

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

WRIT PETITION NO. 4140 OF 2011

Darbarsingh Jhulalsing Thakur .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Anil S. Golegaonkar, Advocate i/by Shri M. A. Golegaonkar,
Advocate for the Petitioner.

Mrs. M. A. Deshpande, Addl.G.P. for Respondent Nos.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 02ND FEBRUARY, 2017.

PER COURT :

. The present petition is filed challenging the order passed by the Commissioner, Tribal Development, Maharashtra State, Nashik dated 01.11.1994 thereby invalidating the tribe claim of the petitioner.

2. Mr. A. S. Golegaonkar, the learned counsel for the petitioner states that, though the petitioner had assailed the order of the Commissioner dated 01.11.1994 initially by filing Writ Petition No. 142 of 1995, the said writ petition was not decided on merits. Initially said writ petition was admitted and interim relief was granted. However, prior to the interim relief

being granted, the petitioner was terminated. As such, civil application was filed. The said civil application was rejected. The said writ petition was transferred to Aurangabad. The said writ petition was disposed off on the ground that said writ petition is disposed of at Bombay. The learned counsel submits that, subsequently a fresh writ petition was filed bearing Writ Petition No. 1202 of 2002 challenging the order of the Commissioner dated 01.11.1994. On wrong premise the said writ petition was withdrawn. The petitioner was of the view that review petition would be a proper remedy against the order passed in Writ Petition No. 142 of 1995. In view of that, the petitioner sought review of the order passed by this Court in earlier Writ Petition No. 142 of 1995, which was subsequently numbered as Writ Petition No. 2206 of 1996 (A) after its transfer to Aurangabad. The said review petition came to be dismissed. The petitioner filed Special Leave Petition before the Apex Court. The Apex Court also dismissed the special leave petition.

3. Mr. Golegaonkar, the learned counsel for the petitioner further submits that, the earlier proceedings would not come in the way of the petitioner for instituting the present writ petition and being considered on merits as in none of the earlier proceedings the caste status of the petitioner was decided on merits. This Court did not consider the challenge to the order passed by the Commissioner. In absence of the decision on

merits, the principles of *res-judicata* would not apply. The learned counsel relies on the judgment of the Apex Court in a case of Raju Ramsingh Vasave Vs. Mahesh Deorao Bhivapurkar and others reported in 2009(1) *Mh.L.J.* 1 to contend that, when a judgment is passed without jurisdiction or the matter involve a pure question of law and/or when the judgment has been obtained by committing fraud on the Court in that event principles of *res-judicata* would have no application. The learned counsel also relies on the judgment of the Apex Court in a case of Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and others reported in (2015) 8 *SCC* 519 to contend that, the basis of applicability of principles of natural justice is fair trial. The principles of natural justice is grounded in procedural fair trial, which ensures taking of correct decisions.

4. According to the learned counsel, the claim of the petitioner as belonging to 'Thakur' (Scheduled Tribe) was validated by the Commissioner earlier. Thereafter, exercising revisional powers *suo motu*, the Commissioner has invalidated the tribe claim. The second order of the Commissioner is without jurisdiction and on all these grounds the present writ petition needs to be entertained. The learned counsel further submits that, because of the ordeal, the petitioner has to undergo lot of sufferings. There is delay in filing the present writ petition.

5. We have also heard Mrs. Deshpande, the learned Additional Government Pleader for respondents/State.

6. The present writ petition is filed in May 2011. The instant petition challenges the order dated 01.11.1994 passed by the Commissioner, Tribal Development, Nashik invalidating tribe claim of the petitioner.

7. This is the third writ petition of the petitioner challenging the order dated 01.11.1994. Earlier Writ Petition No. 142 of 1995 was filed at Principal Seat at Bombay. Initially rule and interim relief was granted. However, the petitioner was already terminated from service. As such, civil application was filed. The said civil application was disposed of. It appears that, thereafter, the matter was transferred to Aurangabad and it was numbered as Writ Petition No. 2206 of 1996 (A). In the said writ petition also civil application was filed and it was observed by this Court that, Writ Petition No. 142 of 1995 itself was disposed of at Bombay. The said order, it appears was passed on or about 11.01.2002. The proceedings in the said writ petition came to an end on the said date.

8. Thereafter, the petitioner filed another writ petition bearing Writ Petition No. 1202 of 2002 challenging the very same

order dated 01.11.1994 passed by the Commissioner, Tribal Development, Nashik invalidating the tribe claim of the petitioner. The said writ petition was heard by this Court. It appears from the order passed by the Court in the said writ petition that, Court was not inclined to entertain the writ petition on the ground of maintainability. The petitioner withdrew the writ petition unconditionally. After withdrawing the said writ petition unconditionally, the petitioner filed a review application in the earlier Writ Petition No. 2206 of 1996 (Old Writ Petition No. 142 of 1995). This Court by speaking order dismissed the said review application. The said order was assailed before the Apex Court. The Apex Court also dismissed the special leave petition. After a long slumber of eight years, present writ petition is filed again challenging the very same order dated 01.11.1994 passed by the Commissioner, Tribal Development, Nashik.

9. It appears from the proceedings that, the tribe claim of the petitioner was invalidated by the Commissioner. The same was assailed before this Court along with other relief of protection in service. The writ petitions are dismissed. The review application is also dismissed. Subsequent, writ petition filed before this Court bearing Writ Petition No. 1202 of 2002 was withdrawn unconditionally. The withdrawal amounts to dismissal. The withdrawal was the act of the petitioner on his own volition. The challenge made in the present writ petition is

the same, which was subject matter in Writ Petition No. 1202 of 2002 and earlier Writ Petition bearing Writ Petition No. 142 of 1995 (New Writ Petition No. 2206 of 1996). The review filed against the order passed in Writ Petition No. 142 of 1995 (New Writ Petition No. 2206 of 1996) has been dismissed and it has attained finality upto the Apex Court. In view of the aforesaid facts, it would not be open for this Court to again consider the challenge to the order dated 01.11.1994 invalidating the tribe claim of the petitioner. In a case of **Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and others** referred to supra, the Apex Court was considering the orders passed by the learned Single Judge of the High Court against an interim order passed by the Commissioner Excise and the effect of a final order passed by the Commissioner. In a case of **Raju Ramsingh Vasave Vs. Mahesh Deorao Bhivapurkar and others** referred to supra, the Apex Court has observed about non applicability of principles of *res-judicata* when the judgment is passed without jurisdiction or the matter involves pure question of law or the judgment has been obtained by committing fraud on the Court.

10. In the instant case, the earlier writ petition filed by the petitioner bearing W. P. No. 1202 of 2002 has been withdrawn unconditionally by the petitioner. On withdrawal of the said writ petition, the consequence would be dismissal of the said writ petition. Thereafter, it would not be again open for the Court to

consider the same challenge in a subsequent writ petition. The judicial propriety would not permit the Court to again consider the writ petition. Instant writ petition is third writ petition challenging the very same order.

11. The question of delay and laches is also not inconsequential. The order impugned is passed on 01st November, 1994. The same was subject matter of challenge in the year 1995 and 2002. The Apex Court had also dismissed the special leave petition on 06th October, 2002 and after a long slumber of eight years the present writ petition is filed. No plausible explanation is coming forth for not filing writ petition for eight years, even after dismissal of special leave petition in the year 2003. The petitioner was prosecuting legal proceedings by filing writ petitions, civil applications and after the dismissal of special leave petition in the year 2003 for the first time approached this Court in the year 2011. The said aspect of delay and laches also would go against the petitioner. On all the aforesaid counts, writ petition cannot be entertained. The writ petition as such is dismissed. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]