

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1553 OF 2017

Jayram Vishram Gangawane

..Petitioner

Vs.

State of Maharashtra and Others

..Respondents

Mr. R. K. Mendadkar, for the Petitioner.

Mr. P. G. Sawant, AGP, for the State.

CORAM :- S.C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.

DATE :- FEBRUARY 10, 2017.

ORAL JUDGMENT (Per. S. C. Dharmadhikari, J.)

Rule. Respondents waive service. By consent, rule made returnable forthwith.

2 By this Writ Petition under Article 226 of the Constitution of India, the Petitioner challenges an order dated 7th January, 2017 whereby the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane has invalidated his tribe claim.

3 The Petitioner has on the basis of a tribe certificate issued to him by the Competent Authority, sought an employment and opportunity to serve Food Corporation of India. The Food Corporation of India, through its Assistant General Manager (personnel) is impleaded as a Respondent, because that authority employed the Petitioner on 13th January, 1976. The Petitioner retired on superannuation on 31st July, 2014.

4 The Petitioner was appointed as a Peon in this Respondent No.4 Corporation in open category. The Petitioner says that his service record was blemishless and that is why he was promoted to the post of Assistant Grade-III on 15th December, 1979 again in open category. Thereafter, he was promoted to the post of Assistant Grade-II on 9th February, 2001. This was against an open post.

5 However, his promotion to Assistant Grade-I was under a reserved category and that promotion order is dated 3rd November, 2008. The Petitioner then was promoted to the

post of Manager (Depot) on 8th November, 2012 and retired on attaining the age of superannuation on 31st July, 2014. However and curiously, the 4th Respondent Corporation withheld his Provident Fund, Gratuity, Leave Encashment etc for non-furnishing of a caste validity certificate.

6 It is upon a reference made by 4th Respondent Corporation to the 2nd Respondent Committee for verification of his tribe certificate and claim of belonging to Thakar Scheduled Tribe that the Petitioner appeared before the Committee. During the course of the proceedings, he relied upon the Tribe Validity Certificates issued to his relatives from the paternal side. The Tribe Validity Certificate issued to his nephew and niece (who are the sons and daughter of his real brothers and from a common ancestor) were relied upon. However, the Committee has discarded that and made its own enquiry and arrived at a conclusion that those claiming to be Thakars and residing in Sindhudurg District have never been able to substantiate and prove their claim as belonging to the Schedule Tribe. They tried to grab and

obtain the benefits for such scheduled tribe by producing caste certificates but have no proof of their affinity nor have they any materials to establish and prove that they are aware of the traits, practices, customs, rituals etc of Thakar Community. They have also not been able to satisfy the Committee on the points framed by it for its consideration.

7 Mr. Mendadkar, learned counsel appearing for the Petitioner has raised one contention and based on which we called upon him to file an additional affidavit. Mr Mendadkar's contention is that once in the family, the relatives from the paternal side have been issued a caste/Tribe validity certificate way back on 11th June, 2002 and 28th February, 2003, then, the Petitioner's claim could not have been rejected discarding this strong and reliable piece of evidence. This evidence is unimpeachable for the simple reason that neither any steps have been taken by the Competent Authority to challenge the correctness of this Tribe Validity Certificate issued to the blood relatives nor the Committee in the present case has come to a conclusion that

they are vitiated by fraud or misrepresentation. In such circumstances relying upon an order passed by this Court in Writ Petition No.12805 of 2016 decided on 11th January, 2017, Mr. Mendadkar would submit that this Writ Petition should succeed.

8 The said order dated 11th January, 2017 reads as under:-

“1)We have heard both sides. We have perused the entire record including the affidavit filed in reply. In paragraph 10 of this affidavit in reply the Committee seeks to justify its conclusion in the impugned order in the following words :

10. “I humbly say and submit that the petitioner is mainly relying upon the earlier validity certificates issued to her paternal side relatives. In this respect I humbly say and submit that the validity certificate on which the petitioner has given most reliance are pertaining to the year 2001 to 2005. In this respect the Committee has also deeply studied the files of the said validity certificate holders. Considering the entire material from the files of the said validity certificate holders, the Committee has rightly concluded that the said validity certificates are issued on the basis of the legal position prevailing at that time after the decision of the Hon'ble High Court in Writ Petition No. 1961/1991 (Pandurang Rangnath Chavan). Further I humbly say and

submit that the above said legal position has been changed after the decision of the Hon'ble Apex Court in Raviprakash Babulalsing Parmar's case. Hence, I humbly say and submit that the Committee has rightly invalidated the tribe claim of the petitioner by considering her case on the point of documentary evidence, oral evidence, cultural affinity, affinity towards area etc. The Committee has rightly shown inability to apply the ratio of the earlier validity certificates in the instant case. The Committee has also rightly observed in its impugned order that the Committee is ready to reconsider the cases of the earlier validity certificates holders in the light of the latest legal position, if the Hon'ble High Court permits to do so and/or directs to do so."

- 2) On a perusal of this paragraph, we enquired from Mr Yadav, learned A.G.P. as to how in law the Committee could come to a conclusion that paternal relatives are either distant and not immediate, or the certificates of validity issued in their favour cannot be relied upon in the absence of a complete and proper enquiry by the very Committee. Mr Yadav found it difficult to justify this stand. He fairly submitted that the certificates of validity issued to the relatives of the petitioner from the paternal side is an undisputed fact. These certificates are relevant piece of evidence and can be relied upon. They can be ignored and brushed aside only when there is a proven and established fraud or misrepresentation. It is only when such is the conclusion reached that these certificates of validity lose their evidentiary value and not otherwise. Once this legal position is conceded, we do not see how the impugned order can be sustained. It is accordingly quashed and set aside.
- 3) In the presence of the Member of the Committee,

Mr Yadav assures the Court that within one week from today a certificate of validity will be issued to the petitioner by the said Committee. We direct accordingly.

4) Post this matter for reporting compliance on 18th January, 2017.”

9 Mr. Sawant appearing on behalf of the Committee as also the State supported the order by contending that the Committee found that one of the oldest documents and relied upon during the course of the proceedings pertaining to the predecessor of the Petitioner would denote that there is a reference to his religion but minus the Tribe. No certificate or document produced shows that the ancestor or the predecessor belongs to the scheduled tribe. Therefore, he would submit that the Committee's order deserves to be upheld.

10 After perusing this Petition and all the Annexures thereto, on the earlier occasion i.e. on 8th February, 2017, we had passed the following order:-

“After some argument, we called upon Mr. Mendadkar to produce a genealogy and family tree

so that we can verify the claim of the Petitioner made before us that the two Caste Validity certificates issued in favour of Geeta Parshuram Gangavane and Aashish Atmaram Gangavane can be relied upon as they are niece and nephew respectively, of the petitioner. Mr. Mendadkar seeks time to comply with the same. Stand over to 10.02.2017.”

11 Pursuant to our earlier order, Mr. Mendadkar has tendered the additional affidavit today which is taken on record. We find that there is no denial or dispute about the genuineness of the genealogy and family tree. The family tree, a copy of which is annexed to the additional affidavit, is stated to be the part of the record of the Scrutiny Committee. Rather it is urged that this is a document found in the compilation and the report of the Vigilance Cell. The Committee has not expressed any opinion as far as the contents of this genealogy / family tree. That shows that there was a common ancestor Vishram Atmaram Gangavane. He had five sons viz. Jayram who is the present Petitioner, Atmaram, Eknath, Parshuram and Navasa. The son of Atmaram namely Aashish was issued the Tribe Validity Certificate certifying him to be belonging to the Thakar

Scheduled Tribe on 11th June, 2002. Thereafter, brother of the Petitioner, namely, Parshuram Vishram Gangavane and daughter Geeta were issued the Tribe Validity Certificates. The Tribe Scrutiny Committee in the impugned order has referred to these documents. One finds a reference to the same at page 20 of the paper book. Thus, Geeta Parshuram Gangavane's validity certificate was before the Committee. The attested copy of this certificate was produced and the Committee opines that Geeta is indeed Petitioner's niece. Similarly, in respect of his nephew Ashish Atmaram Gangavane, the attested copy was produced, which is dated 28th February, 2003. Thus, the relationship is not in dispute. There are several other documents which are referred to by the Committee. The Committee does not dispute that each one of the members of the Petitioner's family was resident of Sindhudurg District. However, despite this evidence, the Committee found it fit to refer the matter to the Vigilance Cell for conducting school, home and other enquiry. A report was submitted by the Vigilance Cell on 14th February, 2011. That contains the statement of the Petitioner wherein he furnished

information regarding the traits, characteristics, customs and traditions of the community. Then the Committee found that the school admission general register extract in respect of the Petitioner's real brothers and father shows that the name of the Thakar Scheduled tribe is not mentioned therein. However, what the Petitioner relied upon was the date of admission of Vishram Atmaram Bavalekar, who is stated to be residing in the same District and in his case the entry in the caste column is "Hindu Bavalekar (Thakar)". The relationship with the Petitioner is shown to be that of father. Thus, in the case of Petitioner's father, the date of admission to the school is 11th May, 1921 and he had in his record of admission to a school, stated as above. Yet, the Committee thought it fit to hold a very detailed enquiry. The Committee found that in the past and even now, it has some doubts, namely, that Thakars of Sindhudurg District are routinely claiming to be belonging to the same scheduled tribe. However, in their case, the Committee finds that there are certain important distinguishing features. These are enlisted in the Committee's order at paragraph 7 running pages 26

and 27. After framing of these points, the Committee renders its findings on each of these points. We find that this exercise was wholly unnecessary and irrelevant to the present case. Why this committee proceeds on these lines and for that matter every Scrutiny Committee is obvious. The Committee places itself as an adversary of the Claimant / Applicant. It proceeds on the footing that when it is empowered to hold scrutiny and verification into the caste claim in terms of the Maharashtra Act 23 of 2001, it must insist on such absolute proof as can be deduced from its findings on these seven points. The Committee feels that anybody who does not have material with him and to satisfy even generally about these seven points, then, his claim is doubtful. The Committee tries to impress upon the Court in every single matter that it is doing a perfect job and by relying upon anthropological data, it discovers the traits, characteristics, customs, rituals of the particular tribe or community and relying upon such historical material in its possession it renders a general finding. Pertinently, the Committee overlooks the fact that it is a caste certificate which is referred and that requires a

scrutiny and verification of the claim of the Applicant or holder thereof. Therefore, this Applicant when he relies upon the Caste Validity Certificates issued to his family members and close relatives from the paternal side, then, it is the bounden duty of the Committee to consider the bonafides of such a Claimant / Applicant. In the instant case the Committee is aware that there are judgments rendered by this Court and which would enable it to scrutinize and verify the claim even if there are such caste validity certificates already issued. However, what the Committee conveniently overlooked in this case is the legal principle that it derives this jurisdiction and authority to go behind such Caste Validity Certificate of a close relative from paternal side and question it when there is material before it to come to a definite conclusion that the Claimant / Applicant therein has misled the Committee. A fraud is practiced and perpetrated by suppressing the relevant and material facts or rather misrepresenting the Committee in the past. Therefore, it can discard such piece of evidence and insist upon proof independent of such caste validity certificate issued to the

relatives on the paternal side. These are the salutary legal principles enunciated in several judgments of this Court.

12 In the detailed order passed in this case, Mr. Sawant was unable to point out any finding of the above nature save and except some general and sweeping observations. That the Claimants are residing in a particular District and in that District the Claimants must show that they have availed of the benefits and specifically meant for the tribe is something that has prevailed upon the Committee and compelled it to question the Petitioner's claim. In that regard without indicating as to how judicial precedents relied upon have an application to the facts and circumstances before it, the Committee reproduces paragraphs after paragraphs of this Court's judgment and equally that of a Supreme Court judgment. We do not think that we are required to be educated at-least on law. The Committees hereafter should stop this business of mechanically reproducing paragraphs after paragraphs of the judgments of this Court as if to bring to this Court's notice that when its

orders are challenged this is how the Committee proceeded. The Committee need not repeatedly and routinely exhibit its awareness and knowledge of Judgments of this Court and that of the Supreme Court. We know how judicial precedents have to be applied and when relied upon, how their application has to be considered to certain given facts and circumstances. In every matter we have been careful to say that we are not laying down a general principle or rule. In the facts and circumstances of those cases, we had merely impressed upon such Committee that they must hold the enquiry in tune with the mandate of the Act. The guiding principles have been enlisted in the judgment of the Hon'ble Supreme Court which are followed and applied by us. We need not be therefore informed of what is the position in law. The Committees would do well in future in not elaborating these principles all over again. In the present case in the lengthy order the Committee finds that though the Petitioner was selected and appointed in open category but having gained promotions, the caste certificate was forwarded for its scrutiny and verification. Yet, in the impugned order the

Committee observes in paragraph 16 as under:-

“16. During the course of personal hearing, the applicant has submitted before the Committee that he was selected in the services of FCI as open category candidate. Later on, in the year 2001, the applicant has obtained the tribe certificate as belonging to Thakar, Scheduled Tribe and submitted the same to the organization where he is working. Therefore, the Committee is of the considered view that when the applicant was selected as a open category candidate and not against the post reserved for the Scheduled Tribe, there is no purpose in insisting him to produce the Validity Certificate by his organization.”

13 We are surprised as to how the Committee thought that it was not necessary for Respondent No.4-Corporation to insist on a caste validity certificate. Respondent No.4 promoted the Petitioner and appointed him as Assistant Grade-I against a reserved seat. Hence, the reference to the Committee and that is how the burden was squarely on the Petitioner to prove that he belongs to Thakar Scheduled Tribe. If that was not necessary, the proceedings should have been disposed off on this short ground alone. The entire discussion then was unnecessary and uncalled for. However, then the Committee questions the competence of the

authority issuing the caste / tribe certificate. It holds that the permanent place of resident of the Petitioner is Pinguli, Taluka Kudal, Dist. Sindhudurg. That is neither from the scheduled area nor from the restricted area of Thakar Scheduled Tribe before removal of area restrictions. The material in the form of an enquiry report, the Research Officer's remarks show and reveal that this community and which claims to be Thakar Scheduled Tribe residing in Sindhudurg District does not have the proof of the affinity with this Scheduled Tribe. The Committee observes in paragraph 17 that the Research Officer's remarks would show that the cultural affinity as stated in the report does not tally or is not associated with that of genuine Thakar Scheduled Tribe. We have referred to these observations at some length only because we apprehend that the Committee would rely on the same in its future endeavours. In future, if such cases are brought for scrutiny and verification and relying upon the Caste / Tribe Certificate issued by the Competent Authority in Sindhudurg District, the Committee would proceed on the lines indicated in paragraph 17.

Paragraph 17 reads thus:-

“17.Considering the above said latest decision of the Hon'ble Full Bench of the Hon'ble High Court and considering the factual position that the applicant's permanent place of residence i.e. Pinguli, Tal. Kudal, Dist. Sindhudurg, is neither from the Scheduled Area nor from the restricted area of Thakar, Scheduled Tribe before the Removal of Area Restrictions. The cultural affinity came through the enquiry report having Research Officer's remarks that the same is not associated with that of genuine Thakar, Scheduled Tribe and applicant's selection as open category candidate (and not against the post reserved for Scheduled Tribe), this Committee is of the considered view that the applicant does not belong to Thakar, Scheduled Tribe. The applicant has also failed to submit unequivocal documentary evidence in support of his claim as most of them depicts their caste as Magas, Magaslela, Bavalekar, etc. Mere submitting of the validity certificates of the relatives will not be sufficient, considering the change in the legal position. All the written and oral submissions made by the applicant have been considered by this Committee, but the same could not holds the field and support the tribe claim of the applicant in the light of the above said details discussions. Hence, the following order is passed by this Committee

ORDER

After considering the entire evidence on record, prevailing legal position, crucial affinity test and affinity towards restricted area, we, the Members of the Scrutiny Committee unanimously have come to the conclusion that the claim of the applicant, as belonging to Thakar, Scheduled Tribe is not established and proved. Hence, the claim of the applicant is held INVALID. Therefore, the Caste Certificate issued to Shri Jayram Vishram

Gangawane, by the Deputy Collector Alies Resident Deputy Collector, Sindhudurg, bearing No.MSC/ST/SR.No./80/2001 dated 7/9/2001 is hereby cancelled and confiscated.”

14 Our judicial conscience is shocked when the Committee makes a casual, light hearted and cavalier remark that mere submitting of the validity certificate from the relatives will not be sufficient considering the change in the legal position. What is the change in the legal position is not clear and has not been explained by the Committee. The Committee feels that it must hold a test of affinity and the Petitioner must pass the same. He has to invariably be successful in such affinity test, even if he has in his possession the proof of caste Validity Certificates issued to his close relatives from the paternal side. We are, therefore, of the opinion that the general observations in the impugned order need to be quashed specifically and the Committee be directed not to make such sweeping remarks or observations unless there is concrete proof and supporting material. The non-submission of unequivocal documentary evidence in support of the Petitioner's claim is another finding which is

clearly perverse. The Committee could not have recorded this finding when the caste validity certificates issued to the nephew and niece of the Petitioner were produced before it. Thus, the Committee feels the caste is Magas, Magaslela Bavalekar and that is no proof. We do not see how in the year 1921 or thereabouts the authorities like a Principal or Headmaster of the school or a Revenue Official could have thought of entering a remark against the Caste / Tribe Column as "Hindu Thakar Scheduled Tribe". The Constitution of India is dated 26th January, 1950. In pre-constitutional documents, therefore, there can never be any reference and as insisted by the Committee. Further, the Scheduled Tribe and Scheduled Caste Orders are a product of the amendment to the Constitution of India made in 1976. There is a further amendment and which removes the restrictions as far as the area. All these are recent amendments and developments. Relying on them, the genuineness of the contents of such old documents can hardly be questioned. Once again we clarify that we are not laying down any general rule or principle but we definitely find fault with the Committee's approach as

adopted in this case. That is why we are making a very strong and harsh comment that the Committee thinks that it is an adversary and it must go on demolishing every claim. Every person before it tries to snatch the benefits meant for genuine tribals and therefore the Committee must be strict in its approach, is the general trend and emerging from the Committee's orders. We do not see why such impressions and which are entertained on some general perceptions, should colour the Committee's vision and its approach. In every case possibly with such pre-determined notions and a pre-judged mind the Committees have been performing their job. It is time they give up all this and come to the ground. Then alone they would not place themselves in the position of an adversary. If they feel that the proceedings are only adversarial and therefore they are justified not only in questioning the claim of the Applicant before it but even orders of this Court, then, that is really unfortunate. We have been finding that when the Committees' orders are quashed and set aside by this Court, the Committees are feeling aggrieved more than even the Claimants and Applicants

whose claims are rejected by this Court by upholding the order of the Committee. It is the Committee and not the State of Maharashtra or the employer which approaches a Higher Court. While we do not have any authority, power or jurisdiction to question the approach of the Committee in filing Appeals nor can we doubt the mandate of the Constitution of India and which allows the Hon'ble Supreme Court of India to entertain any of their requests or proceedings but surely this is a disturbing trend. In the facts of the present case, therefore, we are fully justified in making these observations. The Committee has no material before it to question the validity certificates of the relatives of the Petitioner on the paternal side. Save and except a general remark at page 14 of the impugned order and reference to various Judgments of this Court but without indicating how the Committee was misled in issuing these certificates, who misled it or who misrepresented or perpetrated a fraud on the Committee. No material is placed on record even before us. Therefore, mere reference to earlier orders of this Court in distinct factual backdrop is of no assistance to the

Respondents.

15 Once we have come to the conclusion that the order of the Committee is wholly perverse and vitiated by an error of law apparent on the face of record, it cannot be sustained. Hence the following order:-

1 As a result of the above discussion, the Writ Petition is allowed. The impugned order dated 7th January, 2017 is quashed and set aside. Within two weeks from today, the Committee shall issue a certificate of validity to the Petitioner.

2 Within four weeks from producing this caste validity certificate, Respondent No.4 - Food Corporation of India shall release all the benefits due to the Petitioner on his retirement after attaining the age of superannuation.

3 Rule is made absolute in these terms. No order as to costs.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)