

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

WRIT PETITION NO.7944 OF 2016

Anilkumar S/o Vishwanathsingh
Thakur, Age 47 years,
Occ.Service, R/o Deulgaon, Tq.
Jamner, Dist.Jalgaon, presently
R/o Shaurya Homes, Flat No.C-402,
4th floor, SR No.29, Munjabawasti
Dhanori Tingare Nagar, Lane
No.13, Pune-400 032. ... Petitioner.

Versus

1. The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.

2. Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar,
through its Member Secretary,
having its Officer at Nandurbar,
Dist.Nandurbar.

3. Airport Authority of India
Ltd., through its Member
(Operations), Having its Office
at Rajiv Gandhi Bhavan,
Safdarjung Airport, Vyankatesh
Vidyalaya, New Delhi-110003.

4. Regional Executive Director,
Airport Authority of India
Ltd., Porta Cabin, Vile Parle
(East), Mumbai-400 099. ... Respondents.

...
Mr.V.D.Gunale, Mr.S.G.Rudrawar, advocates for the petitioner.
Mr.P.S.Patil, Additional Government Pleader for the State.
Mr.S.B.Deshpande, Additional Solicitor General for Respondent Nos.3 and 4.

...

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

Date : 12.01.2017.

PER COURT :

1. Heard.

2. Mr.Gunale, learned counsel for the petitioner states that the petitioner was appointed in the year 1988 with the Respondent No.3 as a Fire Operator from Scheduled Tribe category. In 1991, the petitioner was promoted to the post of Care taker and in 1993 was promoted to the post of Security Supervisor. Thereafter in the year 1996 was promoted as Assistant General Manager (Operations). The petitioner in the year 2001 was promoted to the post of Airport Manager. In the year 2007, he was promoted as Senior Manager (Operations).

Thereafter in the year 2010, was promoted to the post of Assistant General Manager (Operations) and in 2016 is promoted to the post of Deputy General Manager (Operations). The learned counsel states that the promotions from the year 2001 to 2016 were granted to the petitioner from open category. The tribe certificate of the petitioner was referred to the Committee. The Committee invalidated the said tribe certificate under judgment and order dated 8.7.2016.

3. According to the learned counsel, the school record of the petitioner shows caste as Thakur. Voluminous documents were produced on record to substantiate the case of the petitioner as belonging to Thakur Scheduled Tribe. The Vigilance on his own had collected documents in respect of the other persons those who were said to be distantly related to the petitioner. The Committee failed to consider the documents produced by the petitioner of paternal relatives in proper perspective. The Vigilance is also not properly conducted. On the ground that the petitioner does not confirm to the affinity test,

the claim of the petitioner is rejected. The learned counsel submits that affinity test can not be the sole criteria for invalidating the tribe claim. The same is only a corroborative evidence and not the sole criteria. The learned counsel relies on the judgment of the Full Bench of this Court in the case of **"Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others"** reported in **2011(6) Mh.L.J.919**.

4. The learned counsel in alternate submits that the Committee has nowhere come to the conclusion that the petitioner had obtained the certificate by way of fraud or misrepresentation. As such the petitioner's services be protected. The learned counsel relies on the judgment of the Full Bench of this Court in the case of **"Arun Vishwanath Sonone Vs. State of Maharashtra and others"** reported in **2015 (2) Mh.L.J.457**.

5. Mr.Patil, learned Additional Government Pleader submits that the Vigilance has collected voluminous documents which shows the petitioner

would belong to Rajput/Pardeshi Rajput caste. The said caste is higher caste. According to the learned counsel, even the petitioner did not come from the area where normally the persons belonging to Thakur tribe reside. The petitioner has also miserably failed in the affinity test. No illegality has been committed by the Committee in invalidating the tribe certificate of the petitioner.

6. Mr.Deshpande, learned Assistant Solicitor General for Respondent Nos.3 and 4 submits that the petitioner was appointed from the reserved category i.e. Scheduled Tribe category, considering the certificate produced by him. It has been proved that the petitioner does not belong to the Scheduled Tribe. Though, the Committee in its judgment has not used the phraseology fraud, however, from the facts on record, the act of fraud on the part of the petitioner can be culled out. The petitioner was knowing that he does not belong to Thakur - Scheduled Tribe, still, misrepresented and obtained employment from the said reserved

category. Fraud vitiates such an employment. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **"Sanjeevkumar Rajdharrao More Vs. State of Maharashtra and others"** bearing **W.P.No.5045 of 2004** decided on 17.4.2007 (**Coram : N.H.Patil and R.M.Borde, JJ.**). Learned ASG states that the employment obtained on such basis can not be protected. The learned ASG in alternate submits that if this Court comes to the conclusion to protect the employment of the petitioner then all the benefits during the period of employment, that of promotion and promotional pay-scale given to the petitioner deserves to be withdrawn.

7. We have considered the submissions canvassed by the learned counsel for respective parties. We have also gone through the judgment delivered by the Committee.

8. The Committee on appreciation of the documents produced on record, so also affinity test and the documents collected by the Vigilance have come to the conclusion that the petitioner

does not belong to Thakur Scheduled Tribe as claimed by the petitioner.

9. Reading the whole judgment of the Scrutiny Committee, it is manifest that the Committee has considered all the documents on record, the affinity test and has come to the conclusion that the petitioner does not belong to Thakur - Scheduled Tribe and belongs to either Rajput/Pardeshi Rajput caste. There are documents to that effect on record. The said finding is a plausible finding. The same does not require any interference and the judgment of the Scrutiny Committee deserves to be upheld.

10. The next question would be about the protection of service as claimed by the petitioner. There can not be any debate with the proposition that fraud vitiates everything. The fraud is a mental element and has to be viewed considering all the attending circumstances, so also the documents. We have gone through the documents produced by the petitioner. The petitioner's documents i.e. the School record

shows caste as Thakur. However, there are other documents of the uncle, brother, showing caste as Hindu Bhamta Rajput - V.J. It is also not a case that the tribe certificate was obtained by the petitioner by fraud or misrepresentation. The petitioner has been employed in the 1988. The petitioner could not prove his caste on account of the failure in the affinity test and lack of adequate evidence. We have also perused the appointment order of the petitioner. The appointment order nowhere states that the appointment of the petitioner is subject to the validation of the tribe certificate.

11. In view of aforesaid, the judgment of the Full Bench of this Court in the case of **"Arun Vishwanath Sonone Vs. State of Maharashtra and others"** referred to supra would be relevant. The said judgment states thus :

"75. We, therefore, do not enter into the merits of the claim and leave it for the concerned Benches to decide, on the facts and circumstances

of each case, whether the protection need to be granted or not. But we conclude in this judgment that -

(i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from the employment or cancellation of appointments that have become final prior to the decision in Milind's case on 28.11.2000.

(ii) upon invalidationn of the caste claim by the Scrutiny Committee, the benefits obtained or appointments secured from 28-11-2000 upto 18-10-2001 can be withdrawn or cancelled, depending upon the terms of the employment, if any, in writing,

(iii) the benefits obtained or appointments secured after coming into force of the said Act on 18-10-2001 can be withdrawn or cancelled immediately upon invalidation of the caste claim by the Scrutiny Committee.

(iv) the benefit of protection in service upon invalidation of the caste claim is available not only to the persons belonging to "Koshti" and "Halba Koshti", but it is also available to the persons belonging to Special Backward Class category on the same terms as is available to "Koshti" and "Halba Koshti", and

(v) the claim of the persons belonging to Nomadic Tribes, Vimukta Jatis and Other Backward Class category shall be decided on the lines of the decision of the Apex Court in the case of "R. Unnikrishnan and another Vs. V.K.Mahanudevan and others" reported in (2014) 4 SCC-434."

12. The petitioner as such would be entitled for the protection in the service and the benefits which are availed by the petitioner prior to 18.10.2001 can not be withdrawn or cancelled. If any benefit is given after 18.10.2001 on the basis of the petitioner being

employed as Scheduled Tribe category candidate then the said benefit will have to be withdrawn. The Respondent Nos.3 and 4 are entitled to withdraw the benefit that is given to the petitioner on and from 18.10.2001 as an employee from Scheduled Tribe category. The petitioner henceforth also shall not be entitled to claim the benefit of reservation with Respondent Nos.3 and 4 and/or in any walk of life. The entry of the same shall be taken in the service book of the petitioner.

13. The Writ Petition is accordingly disposed of with aforesaid observations. No costs.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

