

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

WRIT PETITION NO. 6170 OF 2013

Kirti d/o Baburao Thakur,
Age : 50 years, Occupation : Service,
presently working with Maharashtra
State Road Transport Corporation,
Amravati Division, Amravati.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
- 2 The Committee for Scheduled Tribe
Certificate Scrutiny and Verification of
Tribe Claim, Nandurbar Region,
Nandurbar.
- 3 The Divisional Controller,
Maharashtra State Road Transport
Corporation, Central Office,
Maharashtra.
Vahatuk Bhavan,
Dr.Anandrao Nayak Street,
Mumbai-400008.

...RESPONDENTS

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Advocate for Petitioner : Shri Barlinge S.R.. And P.v.suryawanshi
AGP for Respondents 1 and 2 / State : Shri PS.Patil.
Advocate for Respondent 3 : Shri D.S.Bagul.

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

DATE :- 14th June, 2017

Oral Judgment :

1 Heard.

2 Rule.

3 The Respondents waive service.

4 By consent, rule is made returnable forthwith.

5 The Petitioner is a citizen of India and claims that she belongs to “Thakur” Scheduled Tribe. The certificate was issued certifying her tribe/ caste as such on 24.05.2004. The copy of the said tribe certificate issued by the competent authority is annexed at annexure-A to the petition paper book. Since the Petitioner sought employment with Respondent No.3/ Maharashtra State Road Transport Corporation and was appointed, her tribe certificate was forwarded for scrutiny and verification to Respondent No.2/ Scrutiny Committee.

6 Respondent No.2 having invalidated the claim and refused the tribe validity certificate that the present petition is filed. The only contention and which we find to be of substance and raised by Shri Barlinge, learned Advocate for the Petitioner, is that the Petitioner in support of her tribe claim furnished several documents. One of the documents is the tribe validity certificate of her real sister Prajakta Thakur. The Petitioner specifically relied upon the order passed by the Nagpur

Bench of this Court in favour of her sister Prajakta Thakur. She also forwarded the documents pertaining to Vasant Pawar, who is close relative from paternal side and whose tribe claim was held to be valid by the Commissioner, Nashik Division, Nashik.

7 The Scrutiny Committee in considering these two documents has observed as under:-

"I. *The applicant in her reply has contended that she has submitted copy of High Court's order passed in favour of her real sister and a copy of an appeal order passed in favour of her cousin. Hence, she is also liable for getting the validity certificate of Thakur, Scheduled Tribe.*

After perusing the High Court's order passed in case of applicant's sister (W.P. No.993/1982) it is found that the Hon'ble High Court has given her ratio of an appeal order passed by the Commissioner, Nashik Division in favour of her first cousin Shri Vasant Pawar. The Hon'ble High Court in the third para of the order has observed as follows:-

"3. In the case of Milling vs. State (1986 (1) --- 403) and W.P. No.2697/1984 decided on 04.02.1987 this court has taken a view that no inconsistent order on the question can be made in the case of closed relatives. Applying the ratio of these two decisions, the petition is allowed. The impugned orders of the Caste Scrutiny Committee and the Commissioner are quashed and set aside. It is hereby held that the petitioner belongs to Thakur Scheduled Tribe."

The ratio of this order cannot be given to the applicant because the judgment pertains to the period prior to Madhuri Patil's judgment. The High Court has given applicant's sister ratio of an appeal order passed by the Commissioner, Nashik Division in favour of her first cousin. At present the appellate authority of the scrutiny committee is Hon'ble High Court and not the Additional Commissioner."

8 Shri Barlinge would submit that this is total non application of mind for there is no allegation of fraud or misrepresentation. Further, a mere allegation would not suffice, but there has to be proof of such fraud or misrepresentation in obtaining the certificates of validity, or else the certificates of validity issued to close relatives are valid and reliable piece of evidence. Hence, the Writ Petition be allowed.

9 On the other hand, the learned AGP would submit that the Scrutiny Committee has rightly discarded the two documents that is because the Scrutiny Committee has found that the certificate issued by the Divisional Commissioner at the relevant time cannot bind it once the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No.XXIII of 2001) has been brought in. Secondly, there is consistent view taken by this Court that the certificates of validity issued to close relatives from paternal side by themselves do not clinch the issue. There has to be an independent proof of the claim and that is by establishing and proving the socio-cultural affinity. In the present case, the Scrutiny Committee has found that close relatives have obtained the certificates of validity, but in their cases a detailed inquiry was not made and on merits. That is why the Scrutiny Committee undertook the task of holding a proper and elaborate inquiry.

It is in these circumstances the learned AGP would submit that the order of the Scrutiny Committee does not call for any interference in writ jurisdiction.

10 After having perused the petition and all annexures thereto, so also, compilation of judgments relied upon, we do not think that the Scrutiny Committee's order can be sustained. First of all, the Scrutiny Committee is of the view that we exercise appellate powers. The writ jurisdiction is not to be equated with appellate jurisdiction. There is basic fallacy in the understanding of the Scrutiny Committee about the nature of this Court's jurisdiction. This Court has constitutional power and by which we supervise the working of the Tribunals and Authorities performing judicial or quasi-judicial functions and subordinate to this Court. We issue writ of certiorari and equally we exercise the power conferred in us by Article 226 of the Constitution of India and that is not an appellate power. It is only when there is an error apparent on the face of record or the order of such authorities is perverse that we exercise our writ jurisdiction and interfere with their orders and actions. Yet, we do not sit as a further court of appeal. Therefore, the understanding of the Scrutiny Committee that this Court is an appellate authority of the Scrutiny Committee is incorrect.

11 Secondly, the Scrutiny Committee has committed a grave error, rather it's members have misconducted themselves in ignoring and

brushing aside the binding order of this Court passed in the case of the Petitioner's real sister. This Court directed that the Petitioner's real sister is entitled to a certificate of validity as she has proved her claim of belonging to "Thakur" Scheduled Tribe. The order of this Court cannot be ignored on a specious plea that when this Court passed the order, the judgment of the Honourable Supreme Court in the case of Madhuri Patil v/s Additional Commissioner, 1994 (6) SCC 241, was not in the field or that this Court was not concerned with the proceedings which were held before the Nashik Committee. This Court exercises the power of issuing prerogative writs and equally it passes the orders and so long as its orders are in force and not set aside by the process known to law, they bind all the authorities including the Scrutiny Committee.

12 Thirdly, this Court in the orders passed in the case of close relatives has held that as and when such certificates are produced routinely they should not be relied upon as there could be exceptions. Further, the certificates of validity should not be relied upon when they are obtained by perpetrating a fraud which is fraud on the public and by misrepresenting the authorities. In this case, the certificate of validity issued to the Petitioner's sister, therefore, could not have been discarded nor the order passed in the case of Vasant Pawar. It is unfortunate that the Scrutiny Committee approaches the whole proceedings in such manner. It is further unfortunate that the Scrutiny Committee routinely doubts the

genuineness and bonafides of the claimants and their claims. One cannot start with presumption of dishonesty. Dishonesty and fraud are serious allegations which are easily made, but difficult to prove.

13 In such circumstances to hold that everybody is trying to pass himself as "Thakur" Scheduled Tribe is a too vague or general observation enabling the Scrutiny Committee to discard the valid piece of evidence. Since that has been done in the instant case, we have no alternative, but to quash and set aside the impugned order. It is, accordingly, quashed and set aside. The Writ Petition succeeds. The Petitioner is entitled to the Certificate of Validity. That shall be issued as expeditiously as possible and in any event within a period of TWO WEEKS from the date of receipt of the copy of this order.

14 Rule is made absolute in the above terms.