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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4711 OF 2011

Kaviraj Yelgulawar

.... Petitioner.

V/s.

The State of Maharashtra & Ors

.... Respondents.

Mr. Y.S. Jahagirdar, Senior Counsel a/with Mr. Sarang S. Aradhya for the petitioner.

Ms. Aparna D. Vhatkar, A.G.P. for the Respondents.

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

DATE : 27th January, 2017.

P.C. :

1) Mr. Jahagirdar, learned Senior Counsel appearing for the petitioner raised only one contention before us which in our opinion deserves acceptance.

2) The writ petition challenges the order passed by the Caste Scrutiny Committee, copy of which is Exhibit "A" to the writ petition namely, 5623 of 2011. That order dated 30th April, 2011 invalidates the claim of the petitioner no.1 (Muniraj) as belonging to Mahadeo Koli Schedule Tribe.

3) At page 59 of the paper-book to the writ petition is the genealogy /family tree which on perusal, according to Mr. Jahagirdar would indicate that within the family and common ancestor Narsing Laxman Yelgulwar, paternal relatives and from the side of the petitioner have all been granted caste validity certificates certifying them as belonging to Mahadeo Koli Schedule Tribe.

4) In the case of one of the cousins from the paternal side Bhavna Vishnu Yelgulwar, the Caste Scrutiny Committee had denied the certificate. That order of the Caste Scrutiny Committee was challenged by Bhavna Vishnu Yelgulwar in Writ Petition No. 1625 of 1994. That writ petition was allowed by the Division Bench of this Court by a detailed judgment and order on 14th March, 1996. A copy of that order is annexed at page 94 to 101 of the paper-book to the writ petition namely, No. 5623 of 2011.

5) Mr. Jahagirdar would submit that in one family it

cannot be that one branch belongs to the Tribe whereas, the immediate brother / cousin brother's branch does not. That means the progeny therein suffers and for no fault of the members of that branch. Mr. Jahagirdar would submit that another serious lacunae in the Committee's approach is that even after the judgment of the Division Bench of this Court in relation to Bhavna Yelgulwar who is relative of the petitioner from the paternal side, which everybody accepted including the Committee, nothing empowered the present Committee to question the binding judgment of this Court and ignore it. It cannot re-agitate the controversy and by such an approach.

6) We have found from the affidavit-in-reply filed in this writ petition that the Committee feels that in the light of the latter judgment of the Supreme Court of India, it is empowered to hold full-fledged enquiry and once that is the ratio of the Supreme Court judgment, then, relying thereon it can ignore a binding judgment of this Court.

7) We do not think that this is a correct approach in the

facts and circumstances of the present case.

8) The Committee relying upon certain other judgments of this Court came to a conclusion that by passage of time so many aspects and facts are brought before this Court and the Committee. The Tribe claim therefore cannot be scrutinized and verified in a mechanical manner but bearing in mind the mandate of Maharashtra Act No. XXIII of 2001, the Committee is obliged to hold an enquiry. Everybody therefore must establish and prove their affinity to the Tribe. They must also demonstrate as to how their area of residence can be said to be the one where this tribe is predominantly found.

9) We do not think this is a proper approach. For nowhere the Committee has observed that the earlier orders are vitiated and tainted by fraud, or misrepresentation by the applicant/petitioners therein. In such circumstances, it is clear that the documents produced by the petitioner, namely the order passed in the case of Bhavna, the caste validity certificates dated 2nd June, 1999 issued in the favour of the

cousin-brother from the paternal side Pawankumar Yelgulwar, Yuvraj (real brother), Shashibhushan, Deepak, Nagesh and Ms. Swati cannot be ignored. There is also caste validity certificate issued to one Santosh Yelgulwar.

10) We think that all these documents were extremely vital and had a great evidentiary value. They could not be brushed aside and their contents overlooked by the Committee. The impugned order is therefore vitiated by total non-application of mind. It is perverse as well. We therefore proceed to quash and set aside the same.

11) We allow the writ petition. Now a caste validity certificate certifying the petitioner as belonging to Hindu Mahadev Koli Scheduled Tribe be issued within a period of ten days from today.

[B.P. COLABAWALLA, J.] [S.C. DHARMADHIKARI, J.]