

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12099 OF 2012

Rajendra Shripati Malage

..Petitioner

Versus

State of Maharashtra and others

..Respondents

**Mr. C. K. Bhangoji I/by Mr. R. K. Mendadkar, Advocate for the
Petitioner.**

Mrs. S. D. Vyas, “B” Panel Counsel for Respondent Nos.1, 2 & 4.

CORAM : B. R. GAVAI &

M. S. KARNIK, JJ.

DATE : 26th OCTOBER, 2018

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Rule. Rule made returnable forthwith. Heard by consent.

2] The Petitioner has approached this Court being aggrieved by the order passed by the Respondent No.2 – Scrutiny Committee, thereby invalidating the claim of the Petitioner belonging to “Mahar” Scheduled Caste.

3] The claim of the Petitioner is rejected only on the ground that the Petitioner is not a resident of State of Maharashtra and as such is not entitled to be treated as Scheduled Caste in the State of Maharashtra.

4] The issue is no more res-integra. The Hon'ble Apex Court in the case of Sudhakar Vithal Kumbhare Vs. State of Maharashtra and others¹ had an occasion to consider similar issue. It will be relevant to refer to the following observations of the Hon'ble Apex Court :-

“.....It is one thing to say that the expression “in relation to that State” occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State whose Governor has not been consulted; but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States Reorganisation Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the district of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood the tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of

¹ (2004) 9 SCC 481.

disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganisation might have agreed for inclusion of the said tribe Halba/Halbi as a Scheduled tribe in the State of Maharashtra having regard to the said fact in mind.”

5] It could thus be seen that the Hon'ble Apex Court has held that if prior to the re-organization of the States, the area in which a candidate originally resides and the area where he is migrated, were in the same State and if the Caste/Tribe is notified as Scheduled Caste or Scheduled Tribe in both the State, then such a candidate cannot be denied the benefit of belonging to that category.

6] Undisputedly prior to the re-organization of the States, both Chikodi taluka in Belgaum district and Kolhapur were the part of State of Bombay. Only after the re-organization, Kolhapur district has come in the State of Maharashtra, whereas Chikodi taluka in Belgaum district is in the State of Karnataka. A judicial note is also taken of the fact that there is long standing agitation by the residents of Belgaum district for their inclusion in the State of Maharashtra.

7] In that view of the matter, we find that impugned order is liable to be quashed and set aside. The impugned order is therefore quashed and set aside and following order is passed

ORDER

- I] The Writ Petition is allowed.
- II] It is held and declared that the Petitioner belongs to “Mahar” Scheduled Caste.
- III] The Respondent No.2 – Scrutiny Committee is directed to issue Caste Validity Certificate to the Petitioner within a period of two weeks from today.
- IV] All consequential benefits shall follow.
- V] Rule is accordingly made absolute in the aforesaid terms.

[M. S. KARNIK, J.]

[B. R. GAVAI, J.]