

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

WRIT PETITION NO. 125 OF 2017

Tanmay Sudesh Hemade	}	Petitioner
versus		
State of Maharashtra and Ors.	} }	Respondents

Mr.R.K.Mendadkar with Ms.Tejasvini
Bhamre for the petitioner.

Mr.V.M.Mali-AGP for State.

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.
DATE :- JANUARY 29, 2019**

P.C. :-

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges the order dated 15th October, 2016 passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane.

2. The petitioner is the citizen of India. The petitioner was granted admission in the first year of three years' diploma course (Mechanical Engineering) during the academic year 2014-15 against a seat reserved for Scheduled Tribe. This admission was granted by respondent no. 4 pending the decision of the scrutiny committee.

3. The petitioner was aware that the claim made by him on the basis of a caste certificate issued by the competent authority cannot be held to be sacrosanct and final. The caste certificate dated 27th July, 2015, copy of which is at Exhibit 'B' to the petition was forwarded for scrutiny and verification in terms of 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 (hereinafter referred to as "the Maharashtra Act 23 of 2001") to the competent scrutiny committee. This scrutiny committee, through its Vigilance Cell, conducted thorough inquiry and recorded statement of the father of the petitioner with regard to socio cultural affinity. The other records and particularly pertaining to paternal relatives of the petitioner were obtained. This was a school record. Based on all these materials, the Vigilance Cell prepared a report and submitted the same to the scrutiny committee.

4. It is common ground that after this report was submitted, a copy thereof was sent to the petitioner by Registered Post Acknowledgment Due. Along with that, the petitioner was called upon to furnish his reply on the report. This packet was received

by the petitioner and he submitted his reply on 15th September, 2015.

5. The first contention of Mr.Mendadkar learned counsel appearing for the petitioner is that the scrutiny committee has completely ignored the reply given by the petitioner on the report of the Vigilance Cell. In that detailed reply, the father of the petitioner pointed out that the great grandfather of the petitioner, namely, Kamalya Hemade was working as a domestic help. He was serving a Brahmin family. The said great grandfather was illiterate and was not aware of the status, namely, tribe or caste. When his son Jayram Hemade was to be admitted to a school, the employer mentioned the caste of Kamalya Hemade as Hindu Koli. That is how as against the name of Jayram Hemade, the entry in the caste column in the school record is Hindu Koli. There is no record of the said Kamalya thereafter removing the child from the school.

6. The father of the petitioner has pointed out that the later generation was desirous of taking education and though Jayram Kamalya Hemade was employed as a domestic help, he, with the help of the said employer, entered the names of his children in a school. However, he was also not an educated person. The employer was also not aware of the details of the tribe and

therefore, entered the caste as Koli or Varli. This by itself is not decisive. It is, therefore, evident that on account of illiteracy, the persons from the community suffered immensely. When they got opportunity to educate themselves, because of lack of information, they did not provide the correct description of their caste/tribe. In these circumstances, relying upon the oldest entry, the claim could not have been invalidated is the submission of Mr.Mendadkar.

7. Mr.Mendadkar then contended that in the socio cultural affinity test, all the traits, characteristics, traditions and rituals of the tribe have been mentioned. The information tallied with the anthropological data. The committee, therefore, should have considered this material and not arrived at a technical conclusion that the petitioner has failed to establish his claim as belonging to Koli Malhar Schedule Tribe. The materials that were produced and relied upon to come to the contrary conclusion have been put to the petitioner and the petitioner has duly furnished explanation thereto. However, that has been rejected. Mr.Mendadkar, therefore, submits that contrary to the mandate of the Act and the Rules, the scrutiny committee, in an arbitrary manner, proceeded to invalidate the claim. The impugned order, therefore, deserves to be quashed and set aside.

8. Additionally, Mr.Mendadkar submits that in this writ petition, at the stage of issuance of notice on 6th January, 2017, a Division Bench of this court directed that the fourth respondent shall not take any coercive steps against the petitioner in pursuance of the impugned order of the scrutiny committee. Meaning thereby, the petitioner's education has been continued and the petitioner will suffer immensely in the event the impugned order is now upheld. Mr.Mendadkar, therefore, submits that interest of justice demands that for a proper and thorough scrutiny of the claim, the matter should be sent back to the scrutiny committee.

9. The learned AGP, on the other hand, submits that the committee's approach is consistent with the Act and the Rules. The scrutiny committee has not acted in a biased manner nor is it prejudiced against the petitioner. The scrutiny committee has very fairly analysed the controversy and has referred to germane and relevant material. It has disbelieved the version of the petitioner on account of the inconsistency in the documentary evidence. Further, the petitioner could not establish and prove that he belongs to Hindu Malhar Koli, which is a Scheduled Tribe. In these circumstances and when there is also a finding of suppression of relevant fact, then, all the more this court should

not interfere with the impugned order in writ jurisdiction. The writ petition be dismissed.

10. With the assistance of the learned counsel appearing for both sides, we have perused the writ petition and all the annexures thereto.

11. We want to clear the ground with regard to the pendency of the writ petition and the ad-interim/interim protection. The law is very clear. By virtue of the Maharashtra Act 23 of 2001, in the event parties like the petitioner wish to rely upon the caste certificate for the purposes of public employment or for admission into any educational institution or for any other purpose or for the purpose of contesting an elective post etc., he has to, after obtaining the caste certificate from the competent authority, go through the process of verification of the caste certificate by the scrutiny committee. That is the mandate flowing from section 6 of the Act. After the scrutiny and which shall be in accordance with the Act, if the scrutiny committee is of the opinion that the person is not belonging to Scheduled Caste/Scheduled Tribe claimed and has obtained false caste certificate to that effect, then, the scrutiny committee is empowered to cancel and confiscate this caste certificate. That is how section 7 of the Maharashtra Act 23 of 2001 would read. By section 8, the burden

of proof is on the person claiming to be belonging to the caste/tribe. Thus, a burden is on the applicant/claimant and he has to discharge it.

12. The Rules have been framed consistent with the object and purpose sought to be achieved by the law. Therefore, in every petition under Article 226 of the Constitution of India, if the court issues notice and grants an ad-interim/interim protection till it scrutinises the legality and validity of the order of the scrutiny committee, that by itself does not create any equity nor can a mere sympathy displace the law. After a complete exercise, if this court finds that the petitioner has challenged the order of the scrutiny committee, but is unable to substantiate any of the grounds of challenge, then, the petitioner must suffer all consequences in law. Once this court upholds the order of the scrutiny committee, then, the consequences provided by law must be visited on the petitioner. The petitioner cannot escape the consequences. The admission being protected by an ad-interim/interim order means nothing. Once the claim is found to be baseless and false, then, the admission against a reserved seat cannot be protected and must perish along with the caste certificate which itself is cancelled and stands confiscated. We, therefore, do not think that merely because petitions are pending in this court for some time and the candidates like the petitioner

continue their education does not mean that this court is absolved of its duty in law to scrutinise the validity of the impugned order. We proceed precisely on these lines.

13. The scrutiny committee was seized of the caste certificate and while it undertook the process of a thorough scrutiny and verification of the claim, it made over the inquiry in terms of the Rules by calling upon the Vigilance Cell attached to it to conduct the home inquiry and to submit its report. It is common ground that such a home inquiry was carried out and the report was submitted on 22nd December, 2014. The Vigilance Cell comprises of a Research Officer and his remarks were that in school education register, the petitioner's grandfather's tribe was mentioned as Koli. The petitioner's father's tribe entry was M. Koli and real aunt's and real uncle's tribe entry was found as Varli. The surnames of applicant's paternal side relatives are found different in application form 'E' and the statement furnished by the applicant's father to the Vigilance Cell. When this report was forwarded to the petitioner and his explanation was invited, he gave a written explanation on 6th April, 2015. After that, the petitioner was also called for a personal interview. The father of the petitioner who gave this explanation was also present.

14. In order to satisfy ourselves, with the assistance of Mr.Mendadkar, we have perused this statement of the father. This is an explanation provided to the show cause notice received from the scrutiny committee. That show cause notice called upon the petitioner to show cause why the findings in the report of the Vigilance Cell should not be accepted together with the comments of the Research Officer. In answer, the petitioner's father Sudesh Jayram Hemade clearly stated that Jayram Kamalya Hemade was the grandfather of the petitioner. That Meenakshi Jayram Hemade is the real aunt of the petitioner from the paternal side. That Narsinh Jayram Hemade was the real uncle from the paternal side. Now, if Jayram is the grandfather, the school records in relation to him and particularly the entry in the caste column shows that he is Hindu Koli. Now, Hindu Malhar Scheduled Tribe and Hindu Koli are definitely distinct tribes or communities. Then what we have seen is entirely contradictory to this position emerging from the record of the grandfather. Meenakshi Jayram Hemade and Narsinh Jayram Hemade respectively the aunt and uncle of the petitioner had taken education in a school. The records in relation to these two persons denotes that the entry in the caste column is Hindu Varli. This is a distinct tribe. It is in these circumstances that when the record in relation to the school attended by the petitioner's father

Sudesh is perused, there, the entry in the caste column is Hindu M. Koli. If this is inconsistent with the overwhelming documentary evidence which is pre-constitutional in nature, then, a finding of fact recorded by the scrutiny committee can never be said to be perverse. The finding of fact is that the oldest entries are not consistent with the claim of the petitioner. The petitioner has miserably failed to discharge the burden. The explanation given by the petitioner's father, to say the least, is wholly unreliable and untrustworthy. That Kamlya Hemade, the great grandfather of the petitioner was employed as domestic help at a Brahmin's house and that he was illiterate and when he was desirous to educate his son, it is the Brahmin employer who helped him to get his child admitted to a school. This may be true, but to then say that the Brahmin mentioned this caste and that is why all the further entries appearing as Hindu Koli is a version which cannot be accepted at all. It is bereft of any support. Nobody has come forward to substantiate or support this claim of the petitioner's father. This one sided version of the father, therefore, does not merit any acceptance.

15. Besides this, what we find is that on two occasions, the father of the petitioner was called for hearing. His mother was also present. It is the mother who furnished certain information

about the socio cultural affinity. That information was also taken into consideration by the scrutiny committee. It found that against the overwhelming documentary evidence and to the contrary, this material in the form of answers to a questionnaire, could not establish the socio cultural affinity. The overall material was taken into consideration. The scrutiny committee found that once there is total lack of consistency with the entries in relation to grandfather, real aunt and uncle, then, it will not be safe to accept the petitioner's version. That such a version, therefore, cannot be termed as having any probative value.

16. Besides that, in the teeth of this overwhelming documentary evidence of the year 1932, the scrutiny committee had before it another material and that is in the form of an order dated 26th November, 2012. Kumari Nikita Narsinh Hemade, the petitioner's cousin sought a certificate of validity from the scrutiny committee and by raising an identical claim. The committee passed an order against her. It invalidated the claim of Nikita. Nikita accepted this order of the scrutiny committee and has not challenged it further. Once the scrutiny committee found that a fact relevant and germane to the inquiry has been suppressed, including the relationship with Nikita Hemade, then, additionally it found that it must proceed to reject the version of

the petitioner. Such an approach of the scrutiny committee can hardly be said to be arbitrary, much less perverse.

17. We find no merit in any of the contentions of Mr.Mendadkar and for the aforementioned reasons, we agree with the scrutiny committee that the caste certificate has been obtained falsely and it deserves to be cancelled and confiscated. We, therefore, uphold the order of the scrutiny committee and dismiss this writ petition. The ad-interim order is vacated forthwith.

18. At this stage, Mr.Mendadkar prays that the ad-interim order in this petition be continued for a period of three weeks to enable the petitioner to challenge this order in a higher court. This request is opposed by the learned AGP.

19. After having found that the claim of the petitioner was not substantiated by any materials and the petitioner suppressed a very vital fact in relation to a claim before the committee, all the more we are not inclined to accept the request of the petitioner. It is refused.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)