

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7066 OF 2014

Shrikant Nimba Jagtap

Petitioner

versus

1. State of Maharashtra through
Secretary, Tribal Development Department,
Mantralaya, Mumbai.

2. Scheduled Tribe Certificate Scrutiny Committee,
Nashik Division through Member Secretary.

3. The Collector and District Magistrate, Nashik

Respondents

Mr.R.K.Mendadkar for petitioner.

Ms.Neha Bhide, AGP, for Respondents-State.

CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.

DATE : 13th September 2017

PC :

1. The petitioner challenges the order passed by Scrutiny Committee invalidating the claim of petitioner as belonging to 'Thakur Scheduled Tribe'.

2. The petitioner had applied for a caste certificate and which was issued to him. The petitioner does not dispute that if any benefit on the strength of this certificate dated 20th December 2006 has to be obtained and particularly in terms of Maharashtra Act No.23 of 2001, then, underlying claim has to be verified by the competent

Scrutiny Committee. Since the petitioner relying on this certificate intended to pursue further educational prospects, he applied for admission and the institute to which he was admitted, forwarded the said caste certificate for verification and scrutiny by the competent Scrutiny Committee. The petitioner relied upon the certificates of validity issued to his cousin uncle and also relied upon pre-constitution documents.

3. The Scrutiny Committee on receipt of the application and documents in support thereof, forwarded these materials to vigilance cell for vigilance inquiry. After the vigilance cell conducted necessary inquiry, it submitted a report dated 30th November 2009. A copy of the report was duly served on the petitioner and the Committee called for his comments and explanation with regard to the contents thereof. Thereafter the petitioner appeared before the Scrutiny Committee. The Scrutiny Committee, however, by impugned order dated 18th September 2012, invalidated the claim of petitioner.

4. Mr.Mendadkar, learned advocate for petitioner, would submit that the petitioner's name is Shrikant Nimba Jagtap. His father is Nimba Kisan Jagtap. However, the petitioner relies upon family tree and that would indicate as to how one Hari Namdev Jagtap and the petitioner's father were related. That would indicate further that the petitioner's cousin cousin brother Ashokkumar Hari Jagtap and another cousin sister Pallavi Bhagwan Jagtap had been issued the certificate of validity and those validity certificates could have been relied upon. Those certificates of validity are admissible in evidence. However, the Committee has discarded them on the spacious footing that when the said certificates of validity were issued to Ashokkumar

Hari Jagtap and Pallavi Bhagwan Jagtap, the position in law was different. The Committee, according to Mr.Mendadkar, has been consistently taking this approach and discarding certificates of validity issued to the close relatives on the paternal side. Though there is no finding of fraud or mis-representation, still such certificates of validity are discarded. Learned advocate for petitioner would submit that this Court has heavily criticized this approach of the Committee and he relies upon a recent order of this Court dated 27th July 2017 in Writ Petition Nos.6972/2014, 6974/2014 and 6981/2014 of a Division Bench at Aurangabad Bench to which one of us (Justice S.C.Dharmadhikari) was a member.

5. After having perused the impugned order with the assistance of Mr.Mendadkar appearing for petitioner so also observations of the Division Bench in Writ Petition No.6972 of 2014 and other matters (supra), we are of the opinion that the petitioner can derive advantage or benefit by relying on the certificates of validity issued to Ashok Kumar Jagtap and Pallavi Jagtap, provided, he establishes his relationship and then these certificates of validity can be relied upon as they are close relatives from the paternal side. Mr.Mendadkar would submit that this Court should proceed on the footing that the relationship is established and in that regard he would submit that in the impugned order the Committee has referred to both Ashokkumar Jagtap and Pallavi Jagtap and their certificates of validity. There is, thus, no dispute about the relationship.

6. We are unable to agree with Mr.Mendadkar, for, what we find is that the certificate of validity has been issued to Pallavi Jagtap on 14th June 2005. The certificate of validity is also issued to

Ashokkumar Jagtap. That is relying upon various orders passed by this Court. A copy of the certificate of validity issued to Ashokkumar Jagtap is at page 58 and a copy of certificate of validity issued to Pallavi Jagtap is at page 59. However, the extract of vigilance cell report and which is relied upon, would indicate that petitioner's father is known as Nimba Kisan Jagtap. Then there is reference to another relative Bhagwan Kisan Jagtap. Then there is reference to one Hari Namdev Jagtap and Dattatraya Namdev Jagtap. It is stated that Hari Namdev Jagtap is a cousin cousin grandfather and that is how Ashokkumar Jagtap can be said to be a cousin cousin brother.

7. However, this document would not establish the genealogy or the family tree. It is evident that these are matters of fact and unless and before the certificates of validity issued to Ashokkumar Jagtap and Pallavi Jagtap can be relied upon, petitioner's relationship with them would have to be established. Meaning thereby, they must be close relatives from paternal side. It is only then the petitioner can rely upon the orders passed by this Court and particularly observations made by the Division Bench at Aurangabad Bench in Writ Petition No.6972 of 2014 and other petitions (supra).

8. In the circumstances, we set aside the order passed by Scrutiny Committee impugned in this case. We grant opportunity to the petitioner to once again establish and prove his claim as belonging to Thakur Scheduled Tribe. The petitioner can rely on the certificates of validity issued to Ashokkumar Jagtap and Pallavi Jagtap only after producing the relevant material to establish and prove the relationship.

9. While we allow the petitioner an opportunity to establish his claim and direct the Scrutiny Committee to pass a fresh order, we also clarify that we have not expressed any opinion on the rival contentions. Secondly, when the Committee decides the matter afresh pursuant to directions contained in this order, it shall not influence itself in any manner by earlier observations or the findings. Ordered accordingly.

10. This clarification is given because Mr.Mendadkar made a serious complaint that whenever certificates of validity are issued to close relatives from paternal side and they are relied upon by the parties like petitioner, the Committee invariably discards them and without any proof of fraud or mis-representation. Despite severe criticism and strong indictment of the style of functioning of the Committee, there is no impact on the Committee and the Committee has continued its approach and which is unsustainable in law. The certificates of validity issued in favour of relatives from paternal side are discarded by routine observations and by referring to some position of the law. Though there are several orders and decisions of this Court not upholding the approach of the Committee and particularly by only relying on the observations in the judgment of Hon'ble Supreme Court of India in the case of *Palghat Jilla Thandan Samudhaya Samrakshana Samiti and Another Vs. State of Kerala and another reported in (1994)1-SCC-359*, the Committee continues to make identical observations. Mr.Mendadkar complains that the petitioner cannot expect any justice from the Committee and it is likely that it will arrive at the same conclusion and pass identical order even after remand.

11. In the absence of strong supporting materials, we do not uphold this objection or complaint of Mr.Mendadkar. However, when such complaints are made repeatedly, we would caution the Committee that if it does not abide by the clarification given above and continues to be influenced by its earlier findings and conclusions, and in the event the order passed on the remand in the petitioner's case is adverse and is challenged on the ground as enumerated in Mr.Mendadkar's complaint, then, this Court would be constrained to record a finding of bias and/or pre-judging of the issue. In that event, the Court will not hesitate to direct taking action against the members of Scrutiny Committee. The Court will compensate the litigants like petitioner then with a direction to the Scrutiny Committee members to pay costs personally for the inconvenience and harassment caused to the petitioner, as also because valuable judicial time of this Court is wasted in fruitless litigation. The Committee shall decide the matter as directed above, as expeditiously as possible and within a period of three months from the date of receipt of a copy of this order. The petition is disposed off accordingly.

(PRAKASH D. NAIK, J.)

(S.C.DHARMADHIKARI, J.)

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