

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION ST NO.22558 OF 2018

Rajeshwari Sudhir Thakur	.. Petitioner
Versus	
State of Maharashtra & ors	.. Respondents

...

Mr. R.K. Mendadkar for the petitioner.
Mr. S.B.Kalel, AGP for the respondent.

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

DATED : 3rd AUGUST, 2018

P.C:-

1 This petition was produced before us on account of extreme urgency. The urgency, according to the petitioner, is that the petitioner is a student and seeking admission against a seat reserved for Schedule Tribe in the ongoing examination process. The National Eligibility Entrance Test (NEET) UG-2018 was conducted and the petitioner appeared therein. She has successfully cleared that test and based on a certificate styled as 'caste/tribe certificate', she applied for admission against a reserved seat. That admission can be only if the caste

claim is verified and scrutinized in accordance with the Maharashtra Scheduled Castes, Scheduled Tribes, De Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2001 (Act 23 of 2001). The competent/scrutiny committee is the one situate at Nandurbar. Initially, the petitioner was apprehensive that the claim would not be scrutinized and verified before the cut-off date. The cut-off or deadline is 3rd August 2018. However, the petitioner was served with a copy of the impugned order invalidating the claim.

2 The petitioner, *inter alia*, contends that the Committee has proceeded to rely on some materials adverse to the petitioner, but without giving any opportunity to the petitioner to meet the said adverse material. In other words, a document was introduced during the course of scrutiny and verification by the Committee and based on that, the claim has been rejected. The document is stated to be an alleged school entry, but pertaining to one Gulfa Jagdev. The Committee feels

that this person is the cousin great grandfather of the petitioner and in relation to his school admission, the school admission extract book shows against the caste column entry "Maratha". Thus, every Maratha cannot claimed to be Thakur Scheduled Tribe.

3 The petitioner alleges that neither the Vigilance Cell collected any document in which such an entry appears nor did the Vigilance Cell report contain any reference to the same. A copy of this report was forwarded to the petitioner along with a show cause notice and the petitioner replied it promptly. The petitioner was no where made aware of such a document and the petitioner could not have dreamt of its existence or that the Committee would rely on it to defeat an otherwise lawful claim.

4 With the assistance of Mr.Mendadkar and Mr.Kalel, learned AGP, we have perused the petition and the annexures thereto. Mr.Kalel could not point out to us any material which would indicate that the petitioner had knowledge of the school admission enter book no.1, registration no.28A and other

details about Shri Gulfa Jagdev. That the petitioner has suppressed the fact that this person was his relative, is thus a finding recorded without putting to the petitioner the said case or the document or disclosing to the petitioner the contents thereof in advance and inviting the petitioner response to the same. Thus, in utter breach of principles of natural justice, the impugned order has been passed. It is well settled that any adverse material, and if intended to be relied upon, has to be brought to the notice of the concerned person appearing before a quasi judicial authority and quasi judicial authority cannot pass an order relying on it unless it gives full opportunity to the party appearing before it. The principles of fairness, justice and equity require that every vital adverse material should be brought to the notice of the affected party. In the instant case, grave and serious prejudice is caused by not disclosing to the petitioner this crucial document and inviting her response thereto. The emphasis on this document is apparent and it is the only adverse material.

4-A On this short ground alone, the impugned order is quashed and set aside.

5 The Committee will now re-verify and re-scrutinize the petitioner's claim and pass a fresh order on merits and in accordance with law. If it intends to rely on the entry pertaining to Gulfa Jagdev, then all details in relation to the same, shall be brought to the notice of the petitioner well in advance and prior to the oral or personal hearing. Thereafter, the Committee will pass a fresh reasoned order uninfluenced by the earlier order.

6 We also invite the attention of the Scrutiny Committee to a recent order passed by Hon'ble Supreme Court in relation to entry no.44 in the Presidential Notification pertaining to Thakur Scheduled Tribe. The said order relates to the Constitution (Scheduled Castes) Order, 1950 and clarifies that beyond his entry, and as it stands, no other requirement is to be read in, much less an area restriction. That has been removed by the Constitutional Amendment Act, 1976.

7 The Committee shall pass a fresh order as expeditiously as possible, and in any event, by 31st August 2018. The petitioner shall co-operate in early disposal of the proceedings before the Committee.

8 We clarify that we have not expressed any opinion on the rival contentions.

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

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signed by
Jayant
Vishwanath
Salunke
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