

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

**WRIT PETITION 2720 OF 2014
WITH CIVIL APPLICATION NO.8210/2017**

Kum.Priyanka d/o Kanhaiyalal Thakur
Age 20 years, Occu:Student,
At present R/o Sajal Park,Tidke Colony
Nasik, District Nasik ..Petitioner

Versus

1]The State of Maharashtra,
Through the Secretary
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai-32
[Copy to be served on Govt.Pleader
High Court of Bombay Bench at
Aurangabad

2]The Committee for Scrutiny and
Verification of Tribe Claims
Through its Member Secretary,
Nandurbar, Division Nandurbar.

3]The Sub-Divisional Officer
Shirpur, District Dhule.

4]The Director of Technical Education
Maharashtra State, 3 Maha Palika Marg
Mumbai.

5]The University of Pune
Ganesh Khind Road,Pune
Through it's Registrar.

6]Smt.Kashibai Navale
College of Engineering, Pune

S.No.44/1, Vadgaon (Bk),
Off Singhad Road,Pune-411041. ..Respondents

Mr.A.S.Bayas, Advocate for petitioner.
Mr. S.G.Karlekar, AGP for Respondent Nos. 1 to 3.
Mr.A.P.Bhandari, Advocate for respondent No.6.

**WRIT PETITION NO.2707/2014
WITH CIVIL APPLICATION NO.8211/2017**

Kanhaiyalal s/o Shivaji Thakur
Age 47 years, Occu:Service
At presnt R/o Sajal Park, Tidke Colony
Nasik, District Nasik.

V/S

1]The State of Maharashtra,
Through the Secretary
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai-32
[Copy to be served on Govt.Pleader
High Court of Bombay Bench at
Aurangabad

2]The Committee for Scrutiny and
Verification of Tribe Claims
Through its Member Secretary,
Nandurbar, Division Nandurbar.

3]The Sub-Divisional Officer
Shirpur, District Dhule.

4]The Chief General Manager (T.E.)
Maharashtra State Electricity
Distribution Co.Ltd. Prakashgad
Bandra East, Mumbai-400051 ..Respondents

Mr.A.S.Bayas, Advocate for petitioner.
Mr. S.G.Karlekar, AGP for Respondent Nos. 1 to 3.
Mr.A.R.Salve, Advocate for respondent No.4.

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 06/07/2017

ORAL JUDGMENT (PER S.C.DHARMADHIKARI,J.) :

- 1] Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
- 2] By this Writ Petition under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order dated 24/02/2014 invalidating the claim and cancelling the tribe certificate.
- 3] On this Petition, notice was issued on 25/03/2014 and an ad-interim order was passed in terms of prayer clause "D". By that ad-interim order the petitioner was permitted to complete her studies (the Engineering Course).
- 4] It is common ground that the petitioner being student and claimed to be belonging to Thakur (Scheduled Tribe), applied for a tribe certificate. That tribe certificate was issued to her on 16/04/2009. She secured admission in the respondent no.6 college affiliated to the University of Pune. The Director of Technical Education is the incharge of technical education in the State.

5] As per the prescribed procedure this certificate was forwarded to the scrutiny committee (respondent No.2). That committee issued notice to the petitioner. The petitioner appeared before the committee after it was directed by this Court to dispose of the proceedings within a period of three months from the date of the receipt of the order dated 7/8/2012 passed in Writ Petition No.11448/2010.

6] The case of the petitioner is that she submitted as many as 87 documents to support her claim. These documents also include the pre-constitutional documents such as birth/death extract of the cousin great-great grand father that is of April, 1918. That contained an entry that the petitioner's cousin great-great grand father is Thakur. The petitioner has also submitted the birth extract and school leaving certificate of her father. She also relied upon several other documents which would indicate within the family and her close paternal relatives, were all issued certificates certifying that they belong to Thakur [Scheduled Tribe].

7] Since the scrutiny committee was set up after the Maharashtra Act No.XXIII of 2001 was brought into effect, the petitioner relied upon the certificate of validity granted by this very committee in favour of her paternal cousin uncle Subhash Yadavrao Thakur, that certificate is dated 10/02/2003. She also relied upon the affidavit filed by the said paternal cousin and the genealogy.

8] The certificate of validity was issued to one paternal cousin brother of the petitioner Vaibhav Subhash Thakur on 9/1/2012. That is in pursuance of judgment and order passed by this Court in Writ Petition No.2737/2011 and the order passed by Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No.C.C.18832/2011.

9] Then there are another certificates of validity issued to one Narendra Yuvraj Thakur paternal cousin uncle and paternal cousin grand mother Kalawati Nimraj Thakur, those were supported by affidavit and genealogy. It is in these circumstances that the petitioner appeared alongwith her father before the committee. The committee forwarded proposal to the vigilance cell and there was a report called from this cell. After this report was received, the committee addressed show cause notice to the petitioner directing her to show cause as to why the vigilance report should not be disbelieved.

10] The petitioner appeared and contended that once there are certificates of validity issued and within the family based on appreciation and appraisal of the oral and documentary evidence, then a different view cannot be taken in her case. Yet the committee has invalidated the claim by the impugned order is the complaint.

11] The learned advocate appearing for the petitioner brought to our notice the entire documentary evidence. He relied upon the order passed by the committee in favour of paternal uncle. That order and copy of which is annexed would indicate that this was not a claim unsupported by any documentary evidence. The petitioner also pointed out that in Writ Petition No.5940/2008 decided on 9/10/2009 the Division Bench of this Court set aside order of the scrutiny committee dated 27/8/2008. The scrutiny committee had invalidated the claim of Vaibhav. At that time, Vaibhav relied upon several documents and some of which are common to the present case. After appreciating the oral and documentary evidence, this Court opined that the scrutiny committee's order is perverse and deserves to be set aside. That is how that order was set aside and

the certificate of validity was directed to be issued. There are therefore, no disputed questions and of fact. All these documents were produced during the impugned inquiry. The committee however, expressed a view that Subhash Yadavrao Thakur may have obtained the certificate of validity from the Nasik scrutiny committee but Nasik committee has not issued that certificate by discussing the case on merits. Then, the committee refers to several judgments and says that earlier thousands of validity certificates were issued to the Thakur claimants without conducting socio cultural affinity tests, however, on that aspect all those orders suffered according to the committee from non application of mind.

12] Then the petitioner relied upon the orders passed by this Court directing issuance of certificate of validity to members of the Thakur Scheduled Tribe and particularly the members of the petitioner's family. It is common ground that the committee which passed the impugned order comprised of one Mr.D.J.Pawra. Mr.D.J.Pawra and Mr.B.D.Bhamre were members of the scrutiny committee which issued the tribe validity certificate to the petitioner's paternal cousin. Yet, in the present case when all these materials were brought to the notice of the committee it expressed the view that the Hon'ble Supreme Court order also dismisses the Petition (Special Leave Petition) summarily. It used the words "dismissal in limine" That is not good law.

13] When such observations are made in the impugned order, we inquired from Mr.Karlekar, learned A.G.P. as to how the committee's approach can be sustained. With all his persuasive abilities even he found it difficult to support this reasoning. At internal page 28 para 3 of the impugned order running page 115 the committee expressed the view that it may be true that there is a certificate of validity issued

to Vaibhav Subhash Thakur, Subhash is the father of Vaibhav and in case of Subhash, as well the certificate of validity was issued. That was issued by the very committee. Subhash is the paternal cousin of the petitioner and his son Vaibhav is the cousin brother of the petitioner from the paternal side. There was a Division Bench order passed by this Court in the case of Vaibhav which we have referred above. The proceedings before the Hon'ble Supreme Court therefore were directed against this order of the Division Bench.

14] It would be proper if we reproduce para 3 of the order of the committee.

“ 3] Further the applicants have submitted a copy of validity certificate issued to Vaibhav Subhash Thakur and a copy of Hon'ble Supreme Court's order passed in case of Vaibhav Subhash Thakur. As the Hon'ble Supreme Court has dismissed the Special Leave Petition filed by the Govt. in this matter, hence, it was mandatory on the committee to issue to validity certificate. The order passed by Hon'ble Supreme Court is in limini i.e. “Special Leave Petition is dismissed on the ground of delay and also on merits”. The Special Leave Petition is dismissed on the ground huge delay. Though it is mentioned that, it is also dismissed on merits, but the order passed in limini cannot be said as a good law. Hence, in view of the observations of Hon'ble Supreme Court made in case of Ravi Prakash Babulalsing Parmar, Dattu Namdeo Thakur, Chetan Yuvraj Thakur and Sunil Murlidhar Thakur, the Committee has decided not to give the ratio of this judgment and validity certificate to the applicants. “

15] A perusal of this paragraph would indicate as to how the committee is ignorant of the basic tenets and fundamental principles of law of precedents. The committee is unaware of the fact that the

Division Bench order of this Court binds it, more so, when the said order is unsuccessfully challenged and the Special Leave Petition is also dismissed. None is relying upon that order but the Division Bench order of this Court. If that Division Bench order is confirmed and upheld by dismissal of the Special Leave Petition which is not only on the ground of delay but also on merits, then, the committee cannot doubt the binding nature of the Division Bench judgment at least. The Supreme Court is not obliged to assign any reason and its dismissal by a one line order does not mean that it has not discussed the merits of the case. It is in these circumstances the certificate of validity issued to close relatives from the paternal side had great probative and evidentiary value. That could not have been brushed aside or discarded by the above reason. This reflects complete non application of mind on the part of the committee.

16] In the light of the above discussion we quash and set aside the impugned order. We make the Rule absolute in terms of prayer clause "B". The certificate of validity be now issued in favour of the petitioner within a period of four weeks from the date of receipt of copy of this order.

17] A common order was passed by the committee invalidating the claim of the petitioner in Writ Petition no. 2720 of 2014 and the petitioner in Writ Petition no. 2707 of 2014. Writ Petition No. 2720 of 2014 is filed by the daughter of the petitioner. In Writ Petition No. 2707 of 2014 the case of the father Kanhaiyal is not different. He is employed and on the strength of the tribe certificate. In his case also the claim is invalidated on same reasoning and by a common order passed in the case of his daughter. For the reasons that have persuaded us to set aside that common order, even this Writ Petition succeeds. Rule is made absolute in terms of prayer clause "B".

Kanhaiyalal should also be issued certificate of validity within a period of four weeks.

18] In view of disposal of Petitions, Civil Application Nos.8210/2017 and 8211/2017 stand disposed of.

(MANGESH S. PATIL,J.) (S.C. DHARMADHIKARI ,J.)

umg/