

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3048 OF 2016

Anandrao V. Kisave ...Petitioner
Versus
State of Maharashtra & ors ...Respondents

Mr. Girish Shukla, for the Petitioner.
Mr. S. B. Kalel, AGP for Respondent nos.1 to 4/State.
Mr. R. K. Mendadkar, for Respondent no.2.
Ms. Raveena yadav, I/b Ashok Purohit & co., for Respondent
no.3.

CORAM: R. M. BORDE &
N. J. JAMADAR, JJ
DATED: 7th JUNE, 2019

Oral Order:-

1. The Petitioner is objecting to the tribe validation certificate issued in favour of Respondent no.2 by Respondent no.4 – Scrutiny Committee, by an order dated 18th December, 2014. The Petitioner initially has tendered an application for allotment of retail petroleum outlet dealership in response to the advertisement issued by the Petroleum Company. The Petitioner claims to belong to reserve category i.e. 'Dhangad' Scheduled Tribe (ST). Since, the certificate issued to the Petitioner has been held to be invalid, the process of allotment of petrol pump was completed and Respondent no.2 has been allotted the dealership. The Petitioner claims that he is a 'person aggrieved' and, as such,

is entitled to impeach the eligibility of Respondent no.2. Respondent no.2 belongs to 'Koli Mahadev' (ST) and a tribe certificate issued to her has been held valid by the Scrutiny Committee in view of the order passed on 18th December, 2014.

2. So far as the Petitioner is concerned, though he claims to belong to 'Dhangad' (ST) and has been issued a tribe certificate, the same was referred for verification to the Scrutiny Committee and the Scrutiny Committee on consideration of relevant documentary evidence as well as after going through the report of the vigilance cell, has directed invalidation tribe certificate issued to the Petitioner. The Petitioner challenged the order passed by the Scrutiny Committee by tendering Writ Petition No.4503 of 2004. The petition was taken up for consideration by the Division Bench of this Court and by an order dated 5th December, 2011, the same has been dismissed. This Court had held that the Petitioner does not belong to 'Dhangad' (ST) and that, in fact, he belongs to 'Dhangar' caste.

3. We have perused the order passed by the Scrutiny Committee dated 18th December, 2014, whereby the tribe certificate issued to Respondent no.2 has been held to be valid. The Scrutiny Committee had recorded that the tribe

certificate issued to blood relations of the Petitioner namely Ajay Vitthal Jagdale and Amar Vitthal Jagdale, were held valid by the Scrutiny Committee. There does not appear to be any inconsistency or error committed by the Scrutiny Committee in directing issuance of validity certificate to the Petitioner. In the matter of ***Apporva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee***,¹, the Division Bench of this Court has held that if the caste claim of the blood relations has been held to be valid then, unless it is demonstrated that the validation certificate has been obtained by practising fraud or by placing reliance on fabricated document, ordinarily, such evidence shall be accepted for issuing validation certificate. In the instant case, there is no allegation that the tribe certificates issued to the blood relations of the Petitioner were obtained by practising fraud or that they have suppressed any material evidence from the Scrutiny Committee while securing validation certificate. In the circumstances, the order passed by the Scrutiny Committee on 18th December, 2014, cannot be said to be erroneous.

4. The challenge raised by the Petitioner to the order passed by the Scrutiny Committee holding Respondent no.2

1 2006(6) MhLJ 401.

to be a member of the Scheduled Tribe category is devoid of merits. In the matter of ***Ayubkhan Noorkhan Pathan vs. State of Maharashtra and others***², while examining 'locus' of Petitioner before Supreme Court to challenge caste validation certificate issued to Respondent therein, the Apex Court has observed thus:

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from *legal injury* can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right or insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to *enforce a legal right*. In fact, the *existence of such right, is the foundation of the exercise of the said jurisdiction by the court*. The *legal right that can be enforced* must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide *State of Orissa v. Madan Gopal Rungta* (AIR 1952 SC 12) *Saghir Ahmad v. State of U.P.* (AIR 1954 SC 728), *Calcutta Gas Co. (Proprietary) Ltd v. State of W.B.* (AIR 1962 SC 1044), *Rajendra Singh v. State of M. P.* ((1996) 5 SCC 460) and *Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar* ((2009) 2 SCC 784).

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a

person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide *Shanti Kumar R. Canji v. Home Insurance Co. of New York* ((1974) 2 SCC 387) and *State of Rajasthan v. Union of India* ((1977) 3 SCC 592).

11. In *Anand Sharadchandra Oka v. University of Mumbai* ((2008) 5 SCC 217), a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.”

5. In the instant matter, though the claim of the Petitioner of his belonging to scheduled tribe category has been turned down by the Scrutiny Committee, which order has been upheld by the Division Bench of this Court on 5th December, 2011, in Writ Petition No.4503 of 2004, instant petition is presented after issuance of the order of validation of tribe certificate issued to Respondent no.2 by Scrutiny Committee. Merely because, Respondent no.2 has been allotted petroleum dealership by the Petroleum Company as against reserved category, that itself does not bring the Petitioner within the definition of the 'person aggrieved', so as to maintain challenge to the validation certificate issued to Respondent. The proposal tendered by Respondent no.2, for her appointment as dealer, has been independently considered by the Petroleum Company and same has been accepted. The Petitioner does not belong to the tribe 'Mahadeo Koli' to which Respondent no.2 belongs. Though the Petitioner claims that he belongs to 'Dhangad' (ST),

however, his claim for validation of Tribe Certificate has been negatived. The Petitioner cannot be said to have been posted with the knowledge as regards the relations, traits and characteristics of tribe 'Mahadeo-Koli' and, as such, not set up a definite objection as regards tribal status of Respondent no.2. Apart from this, since the Petitioner cannot be considered as a 'person aggrieved' by application of the parameters laid down by the Supreme Court in **Ayubkhan's** case, the objection raised by the Petitioner to the tribal status of Respondent need not be entertained.

6. Though the Petitioner raises the contention that, in fact, 'Dhangad' and 'Dhangar' are the same, the contention cannot be accepted in view of the judgment of the Apex Court in the matter of **State of Maharashtra vs. Milind and others.**³ Apart from this, request of Petitioner of issuance of validation certificate has been turned down by the Scrutiny Committee, which order has been upheld by the Division Bench of this Court.

7. For the reasons recorded above, the instant petition being devoid of any substance stands rejected with costs quantified at Rs.25,000/-.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]