IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9481 OF 2015

Rajashri Prakash Ahire	}	Petitioner
versus		
State of Maharashtra	}	
and Ors.	}	Respondents

Mr. R. K. Mendadkar for the petitioner.

Ms. Sushma Bhende – AGP for respondent nos. 1 and 2.

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

DATED :- MARCH 3, 2017

P.C. :-

1. The scrutiny committee's order, invalidating the claim of the petitioner as belonging to Thakur Scheduled Tribe, passed on 22nd July, 2015, is under challenge in this writ petition.

2. The scrutiny committee noted that the petitioner is heavily relying upon not only some pre-constitutional documents, but an order passed by the scrutiny committee validating and accepting the claim of a cousin from the paternal side, namely, Madhav Tukaram Ahire. It may be that he is a second cousin, but the committee does not dispute that he is from the paternal side. The Tribal Research and Training Institute, Pune issued this validity

certificate in favour of Madhav on 16th April, 2002. The committee is aware that the family tree and supported by an affidavit is placed on record.

3. Despite the above, Mr. Mendadkar would submit that on remand by this court, the committee continues to hold the view that being a resident of village Vadgaon, Taluka Malegaon, District Nashik, the petitioner can never lay a claim as belonging to Thakur Scheduled Tribe. That Scheduled Tribe and the community population is not to be found in this taluka. Mr.Mendadkar would submit that every time this perception or view of the committee has coloured its vision and ultimate conclusion in its orders. Even if this court had time and again reminded the committee that there is a Gazette notification on record and duly placed in all such matters before the committee, which indicates that the restriction insofar as area is now removed. If that is removed by a parliamentary intervention, then, the said amendment order has to be given full legal effect. Mr. Mendadkar places heavy reliance upon the Scheduled Casts and Scheduled Tribes Orders (Amendment) Act, 1976. Mr. Mendadkar would submit that the amendment of the Scheduled Tribe Order is in the manner and to the extent specified in the Second Schedule to the Amendment Order. When the restriction

insofar as Thakur Scheduled Tribe is removed, then, there is no warrant for reading the Scheduled Tribe Orders (Amendment) as being restricted to the elections. It is, therefore, apparent that the committee's understanding is that the benefit of this Amendment Order can be taken only when the applicant or candidate before it is contesting an election. This understanding is contrary to law, according to Mr. Mendadkar.

4. Secondly, Mr. Mendadkar would submit that when there was no dispute about the contents of the documents, including the family tree and the tribe validity certificate issued in favour of Madhav, then, to discard it by terming that the order passed in that regard and issuing such a certificate to Madhav is not on merits would mean that the committee is critical of the Tribal Research and Training Institute members. The committee proceeds on the footing that they do not apply their mind when they issue such certificates or the merits of the claims are not gone into. Therefore, the committee, in the process, not only ignores a valid piece of evidence, but brushes aside some binding judgments and proceeds to criticise its own members.

5. We had called for the original record before the scrutiny committee only with a view to ascertain as to how the committee understands the above controversy. The only two issues

highlighted before us by Mr. Mendadkar are enough for disposal of this writ petition. In the Scheduled Casts and Scheduled Tribes Orders (Amendment) Act, 1976, the Second Schedule, referable to para 4 of that Order, indicates several Scheduled Casts and several Scheduled Tribes. Now, the entry in relation to the tribe in question is Entry No. 44, namely, Thakur, Thakar, Ka-Thakur, Ka-Thakar, Ma-Thakur, Ma-Thakar. There is no restriction as far as area is concerned nor is the tribe recognised as such with reference to any other region within the State. Pertinently, if one refers to Entry No. 45 (Thoti), then, it is apparent that the said Scheduled Tribe Amendment Order takes care to incorporate, in the bracket, the districts, namely, Aurangabad, Bhir Nanded, Osmanabed and Parbhani districts and Rajura tahsil of Chandrapur district. Once such a stipulation is absent in the case of Entry No. 44, then, the area restriction removal is complete. That is how Mr.Mendadkar is rightly placing reliance upon this Amendment Order. He is right in his criticism of the committee's order, despite such a clear and unambiguous stipulation.

6. As far as the committee's understanding is concerned, it proceeds and holds that the Amendment Order apart, one who is residing in Malegaon Taluka, District Nashik and particularly the villages within the vicinity of the same, is not entitled to claim a

validity certificate. The petitioner produced the above validity certificate, but the committee opined that going by a Full Bench Judgment of this court, rendered in the case of *Shilpa Thakur,* it has to check and verify the affinity of the applicant with the Thakur Scheduled Tribe community appearing at Sr. No. 44 in the interest of genuine Scheduled Tribes.

7. Time and again, we have been noticing the committee's orders making reference to genuine Scheduled Tribes. The committee's concern and anxiety that genuine Scheduled Tribes must obtain the benefits and concessions meant for tribals is understandable and deserves appreciation. However, when every candidate and applicant comes before it, the committee proceeds to test and question his bonafides. The committee feels that it is obliged to verify the version of such persons and not rely upon the documents though they are real and genuine. There has never been any attempt made to question the validity certificate of Madhav, who hails from the same region. When he is related to the petitioner from the paternal side, then, what inquiry is required is unclear to us. If Madhav has not obtained the certificate of validity by fraud or misrepresentation, then, the certificate of validity issued to Madhav way back in the year 2002, particularly on 27th February, 2002 needs necessarily to be

discarded is a strange approach of the committee. If that is questioned in the year 2015 and after 13 years of its issuance, then, the committee must realise the effect of such an act on his family and progeny. We have found that the committee does not dispute, in the impugned order, the affidavit about the family tree (genealogy) and the family tree itself. Apart therefrom, when the main document (certificate of validity of Madhav) is under consideration, the committee, in para 4.7 observes that the certificate issued to Madhav Pandurang Ahire by the scrutiny committee is issued to a secondary cousin and which cannot be accepted to grant the present claim of the petitioner, because each claimant has to stand on his/her own legs and merely because one of the family members' caste claim has been verified would not by itself be the foundation. The committee may rely upon an order passed by this court in the case of *Dharmendra Deoram Patil vs. Scheduled Tribe Scrutiny Committee and Ors.*[1], but the committee should be careful and read that order in its entirety. It is categorically observed in that order that the Hon'ble Supreme Court of India in the case of *Kumari Madhuri Patil and Anr. vs. Additional Commissioner, Tribal Development and Ors.*[2] has observed that each claimant has to stand on his/her own legs and not by relying upon somebody else's case. But that

1 2004 (I) All MR 512
2 AIR 1995 SC 94

is an observation made by this court when it found that the claims of the relatives, namely, Dashrath, Devram and Rupchand were never adjudicated by any scrutiny committee. They were beneficiaries of the appellate orders and certain documents, which could not be accepted as sufficient evidence in support of their tribe claim. Thus, by clearly misleading and misrepresenting the facts and not facing any scrutiny, but relying upon some order that these certificates of validity were obtained. That is how *Dharmendra's* case (supra) is not relevant for our purpose. However, in the present case, though the certificate is issued, according to the committee, by the experts and by proper application of mind by the Scrutiny Committee, Thane, to Madhav, still, the committee follows the dictum in *Dharmendra's* case (supra). We do not see any reason for following such judgment of this court and applying it mechanically. There is substance in the criticism of Mr.Mendadkar, therefore, that in matters after matters, the orders, which are already printed and typed earlier are passed by filling in the particulars. No independent scrutiny and independent application of mind to every claim, which is pending before the committee, therefore, is done. Mr. Mendadkar is justified, therefore, in criticising the general observation, which is very casually and light heartedly made that when a certificate is granted to the family member by

the committee within its jurisdiction, it has to be on its own merits. In the present case, there is no finding as to how the merits of the case of Madhav are different than that of the present applicant or vice versa. However, in Madhav's case, whether no inquiry was made and as observed by the committee, then, that should have been clearly set out. If the merits of Madhav's case have not been considered and therefore, Madhav has to be faulted and that means Madhav necessarily is a beneficiary of a fraud cannot be the conclusion and reached in every such case.

8. Therefore, we are unable to agree with Ms. Bhende appearing for the respondents that we must sustain the committee's order. We have found from a perusal of the original record specifically produced before us that the committee's order is vitiated by total non application of mind. It is vitiated by an error of law apparent on the face of the record and as pointed out above. The committee's order can be safely termed as perverse for it ignores and brushes aside legal and valid evidence. The documents, which have great evidenciary value, have not been taken into consideration.

9. In the circumstances, we allow the writ petition. We quash and set aside the impugned order. On par with Madhav Ahire, the

petitioner should be issued a tribe validity certificate within a period of four weeks from the date of receipt of a copy of this order.

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