

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No. 6396/2013.

Ajay Uddhaorao Ingle

VERSUS

The Scheduled Tribe Certificate Scrutiny Committee, Amravati and another.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI
AND A.P. BHANGALE, JJ.

DATE : FEBRUARY 23, 2015.

Heard Shri R.S. Parsodkar, learned Counsel for the petitioner, Shri A. Deshpande, learned Counsel for respondent no.1 and Shri A.S. Fulzele, learned A.G.P. for respondent no.2.

2. Challenge is to order dated 21.11.2013, passed by the respondent no.1 Scrutiny Committee, invalidating caste claim of petitioner as belonging to 'Thakur, Scheduled Tribe'.

3. Shri Parsodkar, learned counsel submits that blood relative of petitioner namely Gajanan Pandurang Ingle, whose name figures in the family tree, has been given validity by the Scrutiny Committee at Nashik. He further contends that even in present matter, the police vigilance cell and all old documents support case of present petitioner as belonging to Thakur Scheduled Tribe. He is relying upon a judgment of Hon'ble Apex Court in case of Amruta Vijay More .vrs. State of Maharashtra (I.A.No. 3/2011 in Civil Appeal No. 7230/2011), to submit that as there is validity in the family, caste claim of petitioner also needs to be validated. He has invited attention to malice, as pleaded in paragraph no.23 of the Writ Petition. According to him, only to deny the petitioner his due promotion, hastily and mechanically an order of invalidation has been passed. He further submits that other observations on area restrictions have no bearing and the issue stands concluded because of judgment in Special Leave Petition No. 25000/2014 (State of Maharashtra and others .vrs. Madhuri Nitin Jadhav), decided on 06.02.2015.

4. Shri Deshpande, learned counsel appearing on behalf of respondent no.1 as also Shri Fulzele, learned A.G.P. for respondent no.2 are opposing the petition. Shri Deshpande, learned counsel submits that validity issued to Gajanan Ingle is looked into by the by the Scrutiny Committee and for valid reasons it has found it proper not to accept it. He submits that after applying affinity test and the area restrictions, as petitioner is found not eligible, validity is correctly denied. According to him, order of Hon'ble Apex Court dated 06.02.2015 (supra), leaves the question of area restrictions open, and hence, the issue is still not concluded. He further states that the validity given to Gajanan is, because of orders of this Court in various writ petitions and prior to coming into force the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, (Act No. 23 of 2001).

5. With the assistance of respective counsel, we have perused the papers. Validity given to Gajanan is dated 06.06.2001, and the certificate shows that the committee then has looked into documents and considered the facts, as also replies submitted before it by the applicant – Gajanan. It then mentions that it considered various orders passed by this Court in Writ Petition Nos. 2746/1998, 5454/1998 and 856/1998. In the light of this application of mind, the caste certificate of Gajanan as belonging to Thakur Scheduled Tribe is held valid.

6. The judgment of Hon'ble Apex Court in case of Amruta Vijay More [supra], shows that the appeal before the Hon'ble Apex Court was directed against the order dated 27.08.2010 passed by this Court. Respondent State Government before the Hon'ble Supreme Court pointed out that question of validity on affinity test for determination of persons caste, was pending in C.A.No. 6902-04 of 2009 and, therefore, it requested that matter of Amruta More be taken up along with said matter. The Hon'ble Apex Court however, declined to do so. The Hon'ble Apex Court found that in

paragraph no.6 of the Writ Petition filed before the High Court, Amruta disclosed that her father had been recognized as a member of Thakur Scheduled Tribe, and was granted validity certificate by Screening Committee, Nashik. Her real brother has also been granted such certificate by that Screening Committee. Another certificate was issued by the Committee on 15.06.2000 in favour of paternal uncle – Rajendra and then validity certificates were issued in favour of three of her paternal cousins and copies of those certificates were annexed along with the writ petition. The Hon'ble Apex Court also took note of the fact that decision of the Screening Committee in case of Amruta appeared to be a decision in appeal over the earlier decision of the Screening Committee which had granted earlier certificate. The contention of appellant before the Hon'ble Apex Court was in the background of these validities, it was not open to the subsequent Screening Committee to re-open the issue and consider the case of the appellant. The State Government had opposed those arguments. State Government also placed reliance upon judgment of the Hon'ble Apex Court in case of Raju Ramsingh Vasave. .vrs. Mahesh

Deorao Bhivapurkar (2008 (9) SCC 54).

7. After considering these submissions, the Hon'ble Apex Court distinguished the judgment delivered by it in case of Raju Vasave (supra) and then noted that because Scrutiny Committee had clearly found the father, paternal uncle, brother and paternal cousins of appellant Amruta as belonging to Thakur Scheduled Tribe, therefore, subsequent decision of the Screening Committee solely on the basis of affinity test could not have been accepted.

8. Perusal of judgment in case of Raju Vasave .vrs. Mahesh Deorao (supra), shows that a finding by the Hon'ble Apex Court in that matter that a finding or opinion of a Committee as regards caste of a near relative of applicant may not be wholly irrelevant. The said observations also show that if by mistake or otherwise a member of his family has been declared to be a member of Scheduled Tribe, same by itself would not be conclusive in nature so as to bind a committee, while examining or considering caste claims of other members

of the family in detail.

9. Here, the family tree produced by the petitioner shows that son of his real uncle Pandurang by name – Gajanan, has been given validity. The perusal of the order passed by the Scrutiny Committee reveals that it has mentioned said validity as document no.13 in paragraph no.2. Then it mentions the report of vigilance cell and research officer. The research officer remarked that traits, characteristics, customs of petitioner Ajay do not match with Thakur Scheduled Tribe. In the process of consideration, in paragraph no.6[f], validity of Gajanan again finds mention. Thereafter, while considering issue no.2, the origin of family and issue of area restriction has been gone into.

10. Thus, this order shows that the Scrutiny Committee has gone in some details in caste claim of petitioner Ajay. It however, does not show any application of mind qua, validity given to cousin Gajanan. Validity given to Gajanan is already mentioned by us supra. Orders of High Court looked into by

the Committee in case of Gajanan are not looked into by the Scrutiny Committee while passing the impugned order. It has also not considered the documents, facts or replies given by said Gajanan, which appears to have been looked into while giving him validity on 06.06.2001.

11. In so far as the relevance of area restriction in such matters is concerned, issue is already pending before Larger Bench of this Court. The Hon'ble Apex Court in its order dated 06.02.2015, in case of State of Maharashtra .vrs. Madhuri Jadhav (supra), after condoning the delay, did not find it necessary to interfere as the order assailed was one of remand. Therefore, the Hon'ble Supreme Court clarified that the question of law is kept open. It is not in dispute before us, that the said question of law is relevance of removal of area restrictions.

12. In case of Amruta More, in the face of validities given to all close relatives, the Hon'ble Apex Court has considered denial of validity to Amruta only on the ground of

affinity. Thus, Amruta was not denied validity on any other ground.

13. In present matter, the Committee has looked into the issue of area restriction and also has applied affinity test. Though validity of Gajanan was pressed into service by it, there is no express finding on said validity. The Committee ought to have expressed itself and pointed out as to why it was not accepting that validity or what was the error with the said validity. That obviously has not been done. In that situation, we are not inclined to grant request of Shri Parsodkar, learned Counsel to issue validity in present Writ Petition to Ajay.

14. In so far as the question of malafides are concerned, the contention that order has been passed only to deny the petitioner promotion is, kept open and can be looked into at appropriate juncture.

15. The impugned order dated 21.11.2013, is hereby quashed and set aside. The Committee shall properly apply its

mind to the validity given to Gajanan and then discuss whether said validity can be acted upon or not in case of present petitioner. However, it shall record its reasons for doing so.

16. We direct the respondent no.1 Committee to extend an opportunity of hearing for said purpose to the petitioner. Petitioner is at liberty to produce documents mentioned in validity of Gajanan for perusal of the Committee, and Committee can also procure those documents for appreciation. Petitioner to appear before the Committee on 06.04.2015. Committee shall attempt to complete this exercise within next three months.

17. Shri Parsodkar, learned Counsel at this stage insists for grant of interim prayer in terms of prayer clause (c) of the Writ Petition. Petitioner seeks promotion provisionally on the post of Sub Divisional Officer as a Scheduled Tribe category candidate. We are not inclined to pass any intetim orders in the present matter.

18. In view of above discussions, Writ Petition is, partly allowed and disposed of. No costs.

JUDGE

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