

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9797 OF 2017

Macchindra Soniram Nagtilak ... Petitioner
Vs.
State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION NO. 2011 OF 2016

Uttreshwar Vishnu Nagtilak & Ors. ... Petitioners
Vs.
State of Maharashtra & Anr. ... Respondents

WITH
WRIT PETITION NO. 2943 OF 2017

Snehalata Rajiv Nagtilak ... Petitioner
Vs.
State of Maharashtra & Ors. ... Respondents

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Mr. R. K. Mendadkar a/w Ms. Komal Gaikwad for the Petitioners
in all Petitions.

Mr. B. V. Samant, AGP for Respondent-State.

Ms. Neeta Karnik for Respondent No.4 in WP/2943/2017.

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**CORAM : S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE : NOVEMBER 28, 2017.

P.C. :

1. By these Petitions under Article 226 of the Constitution of India, the petitioners are challenging the orders passed by the

Scheduled Tribe Certificate Scrutiny Committee, Pune Division, Pune.

2. In Civil Writ Petition No. 2011 of 2016, we have in all six petitioners.

3. They say that on 2nd December, 2015, they received a copy of the order passed by the 2nd respondent Scrutiny Committee dated 6th November, 2015. Being aggrieved and dissatisfied with that order, they have filed this Petition contending that each one of them belongs to Thakar Scheduled Tribe. The petitioners state that there are several judgments of this Court based on which certificates of validity have been issued and which judgments have stood the test of time. Thus, there were no materials which would doubt the genuineness and authenticity of the claim of Thakars.

4. The argument proceeds on the footing that 'Thakar' was recorded during the British regime and/or preceding the first Presidential Order of 1950 as Tribe and then included in the Constitutional Schedule. The Tribe certificates were issued to the petitioners on 30th March, 2003, 16th August, 2006, 16th October,

2006, 14th December, 2000, 16th July, 2002 and 14th February, 2001.

5. Since the petitioner nos. 1 and 2 intended to apply for public employment, they moved the 2nd respondent Committee for verification of their claim. They submitted various documents. One of the document submitted and as proof of the genuineness and authenticity of the claim is a certificate of validity granted to one Rameshwar Vishnu Nagtilak. This person is the real brother of petitioner nos. 1 and 2. There are other close relatives from the paternal side as well. Similarly, petitioner nos. 3 to 7 intended to have their claim scrutinized and verified for they were relying on their caste certificates for education and service. The petitioners then state that caste validity certificates have been granted to the father and other close relatives from the paternal side to petitioner nos. 5 to 7.

6. It is stated that the Committee, in the first instance, referred the case to the vigilance cell for conducting a home inquiry. Accordingly, that inquiry was conducted and report was submitted

to the Committee. The Committee caused a copy of this report to be served on the petitioners and called for their response. Accordingly, a reply dated 21st August, 2013 was submitted to show cause on the findings in this report.

7. Thereafter, there was another inquiry because of a complaint made by one Laxman Rambhau Pardhi. On second occasion, the Committee found from the inquiry, and particularly the school record of one Anant Bhagwan Nagtilak, the cousin grand father of the petitioners, that the entry against the caste column is Maratha. Once again the petitioners were noticed as to why this finding in the second inquiry be not relied upon so as to invalidate their claim.

8. The Committee accordingly passed an order on 21st September, 2013 and invalidated the claim.

9. This order was challenged by filing Civil Writ Petition No. 10811 of 2013 in this Court. That Petition was disposed of by quashing and setting aside the initial order and directing the Committee to re-examine the claim. On remand, the petitioners

appeared before the Committee on 18th March, 2014. Thereafter, the petitioners pointed out that all of them being related, the cases be taken together. Accordingly, a hearing and combined one was scheduled on 26th June, 2014. The second and the third hearing was also held in the months of May and September, 2015.

10. It is in these circumstances and when voluminous documentary evidence, including the written arguments, copies of certificates of validity issued to the close relatives including the real brothers, being placed on record, it was expected that the Committee will validate the claim and issue the certificate of validity.

11. However, that having been refused, this second Petition.

12. Mr. Mendadkar appearing for the petitioners would argue that the 2nd respondent Committee has erroneously invalidated the claim. It could not have arrived at the requisite satisfaction in the teeth of the certificates of validity granted to the blood relatives from the paternal side and when their claims were in the field, duly adjudicated and accepted. The certificates of validity issued

to these relatives were on record and in some cases, for decades together. In the circumstances, the Committee's order can be clearly termed as perverse.

13. We have heard Mr. Mendadkar appearing in support of these Petitions and Mr. Samant, learned AGP.

14. In the other Petitions which have been placed before us, namely Writ Petition No. 2943 of 2017 and Writ Petition No. 9797 of 2017 as well, the challenge is to the orders passed by the Committee dated 6th November, 2015 and 20th June, 2017.

15. In Writ Petition No. 2943 of 2017, the Committee's order was received by the petitioner on 2nd December, 2015. The petitioner is taking education in the respondent no.3 institution affiliated to the 4th respondent-Mahatma Phule Krishi Vidyapeeth, Rahuri, District Ahmednager.

16. In this Petition, we have heard Mr. Mendadkar appearing for the petitioner, Mr. Samant, learned AGP and Ms. Karnik appearing for respondent no.4.

17. While challenging the order of the Committee invalidating the claim of the petitioners, learned counsel Mr. Mendadkar has raised identical grounds. The certificates of validity were sought relying on the same materials. The findings in the Committee's order are more or less identical. Even the order is common to the petitioners in Writ Petition 2011 of 2016.

18. In Writ Petition No. 9797 of 2017, the order dated 20th June, 2017 is challenged by the petitioner, who relied upon the Scheduled Tribe certificate issued and on the basis of which he was employed as a Peon in the office of respondent nos. 3 and 4.

19. The appointment was against a reserved category. The Tribe certificate was forwarded for scrutiny and verification to the Committee and during the course of such verification, the petitioner therein relied upon the certificates of validity granted in favour of his cousin brothers. The petitioner had apprehended that his services would be terminated, and therefore, approached this Court and pending verification and scrutiny, the petitioner's services were protected. Later on, the Committee found from the records that there is, in the vigilance cell report, a reference to one

of the close relatives of the petitioner, namely Asha Govind Nagtilak. Her claim was pending with the Scheduled Tribe Certificate Scrutiny Committee at Aurangabad. The 2nd respondent Committee served upon the petitioner a chart of entries in the case of Asha Govind Nagtilak and directed the petitioner to file an explanation. That letter is dated 29th March, 2017 and though a copy of that letter is not annexed, it is apparent that the persons mentioned at serial nos. 5, 6, 7, 10, 19, 20, 21 and 22 of the chart are relatives of the petitioner, and the other persons whose names are mentioned in the chart are not his blood relatives. Thus, the Committee found that the claim which has been raised, appears to be dubious. In paragraph 20 of the order under challenge, the Committee expressed an opinion that the petitioner's blood relatives Uttreshwar Vishnu Nagtilak, Bhagyashri Vishnu Nagtilak, Parmeshwar Macchindra Nagtilak (son of the present petitioner), Snehalata Rajiv Nagtilak, Ashwini Sanjiv Nagtilak, Akshay Sanjiv Nagtilak and Amruta Sanjiv Nagtilak were refused the certificate of validity by the Committee on 6th November, 2015. It is they who have filed a companion Writ Petition No. 2011 of 2016 and the matter is subjudice. However, while referring to the

documents and the materials on record, the Committee discovered that in the case of Asha Govind Nagtilak, there were some pre-constitutional documents relied upon by her. In those documents, the entry against the caste column is Hindu Maratha. These documents were not before the Committee which issued the certificates of validity to the blood relatives of the petitioner. Once these documents clinch the issue and they have been suppressed, then, even the other certificates of validity are vulnerable. The claim itself cannot be said to be genuine and bonafide. In the order under challenge, the Committee referred to attempts made by forward caste members, in trying to pass themselves as members of this particular Scheduled Tribe. The Committee has time and again referred to such bogus and fraudulent claims, but was unable to pin-point such claimants or to refer to precise data or other contemporaneous record. The Committee's general finding and vague assertion during the course of arguments before us compelled us time and again not to uphold its orders.

20. When, in the impugned order it was brought before us that there is indeed a case of a claimant obtaining a bogus caste

certificate and a doubtful and equally dubious caste validity certificate, though the entries in the pre-constitutional documents, particularly the school record are Hindu Maratha, we called upon Mr. Samant, learned AGP to take instructions. The instructions to be called were very specific. We called upon Mr. Samant to obtain instructions from the Scrutiny Committee and particularly its members, whether they are inclined to reopen the issue and consequently, all certificates of validity which have been issued and expressly referred in the case at hand. Meaning thereby, in the impugned order, there is a reference to some certificates of validity and equally when these certificates of validity were issued based on the certificates of validity issued to Asha and others, then, all the more, we would not remain silent spectators. We are not oblivious to this position in law that when the Committee brings to the fore a case of fraud or mis-representation, then, in powers of judicial review we should not interfere with such findings of fact unless they are demonstrably perverse or vitiated by an error of law apparent on the face of record. If the fraud is detected and there are enough particulars on record of such fraud, the proof of that fraud cannot be easily discarded. Even when

there is a mis-representation by keeping back vital and crucial documents from the Committee, then, such findings have to be ordinarily upheld. Therefore, the Committees need not be apprehensive that this Court necessarily sets aside their orders or directs a remand. We do not pass stereotype, much less mechanical orders. The Committee may do so.

21. Since this was a serious case, we directed Mr. Samant to take these instructions. Pursuant to our oral directions, Mr. Samant has informed us that the Pune Committee has received his communication dated 23rd November, 2017. In response to that, in writing, the Joint Commissioner and Vice Chairman of the Scheduled Tribe Certificate Scrutiny Committee, Pune informs that the Committee is agreeable, in the sense, if these matters are sent back, in the case of the present petitioners, appropriate inquiries would be made and afresh. The certificates of validity which have been issued earlier would not be accepted as gospel truth. Even the cases of such certificate holders would be reopened. In a fresh inquiry, without being influenced by any earlier findings or conclusions, the Committee will then refer to

each and every document, report, contents thereof and verify and scrutinize the claims. If they are tainted, fraudulent or vitiated by gross mis-representation of facts, then all the certificates of validity would be cancelled. Consequently, if the certificate holders prove their claim, as the burden is primarily on them, then the Committee will not interfere with earlier certificates of validity. Once these certificates of validity, which are relied upon by the petitioners, remain un-interfered or untouched and the claims of the holders thereof are upheld, then, naturally the benefit of the same would be extended to the petitioners as well.

22. At the same time, the Pune Committee clarifies that it has before it cases of the petitioners' relatives to whom the certificates of validity are issued. They are five in number. The other relied upon certificates of validity are issued by the Scrutiny Committee at Aurangabad. It has issued six certificates. Thus, in all there are eleven certificates of validity which have been issued on diverse dates by these Committees and certified true copies thereof have been relied upon by the petitioners before us. Once these cases are to be reopened, then, equally, the petitioners' case should also be

remanded so as to subserve the larger interest of justice. These are the written instructions issued to Mr. Samant.

23. At the same time, Mr. Samant was fair enough to produce before us a copy of another communication dated 16 November, 2017 addressed by the Deputy Director and Member Secretary of the Pune Committee to the Joint Commissioner of the Aurangabad Committee. It is stated that during pendency of these Petitions before us, the Pune Committee noticed that the certificates of validity issued by the Aurangabad Committee may also have to be reopened. In this communication, it is stated that Rajesh Haribhau Nagtilak, Meerabai Shivaji Nagtilak, Sanjay Shivaji Nagtilak, Ashabai Gulab Nagtilak, Balaji Prakash Nagtilak and Shrikrishna Gulab Nagtilak have been issued certificates of validity by the Aurangabad Committee from the year 2003-2004 to 2010.

24. In cases of these certificate holders, reliance was placed upon 24 (twenty four) documents. These documents were also referred and relied upon in the case of Asha Govind Nagtilak. Asha was issued certificate of validity by the Aurangabad

Committee. Out of these 24 documents, majority are pre-constitutional. These are school records. However, in these cases, the entry against the caste/tribe column is Hindu Maratha. Therefore, a request was made to the Aurangabad Committee that it should also consider reopening the cases of these validity certificate holders. We take copies of both the communications on record and mark them "X-collectively". We accept the statements of Mr. Samant based on these communications as undertakings to this Court. We also accept the statement of the Committee that the cases of the present petitioners would be considered afresh on merits and in accordance with law when the cases as above are reopened. Hence, each of the orders challenged in these Petitions are quashed and set aside. The matters are remanded to the Scrutiny Committee for compliance with the above directions.

25. Throughout the hearing we impressed upon Mr. Mendadkar as also Mr. Samant that it is impossible that such certificates of validity have been issued or obtained without any role being played by the officials of the Department. It cannot be that the Department of Tribal Development, its Commissioners, other

employees, members of the Scrutiny Committees, their Chairman, Vice Chairman are totally innocent and ignorant as to what is happening around. We find that directions of the above nature would be incomplete and would never serve the larger interest of justice unless we direct stern and strict action to be taken against those employees of the State, including the members of the Committee, involved in the alleged fraud. If they are let off, then, such false certificates may still be issued in future by accepting dubious, doubtful, suspicious and bogus claims. The menace can never be curbed. At the Sub-Divisional Office level, namely, the competent authority to issue caste certificate and equally at the higher level, namely, the tier of Scrutiny Committee, there are definitely certain persons involved and that is the impression gaining ground. Unless they connive and collude with the claimants, such certificates of validity can never be issued. The certificates of validity in these cases have been issued by two different Committees, but pertaining to the same tribe. We expect all those entrusted with statutory functions and duties to complete the task and job assigned to them bearing in mind the object and purpose of the statute. In this case, the Maharashtra Act No. XXIII

of 2001 has been enacted to achieve the purpose of conferring benefits, concessions and granting relaxations to those genuine Scheduled Tribes, Scheduled Castes, Other Backward Classes and Nomadic Tribes etc. who have been deprived of educational opportunities, jobs in public entities and elected offices. If they have been kept away from all this, then, to ensure their participation and a broad based representation that the Act was enacted. It was to weed out and exclude those from the benefits who, from the inception, were not entitled thereto. If they have managed to corner these benefits and concessions meant for the genuine members of the deprived sections of the society, then, instances of such nature have to be curbed and avoided. In such circumstances, it is unfortunate but may be true that members of the statutory machinery are also involved. They may not have made proper inquiries, submitted reports in time or reports may be defective and lacking in material particulars. All this leads to the Committee eventually either denying or accepting the claims. On most occasions, the claims may have been accepted without ascertaining as to whether the school records are authentic, obtained from proper custody and there is no possibility of any

overwriting or alterations therein. These matters, therefore, have to be verified and scrutinized by the Committee. It is expected to apply its mind, and when it applies its mind, it must not be carried away by any preconceived notions or ideas. The process should be transparent and totally independent of any interference by the Departmental superiors. If this has not been done in most of the cases and people have managed to obtain certificates of validity, then, to avoid the fraud being perpetuated, we would expect the persons in-charge to also probe and pin-point the role of the officials in the Tribal Development Department. Hence, when these matters are remanded to the competent Scrutiny Committees and they are undertaking the verification and scrutiny afresh, we would expect them not to render inconsistent or contradictory findings. They must not contravene each other in vital aspects and application of relevant factors and tests.

26. What has been brought to our notice is that, the certificates of validity have been obtained or granted or issued by the Committee at Aurangabad.

27. There were several suggestions given on this point by both sides. Mr. Samant would submit that since the Petitions are pertaining to the Pune Scrutiny Committee and the orders of the Pune Scrutiny Committee are set aside, the matters are remanded and particularly to investigate the fraud, then, let the Pune Committee commence its job and function. The Pune Committee has already written to the Aurangabad Committee insofar as the balance six certificates are concerned and pertaining to the same Tribe. The Aurangabad Committee may or may not commence the inquiry or investigation, but that should not preclude the Pune Committee from initiating the process. Mr. Mendadkar on the other hand submits that there is a single family, namely Nagtilaks. This is a common surname. The ancestor is also common. It may be that the family is divided and some of them are residing in western Maharashtra and some are in Marathwada region. However, if parallel inquiries are commenced in two Scrutiny Committees, there is every likelihood of contrary findings or inconsistencies. Mr. Mendadkar would therefore submit that let one Committee initiate the process and complete it.

28. We would have ordinarily passed such an order based on these submissions, but all those affected are not before us. Today, the process has been already initiated by the Pune Committee, in the sense, notices have been issued to the validity certificate holders and they are summoned to appear. The Aurangabad Committee is yet to issue such notices. In the light of our order passed today, we would expect the Commissioner of Tribal Development to apprise the Aurangabad Committee of our directions and ensure that Aurangabad Committee also initiates similar process against those validity certificate holders whose claims are found to be *prima facie* doubtful and dubious. The Aurangabad Committee shall not wait for any formal orders from any Court and must proceed to carry out its duty in accordance with the Act and the Rules by issuing notices and holding inquiries. Since the certificates have been relied upon by the members of same family before both the Committees and the initial certificate holder, namely Asha's case being taken as the test case, the Aurangabad Committee should also, therefore, initiate the process and issue notices and cause them to be served. Presently, we do not pass any orders clubbing the matters, but it

will be entirely for the Commissioner or such authorities in-charge of administration and implementation of the enactment to issue directions so that the inquiries can be clubbed and to avoid any conflicting findings and opinions. However, we direct that the process be completed as expeditiously as possible and in any event within a period of six months from today.

29. Needless to clarify that the Commissioner of Tribal Development, on an independent scrutiny, noticing that the officials of the Department including some of the Committee members, research officers etc. are also involved in the fraud perpetrated on the public by the certificate holders, then, together with such certificate holders, these persons should also be prosecuted by instituting civil and criminal proceedings. Meaning thereby, the Maharashtra Act No. XXIII of 2001 and the Rules being silent on this aspect does not mean the officials of the Tribal Welfare Department can escape the consequences in law. If they are involved, they ought to be prosecuted and an F.I.R. be registered at the instance of the Department concerned against Departmental officials and the process taken to its logical end. In

addition, the proceedings under the Discipline and Conduct Rules should also be initiated as such acts would amount to gross misconduct. Then, appropriate penalties and punishments be inflicted and imposed. All this process be carried out and completed in accordance with law. It is clarified that beyond the *prima facie* expression in the orders of the Scrutiny Committee, we have not held that the certificate holders have brought fraudulent and bogus claims or that the whole inquiry was not genuine and authoritative or that all the claims lack bonafides. All contentions in that regard of all sides are kept open.

30. In the event any of the petitioners continuing in service or continuing studies, everything shall be subject to the final orders of the Committee, but till the Committee completes the process as directed by us, the services or the education shall not be disturbed or discontinued.

31. With the above directions, the Writ Petitions stand disposed of.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)