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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4379 OF 2014**

Kishor Jetho Somai & Ors. ...Petitioners
Versus
The State of Maharashtra & Ors. ...Respondents

**WRIT PETITION NO. 9328 OF 2014
WITH
CIVIL APPLICATION NO. 2643 OF 2015**

Kajol Jethanand Somai ...Petitioner
Versus
State of Maharashtra & Ors. ...Respondents

**WITH
WRIT PETITION NO. 8077 OF 2014**

Kajol Jethanand Somai ...Petitioner
Versus
State of Maharashtra & Ors. ...Respondents

**Mr. R.K. Mendadkar, i/b Mr. Chintamani K. Bhangoji, for the
Petitioners in WP/4379/2014.
Mr. R.K. Mendadkar, for the Petitioners in WP/ 9328/2014 &
WP/8077/2014.
Ms. Sushma Bhende, AGP, for Respondent Nos. 1 & 2 in**

WP/4379/2014 & WP/9328/2014.
Mr. P.D. Dalvi, *for Respondent No. 5 in WP/4379/ 2014 &*
for Respondent NO. 4 in WP/9328/2014 & for Applicant in
CAW/2643/2015.

CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.

DATED: 24th February 2016

PC:- (Per G.S. Patel, J.)

1. In all three Writ Petitions, **Rule.**
2. In Writ Petition No. 9328 of 2014, an ad-interim order was obtained on 10th October 2014 in circumstances to which we will presently advert. The manner in which these Petitions have been filed and an ad-interim order obtained in one of them impels us to vacate this ad-interim order, although we are issuing rule.
3. Writ Petition No. 4379 of 2014 was filed by four members of Somai family. The 2nd Petitioner was one Neha Jetho Somai; the 4th Petitioner was one Kajol Jetho Somai. All four are described as students. The challenge in this Petition is to the impugned order passed by the Caste Scrutiny Committee, Thane Division, Thane. Prayer clauses (a), (a-1), (a-2) and (b) of this Petition reads as follows:-

“(a) This Hon’ble Court be pleased to issue “Rule”-Records and proceedings from Lower Authorities be called for and after perusing the legality ad propriety thereof, this Hon’ble Court be pleased to

issue a writ of certiorari and/or any other appropriate writ or order, direction and quashed and set aside the impugned Order which reflects in roznama of Petitioners proceedings dated 25/03/2014 passed by the Scheduled Tribe Certificate Scrutiny Committee, Thane Division, Thane."

(a-1) This Hon'ble Court be pleased to call for the record and proceedings from Lower Authorities, and after perusing the legality and propriety thereof, this Hon'ble Court be pleased to issue a writ of certiorari and/or any other appropriate writ or order, directions and quashed and set aside the impugned Judgment and Order dated 07/04/2014 passed by the Respondent No. 2 Scheduled Tribe Caste Certificate Scrutiny Committee, Kokan Division, Thane.

(a-2) This Hon'ble Court be pleased to further hold and declare that the Petitioners are belongs to Scheduled Tribe Thakur Community and further be directed the Respondent No. 2 Committee to issue validity certificate of Scheduled Tribe Thakur to the Petitioners respectively.

(b) This Hon'ble Court be pleased to issue writ or mandamus and/or any other writ, order and/or direction, directing the Respondent No. 2 Committee to grant the opportunity of the hearing to the Petitioners as well as liberty to file submissions, objections and additional documents in support of the Petitioners

case and the Petitioners case may be heard on its own merits."

4. The case of the Petitioners is that the Petitioners' family is settled in Ulhasnagar since the time of their great grandfather who came there after migrating from Pakistan. The Petitioners claim that their father has a Caste Certificate certifying him to be a Hindu Thakur from Maharashtra. All four Petitioners are said to have been born in Kalyan between 1989 and 1996. They are said to have obtained school admissions, and their school certificates are said to record their caste as Hindu Thakur. Each of the Petitioners is said to have obtained a caste certificate from the Sub-Divisional Officer, Panvel Division, Panvel reflecting this caste.

5. The Petitioners point out that the 3rd Petitioner suffers from certain physical disabilities (a hearing and speech impediment), whereas Petitioner No. 4, Kajol, is a student of the Usha Mittal Institute of Technology, SNDT Womens University pursuing a course in engineering. She is said to have obtained admission against a seat reserved for Scheduled Tribes in 2012.

6. At the time when the Petition was filed, the SNDT University was not a party Respondent to the Petition. For that matter, neither was the 4th Respondent, Bank of Baroda with whom the 2nd Petitioner had probationary employment. Both were joined by a subsequent amendment when other prayers were also added, including to impugn order dated 7th April 2014 passed by the Caste Scrutiny Committee. The Petitioners' say that one Ashok Narwani, now joined as 5th Respondent, filed a complaint on 15th July 2013 *inter alia* alleging that the Petitioners had obtained their

certificates of caste fraudulently and by cheating. The Committee issued notices to the Petitioners and they were asked to submit proposals for verification of their Caste Certificates. By the impugned order dated 7th April 2014 (Exhibit "I" at page 80), the caste certificates of all four Petitioners were cancelled and confiscated.

7. The present Petition was filed on 3rd April 2014. An amendment followed later that month. On 7th May 2014 an application was made for ad-interim relief of *status quo* (Coram : A.S. Oka & M.S. Sonak, JJ.). This prayer was specifically rejected. The Petition was directed to be listed on its scheduled date.

8. What follows thereafter is indeed most disturbing. It transpires that Kajol Somai, 4th Respondent, then filed a *fresh* Writ Petition No. 9328 of 2014 on 29th September 2014. In this fresh Petition, she alleged, again without making the complainant Narwani a party at the time of filing of the Petition, that her Caste Certificate had been cancelled, but that though this had been challenged in the previous Writ Petition No. 4379 of 2014, where she was one of four Petitioners, she had not challenged the subsequent order cancelling her admission to SNDT University. Paragraphs 4, 5 and 6 of Writ Petition No. 9328 of 2014 makes for interesting reading:

"4. The Petitioner states that her caste certificate was invalidated by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane, along with her brothers and sisters by an order dated 7th April 2014. Accordingly, the

Petitioner along with her said brothers and sisters filed a writ petition No. 4379 of 2014 in this Hon'ble Court which is pending judicial scrutiny. The petitioner craves leave of this Hon'ble Court to refer to and rely upon the said writ petition no. 4379 of 2014 at the time of hearing.

5. The Petitioner however, states that in the said writ petition no. 4379 of 2014, she has not challenged the order of cancelling her admission dated 25.8.2014. The Petitioner has been now, advised to challenge the said order cancelling her admission dated 25.8.2014 in this Hon'ble Court. The Petitioner further states that unless the said writ petition no. 4379 of 2014 is decided by this Court, she will not claim any benefits as scheduled tribe.

6. Since the Petitioner is in mid-way of her studies and her admission has been cancelled only on the basis of order passed by the scrutiny committee, she has no other alternative than to approach this Hon'ble Court under Article 226 of the Constitution of India on the following amongst other ground which are taken without prejudice to one and another:"

(Emphasis added)

9. This later Petition nowhere makes a reference to the order of 7th May 2014 refusing the ad-interim relief. Indeed, nowhere in the Petition is there even an indirect reference to it. We do find a

somewhat elliptical reference in Exhibit “A” to the Petition. This is the letter dated 25th August 2014 from the Usha Mittal Institute of Technology addressed to Kajol which says that “as per the order of the Hon’ble High Court and instructions from DTE” her admission to that Institute was cancelled for non-compliance of the Caste Certificate and Validity Certificate. This is the letter impugned in the later Writ Petition No. 9328 of 2014. Read on its own, even this letter does not indicate that there was any previous order passed declining ad-interim relief. We are left to infer this, because at the time of the letter, 25th August 2014, there was only one possible High Court order to which the reference in that letter could point, and that was the order of 7th May 2014 declining ad-interim relief. There is absolutely no reason given for this crucial and critical omission.

10. As later events show, that omission was not just crucial but possibly calculated. For Kajol then made an application in the fresh Writ Petition No. 9328 of 2014 for ad-interim reliefs on 10th October 2014. Paragraphs 2 and 5 of the order passed on that day read thus:

“2. We are inclined to observe that in view of the averments made and until the claim of the Petitioner is decided finally, there is no question of cancellation of admission, as done in the present case. Therefore, a case is made out, and as it concerns the career of the Petitioner, therefore, ad-interim in terms of prayer clauses (b) and (c).

5. As the ad-interim relief is granted to the Petitioner in terms of prayer clauses (b) and (c), we direct Respondent No. 3 to accept the examination form and consider the case as granted, if otherwise eligible."

11. We are at pains to point out this because it is evident that the Court considering the later Petition No. 9328 of 2014 could not have been expected to know or been aware of the 7th May 2014 order. All that the Court hearing the later Writ Petition No. 9328 of 2014 was told was that previous Writ Petition No. 4379 of 2014 was 'pending judicial scrutiny'. Matters would undoubtedly have been very different had Kajol instead filed a Civil Application or even an affidavit in the first (joint) Writ Petition No. 4379 of 2014, pointing to a change in circumstances and then seeking to justify a fresh application for ad-interim relief. We have no doubt that had the Court before which the later Petition was moved been informed of the previous order dated 7th May 2014 declining ad-interim relief, it would also have declined to grant any relief on the fresh Petition. The order of 10th October 2014 makes it clear that the attention of the Court was not drawn by the Petitioner to the previous refusal on 7th May 2014 of ad-interim reliefs. It is self-evident why this strategy of filing a fresh writ petition was adopted instead of following the fair, reasonable and logical course of making an application in the first writ petition. After all, the cancellation of the admission to the college was consequent upon the invalidation of Kajol's caste certificate *and* the refusal on 7th May 2014 of ad-interim reliefs. It was therefore incumbent on the Petitioner to bring that order to the notice of the Court. Had there been a Civil Application in the first petition, the Court would undoubtedly have

noticed the previous order. By filing a separate petition, this was studiously circumvented.

12. In our view this order of 10th October 2014 was obtained by the Petitioner by a material misdirection and by misleading the Court. Although the previous Petition was in fact mentioned in paragraphs 4, 5 and 6, the fact of 7th May 2014 order was carefully kept out. It is on this basis that Kajol was able to obtain what was effectively an order of *status quo ante* continuing her in college.

13. We do not approve of any such practices of misleading Court and concealing vital and material information from the Court. Indeed, we most strongly deprecate these practices. In holding as we do, we are not even considering on merits the case of the 4th Respondent, Marwani, the first complainant. That will be decided at an appropriate time. We are concerned only with the conduct of the Petitioners. In our view, this conduct is of the kind that pollutes the stream of justice. It subverts the justice delivery system. Perhaps most pertinently, it has resulted in the Petitioner in Writ Petition No. 9328 of 2014 obtaining a benefit by depriving some other deserving student or candidate of a secure, reserved seat at the Institute. In short, by this method, the Petitioner in the later petition (Kajol) obtained for herself admission though her caste certificate had been invalidated and though she had been refused ad-interim relief against that invalidation.

14. It is not possible, in our view, to continue the interim relief in circumstances such as these. For these reasons, the ad-interim

relief granted on 10th October 2014 in Writ Petition No. 9328 of 2014 stands vacated forthwith.

15. In view of the foregoing order, Civil Application No. 2643 of 2015 filed by the complainant Narwani for vacating that ad-interim order does not survive and disposed of accordingly.

16. It is clarified that in the third Writ Petition No. 8077 of 2014, filed by Neha Somai (the 2nd Petitioner in the first Writ Petition No. 4379 of 2014) there will also be no interim relief.

17. It is also clarified that the views that we have expressed are, of necessity, tentative and *prima facie* views.

(G. S. PATEL, J.)

(S. C. DHARMADHIKARI, J.)