

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10545 OF 2014

Dattatray Laxman Durgavale ... Petitioner
Vs.
State of Maharashtra & Ors. ... Respondents

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Mr. Chintamani K. Bhangoji for the Petitioner.
Mr. B. V. Samant, AGP for Respondent Nos. 1 & 2.
Mr. Neel Helekar a/w Mr. A. A. Garge for Respondent No.3.

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

DATE : OCTOBER 30, 2017.

P.C. :

1. We have heard Mr. Bhangoji appearing for the petitioner.
2. The Petitioner has challenged the order of the Scrutiny Committee, namely, the Scheduled Tribe Certificate Committee, Pune, dated 29th October, 2014.
3. The petitioner was appointed in the postal services of Government of India against a reserved post.
4. He was appointed on the footing that he has produced a caste certificate certifying him as belonging to Koli Mahadeo

Scheduled Tribe. On the strength of this certificate, after obtaining employment, the petitioner's case was referred to the competent Scrutiny Committee for verification and scrutiny of his claim.

5. The petitioner may have joined services with effect from 28th April, 2005, but the Department of the Central Government proceeding on the footing that it was obliged to refer the claim to the Scrutiny Committee, forwarded the tribe certificate of the petitioner to the 2nd respondent-Committee.

6. The 2nd respondent-Committee, after following the mandate of the Maharashtra Act No. XXIII of 2001 and the Rules framed thereunder, has proceeded to invalidate the claim. Hence this Petition.

7. The two contentions raised before us by Mr. Bhangoji are firstly, that the Scrutiny Committee has not considered the vital documents which were forwarded by the petitioner in support of his claim. In that regard, our attention is invited to page 34 of the paper book annexure "D". That is a communication from the petitioner dated 15th September, 2014 to the Member Secretary of

the Scrutiny Committee. In that, the petitioner says that the petitioner is seeking to establish and prove his claim of belonging to Koli Mahadeo Scheduled Tribe. The petitioner is relying on the documentary evidence produced before the Committee. That documentary evidence should also be taken as including the reliance by the petitioner on his fathers birth certificate or extract from the Birth and Death Register at the relevant time certifying that Laxman Rama Koli (father of the petitioner) born on 1st March, 1932, belongs to Koli Mahadeo Scheduled Tribe. That is the insertion or entry against the tribe column. The petitioner also relies upon a similar extract in the case of his real uncle from the paternal side Narayan Rama Koli born on 1st January, 1946. In his case as well, the entry is Mahadeo Koli. There is another real uncle Kashinath @ Krishnath Koli born on 13th January, 1938. Even in his case, there is a similar entry in the Birth and Death Register, copy of which entry is at pages 37 and 38 of the paper book. Mr. Bhangoji would submit that these documents have great probative value and should have been, therefore, considered by the Committee before it passed the impugned order.

8. The other argument of Mr. Bhangoji is that the petitioner and the similar claimants like him coming from some hilly areas are not confined necessarily to those places from where the Scrutiny Committee considers a caste/tribe to be emanating. The understanding, according to Mr. Bhangoji, of the Committee is that Mahadeo Kolis are predominantly found in the tribal areas of the State of Maharashtra and those from the other places are trying to usurp and wrongfully the benefits meant for these tribals. That is incorrect and that is how he would rely upon the findings in the order of the Committee to submit that the petitioner has enough material with him which would enable him to provide the requisite information and even stand successfully the affinity test. Therefore, on this count as well, the order of the Scrutiny Committee is vitiated and it must be set aside and the matter be restored back to the Committee for fresh consideration. In the meanwhile, the petitioner seeks protection of services.

9. Upon a perusal of the Petition and the annexures thereto, we are unable to agree with Mr. Bhangoji and for more than one reason. The petitioner does not dispute that his father's name is

Laxman Rama Koli @ Durgavale. The petitioner does not dispute that he was born on 1st March, 1932. The petitioner does not dispute that in the school record of his father Laxman Rama Koli, the Committee has found that the date of admission to the school is 20th October, 1939. The entry against the caste column is Hindu Koli. The argument is that in the Birth and Death Register, Laxman Rama Koli @ Durgavale's caste is entered as Mahadeo Koli and that would prevail upon the entries in the school records. Ordinarily, one would have taken note and a serious one of such a complaint, but what we found from the order of the Scrutiny Committee is that the Scrutiny Committee had indeed considered the documentary evidence including the birth record of Laxman Rama Koli and the school record. When the Committee referred to it, it found that in the birth record in respect of the father, which shows the entry as Mahadeo Koli, there is a specific remark in the Inquiry Officer's report. That remark is that this Inquiry Officer personally inspected the original birth/death record in the concerned Tahsildar's office. The birth record appears to be manipulated. The original entry was recorded as Koli. The word "Mahadeo" has been written above the word "Koli" in different ink

and different handwriting. The photo copies of the original register were also obtained by the Inquiry Officer and were placed on record of the Committee. It is in the light of this adverse remark or finding and the manipulation found from the document itself that the petitioner's claim was disbelieved. We do not see how an argument of perversity can be built and when the foundation of the same is extremely weak. We do not think that there would be any different opinion recorded had the Committee referred to the birth and death extracts of the real uncles of the petitioner on the paternal side and which are relied upon by the petitioner. Even if the documents referred in the communication at page 34 had been on the file or record of the Scrutiny Committee, we do not think that the Committee was prevented or prohibited in law from recording an adverse opinion with regard to the document pertaining to the petitioner's own father. If the entries in relation to the petitioner's father in the birth and death extract were tampered with, then, that was enough for recording a negative finding against the petitioner. The conduct of the petitioner, therefore, clearly disentitles him from obtaining any relief. It is that approach of the Committee which we find to be

entirely sustainable and justified in law. It is a patently false claim laid by the petitioner. The entries as old as of 1932 and 1939 reveal that the petitioner's ancestors and his father do not belong to Koli Mahadeo Scheduled Tribe. That some of the members of this tribe, though not belonging to Koli Mahadeo, have been successful in obtaining either a complete relief or a direction of remand, is another argument of Mr. Bhangoji but which fails to impress us. In similar cases, there may have been a direction of this Court to reconsider the matter, but that does not bind us. The petitioner's case stands on a totally different footing and when the fraud as perpetrated on the Committee is apparent. We do not think that such underlying fraud should result in the petitioner obtaining any favourable relief. The consequences of such a patent fraud must be visited and handed down on the petitioner. Once we agree with the Committee's reasoning as noted above, then there is no necessity of referring to the other materials, particularly on the point of affinity. We do not think that the other findings of the Scrutiny Committee need to be gone into and in details. Once the claim fails on the point of fraud, then, that is sufficient to deny the reliefs as claimed in the Petition.

10. As a result of the above discussion, the Petition fails and it is dismissed. No costs.

11. At this stage, Mr. Bhangoji prays that the ad-interim order passed by this Court on this Petition be continued for a period of eight weeks to enable the petitioner to approach the higher Court or to reconsider his position.

12. On 15th December, 2014, this Court directed that no coercive steps based upon the impugned order be taken against the petitioner. In fact, protection was granted by this Court on 12th November, 2014. That protection has been continued till date. Pertinently, and as pointed out by the respondents, on that date the authoritative pronouncement of the Hon'ble Supreme Court in the case of *Chairman And Managing Director, Food Corporation of India & Ors. v. Jagdish Balaram Bahira & Ors.*, reported in *(2017) 8 Supreme Court Cases 670* was not available. This Court was proceeding on its own full Bench decision in the case of *Arun s/o Vishwanath Sonone v. State of Maharashtra & Ors.* reported in *2015 (1) Mh.L.J. 457*. When

the decision in the case of *Arun Sonawane* was pronounced to be manifestly erroneous and illegal by the Supreme Court and the Supreme Court held that fraud vitiates everything and from the inception, then, we cannot continue this ad-interim order. It is vacated forthwith.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)