nityanand Sharma and anr. Vs. State of Bihar and Ors. - (1996) 3 SCC 576, to urge that alteration in by inclusion, substitution or exclusion, in the Scheduled Tribe Order, 1950, cannot be ordered by the Court, and nor the courts can declare synonymous of the

Scs/STs or parts or groups thereof mentioned in the Order/Act. Learned Counsel also cited the judgment of the Division Bench of this Court in the case of Prakash s/o Subhash Bople Vs. Dy. Collector, Latur and Ors (W.P.No.4536 of 2014), wherein the Division Bench has referred to the Apex courts' Judgments in the case of Milind and Ors. and has also discussed other two judgments, first in the matter of State of Maharashtra Vs. Ravi Prakash Babulalsing Parmar and Ors — 2007(1)BCR 102 and Palghat Jilla Thandan Samudhaya Samrakshna Samiti Vs. State of Kerala — (1994) 1 SCC 359. Learned Counsel placed reliance on one more judgment of the Division Bench in Writ Petition No. 7162/2010 (Ramakant s/o Bajirao More Vs. Scheduled Tribe Certificate Scrutiny Committee, Nasik and Anr.) to urge that the entries in the Presidential Order are required to be taken as it is and it is not permissible for any one to add, alter or amend the said entries. Shri Girase lastly submitted that in absence of any conclusive evidence,

showing caste of Respondent No.5 as "Jagiyasi", the Caste Scrutiny Committee has wrongly issued Caste Validity Certificate in favour of Respondent No.5, certifying her to be belonging to "Jagiyasi" caste and, therefore, the same needs to be quashed and set aside.

8) Shri Amol Sawant, learned Counsel appearing for Respondent No.5, supported the impugned order passed by Respondent No.4-Committee. Learned Counsel submitted that the Caste Scrutiny Committee, after having considered the documentary evidence placed on record by Respondent No.5, has rightly validated the caste claim of Respondent No.5. Learned Counsel further submitted that out of vengeance and for the reason that the petitioner No.1 got defeated by Respondent No.5, the objections were raised before the Committee and the caste claim of Respondent No.5 was opposed by the petitioners.

9) Learned AGP appearing for Respondent Nos.1 to 4, also supported the order passed by

the Caste Scrutiny Committee and submitted that no interference is required in the order so passed by Respondent No.4-Committee and prayed for dismissal of the petition filed by the petitioners.

10) We have carefully considered the submissions advanced on behalf of the petitioners as well as respondents. We have also carefully perused the impugned order passed by the Respondent no.4-committee and the original papers in respect of Respondent No.5, made available for our perusal by Respondent No.4-committee.

11) Perusal of the objections raised by the present petitioners before the Caste Scrutiny Committee, reveals that the petitioners have, amongst other, raised a specific objection that in the documents filed by Respondent No.5 before the Caste Scrutiny Committee, in most of the documents, caste mentioned therein is "Jagyasi" and in such circumstances, the Sub Divisional

Officer, Bhusawal should not have issued the caste certificate in favour of Respondent No.5, mentioning therein caste of Respondent No.5 as "Jagiyasi". The petitioners have further submitted that caste "Jagyasi" is not either mentioned in Maharashtra Scheduled Caste, De-Notified Tribes, Vimukta Jatis, Nomadic Tribes, Other Backward Class and Special Backward Class (Regulation of Issuance and Verification) of Caste Certificate Act, 2002 or Maharashtra Scheduled Caste, De-Notified Tribes, Vimukta Jatis, Nomadic Tribes, Other Backward Class and Special Backward Class (Regulation of Issuance and Verification) of Caste Certificate, Rules 2012. It is the further specific objection raised by the petitioners that caste "Jagyasi" and "Jagiyasi" are two different castes. Respondent No.4 committee in Para 3 of its order has reproduced the submissions so advanced on behalf of the present petitioners, who were objectors before the Committee in the concerned Caste claim.

12) In view of the specific objections raised, as above, when we looked into the reasoning part of the order passed by the Committee, it is revealed that the Committee has not dealt with the objections so raised. Perusal of the order passed by Respondent No.4 committee reveals that the Committee has taken note of the fact that in most of the documents submitted by Respondent No.5 before it, the caste mentioned therein is "Jagyasi". The Committee has referred to the School Leaving Certificate pertaining to father of Respondent No.5, viz. Hareshkumar Bhai Uddhavdas Nagdeo, issued by Head Master, Sindhi High School, Bhusawal, wherein in caste column, caste 'Jagyasi' has been mentioned. The Committee has further observed that in general register also; caste mentioned is "Jagyasi". The Committee has further referred to Municipal Record dated 6.1.1963 in respect of birth of son of the uncle of Respondent No.5, viz. Atmaram Uddhavdas wherein caste has been mentioned as "Jagayasi". Respondent No.4 committee has also

referred to the Caste Validity Certificate dated 20.02.2007 issued in favour of father of Respondent No.5, certifying father of Respondent No.5 to be belonging to "Jagyasi" caste. After having referred to the documents, as above, the Committee has observed that though in some of the documents submitted by Respondent No.5, caste mentioned therein is "Jagyasi", sufficient documents have also been produced by Respondent No.5, who was applicant before the Committee, showing her caste to be "Jagayasi" and in such circumstances, the Caste Scrutiny Committee has validated the caste claim of Respondent No.5 and accordingly issued Caste Validity Certificate in favour of Respondent No.5.

. We reiterate that after having read the order passed by the Committee, we do not find that the Committee has properly dealt with the objections raised by the objectors, i.e. present petitioners. When the Hon'ble Apex Court has clearly held in the case of State of Maharashtra Vs. Milind and Ors. (cited supra), that the

Scheduled Tribes order, must be read as it is and it is not permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes order, if they are not so specifically mentioned in it, it was incumbent on the part of Respondent No.4 committee to properly deal with specific objections raised by the objectors before the Committee to the effect that "Jagayasi" and "Jagiyasi" are two different castes and the Committee should have recorded an unequivocal and unambiguous finding in that regard. However, as mentioned above, the Committee has not adequately dealt with the objections so raised and has recorded a cryptic finding that though in some of the documents submitted by the applicant, caste "Jagyasi" has been recorded, since the applicant has also produced the documents, evidencing her caste as "Jagayasi", the applicant is held to have proved that she belongs to "Jagiyasi" caste. It is to be noted that the Committee has referred the

caste of Respondent No.5 as "Jagayasi", whereas in the concerned notification at Serial No. 49, the caste which has been shown as Other Backward Class (OBC) is "Jagiyasi". This aspect also requires to be clarified by Respondent No.4 committee. The Committee has to ascertain whether any caste as "Jagyasi" is really exists or it is simply a wrong pronunciation of caste "Jagiyasi" as notified at Serial No.49 as Other Backward Class (OBC).

13) For the reasons stated herein above, the only alternative before us is to remand back the matter to Respondent No.4-Committee for its fresh consideration and for recording a clear finding on the point, whether caste "Jagyasi", "Jagayasi" and "Jagiyasi" are one and the same or different castes. Unless the Committee records a clear finding on this aspect, in our opinion, it may not be possible for it to decide the caste claim of Respondent No.5. Hence, following order, -

ORDER

- (i) The writ petition is partly allowed;
- (ii) The impugned order of the Respondent No.4-Committee is set aside and the matter is remitted back to Respondent No.4-Committee with a direction to record a clear finding on the point - whether castes "Jagyasi", "Jagayasi" and "Jagiyasi" are one and the same or different castes, and based on the finding which may be recorded, to decide afresh the caste claim of Respondent No.5. Needless to state that Respondent No.4 - Committee shall afford adequate opportunities to both the parties to place their respective submissions on record;
- (iii) There shall be no order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/

Res.Jt.