

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6891 OF 2018

Narayan Ganesh Khairnar	.. Petitioner
Versus	
State of Maharashtra & ors	.. Respondents

...

Mr.R.K.Mendadkar with Mr.Tanaji Jadhav for the petitioner.
Mr.S.B.Kalel, AGP for the State.

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

DATED : 28th JUNE 2018

P.C:-

- 1 Rule. Rule made returnable forthwith.
- 2 This petition was mentioned in the morning session.

On account of extreme urgency, we permitted Shri Mendadkar to mention this matter during the course of our proceedings and before 2.00 p.m. The Vice Chairman, the Member Secretary and the member of the Schedule Tribes Certificates Scrutiny Committee, Konkan Division, Thane has passed an order on 27th June 2018 invalidating the claim of the petitioner

as belonging to Thakur Schedule Tribe. The order itself recites that the certificate of validity was issued to one Ganesh Laldas Khairnar, father of the petitioner and Hemant Laldas Khairnar, real uncle. These certificates of validity were issued after the father gave information regarding the traits, characteristics, customs and traditions of the community to which he belongs and also a genealogy was placed on record establishing and proving the relationship. Yet, these certificates of validity have been discarded and contrary to the law laid down by this court repeatedly. The first reason that is assigned is that those certificates of validity have been issued to the father and real uncle after considering the ratio of various judgments of this court, but the father of the petitioner tried to conceal the information pertaining to one of the uncle of the petitioner whose tribe claim was invalidated by the Scrutiny Committee, Thane by order dated 29th December 2016. Then, this uncle Nitin Shivdas Khairnar, though being the cousin brother of the petitioner's father, his name was conveniently omitted from the genealogy and affidavit filed by the petitioner's father in the instant case on 11th August 2016. Thus, the copies of the

validity certificates though supporting the claim, but the uncle's name being withheld and that details pertaining to this uncle were obtained only by the Police Vigilance Cell would mean that the petitioner has not approached this Committee with clean hands and has misled the Committee. Pertinently, the genealogy and affidavit filed in the present case by the petitioner's father is dated 11th August, 2016, and the invalidation order in the case of Nitin is subsequent thereto. The father of the petitioner could not have anticipated in advance that Nitin's claim is going to be invalidated or rejected. That was in December, 2016. Every explanation or justification for rejection of a valid admissible piece of evidence is thus vitiated by complete non-application of mind to relevant and germane facts.

3 We are sorry to say that this reasoning does not find any support from any judgment either rendered by the Hon'ble Supreme Court or by this Court. True it is that certificates of validity of close relatives/blood relatives can be discarded, but there has to be a proven case of fraud or misrepresentation.

With all this that the committee narrates and at page 28 of the paper book, there is no explanation why the father's certificate of validity has not been recalled or cancelled. With all this, why the committee does not deem it fit and proper to then cancel the certificate of validity issued to Hemant Laldas Khairnar, has not been clarified to us at all. This reasoning of the Committee also indicates that this cousin brother of the father Nitin Shivdas Khairnar has challenged the order of the Committee invalidating his claim by filing Writ Petition No.578 of 2017. The impugned order does not indicate anything with regard to the outcome of these proceedings.

4 With all this and the Committee being aware that it was passing an order on 27th June 2018 in the teeth of atleast two or three Division Bench judgments of this Court, the recent one being pertaining to Thakur Schedule Tribe itself and pronounced on 22nd December 2017, ***Motilal s/o Namdeo Pawar Vs. Schedule Tribe Scrutiny Committee and others*** (Writ Petition No.7 of 2014) it still has proceeded to pass the impugned order which is entirely unsustainable. It is vitiated

by total non-application of mind and can be safely termed as perverse. If the committee proceeds to invalidate every claim of a member of Thakur Schedule Tribe, though these claims are supported by certificates of validity within the family, then, we have no duty to go on setting aside such orders and granting certificates of validity. Precisely, that is being done by us for the past three days in relation to this committee. Hence, the writ petition is allowed.

5 The order of the Committee is quashed and set aside.

6 Shri R.B. Hiwale, Member of Schedule Tribe, Konkan Division, Thane should within one hour from now walk in with the certificate of validity in this Court and we will pass further orders thereafter.

7 It is reported by Mr.Mendadkar at 5.00 p.m that the order passed has been complied with and a certificate of validity has been issued. The petitioner has been able to meet

the deadline before 5.00 p.m so as to enable her to participate in the ongoing admission process. We do not think that merely because a certificate of validity has been produced within one hour of the passing of the order that the injustice which is meted to several such students stands mitigated automatically.

8 The Committee does not realize that students who belong to Schedule Caste and Schedule Tribe and have a caste certificate but have to comply with the statutory condition of obtaining a certificate of validity so as to enable him/her to secure admission, pass through several obstacles and hurdles, the certificates of validity are not granted for months together for the scrutiny and verification is never completed before the admission process. There may be practical difficulties in the sense lack of infrastructure and staff disables such committees from disposing of pending matters but what we invariably find is that when matters reach us, the certificates of validity are not issued to a daughter or son, though the father holds them and relying on that certificate of validity, the claim is asserted to be genuine and bonafide. If there is an on-going proceeding in

respect of the certificate of validity already issued in the sense show cause notice is issued and a father is summoned to answer a charge of fraud, then, we can understand a denial of a certificate of validity to the daughter or son, but we do not understand the routine course adopted and charted by this Committee to deny the certificate of validity to the daughter or son only because some doubt is entertained by it about the genuineness of the father's claim. They are aware of several judgments of this Court which have repeatedly set aside their orders and quashed their conclusions, particularly in relation to the same Schedule Tribe i.e. Thakur, Entry no.44 of the Presidential notification. Yet, day-in-day out, such orders are passed. The harassment and ill-treatment continues and not every tribal can afford to approach this Court. We are deriving no pleasure in summoning members of the Committee to this Court and giving them a dressing down in open court but that frequent exercise also did not have the desired result.

9 Thus, the State also does not adopt any proceedings against the members of the Scrutiny Committee who are

indicted as they routinely defy the orders and judgments of this Court. We also share and are aware about the State's concern that the concessions and reservations, relaxation meant for Scheduled Castes and Scheduled Tribes reach the genuine section of them are not snatched by those who do not deserve them. The Committee must trust this Court at least for it has never been party to a claim which is bogus and malafide, nor has it proceeded to uphold it routinely. In the circumstances, we do not understand this disobedience and defiance of this Court's judgments and orders. None of the adverse remarks in our judgments have had the desired effect. In the circumstances, we impose costs of Rs.1,00,000/- (Rupees One lakh) payable to the petitioner and which shall be apportioned between three members of the Committee. The costs should be paid in equal proportion by these members to the petitioner within one week from today.

10 Rule is made absolute accordingly.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)