

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

**WRIT PETITION NO. 3832 OF 2014**

Ashwin Babubhai Patel

.. Petitioner

Vs.

State of Maharashtra

Through Secretary, Tribal Development

Department & Ors.

.. Respondents

Mr.R.K. Mendadkar, a/w. Ms. Tejasvini Bhamare, Advocate for petitioner.

Mrs. R.A. Salunkhe, AGP for respondent Nos.1 and 2.

**CORAM : B.R. GAVAI &  
N.J. JAMADAR, JJ.**

**DATE : 17<sup>TH</sup> JANUARY 2019**

**P.C.**

1 Rule. Rule made returnable forthwith. By consent, heard finally.

2 By way of this petition, the petitioner challenges the order dated 31<sup>st</sup> May 2012 passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane-respondent No.2, invalidating the tribe certificate of the petitioner belonging to 'Dhodia' Scheduled Tribe on the ground that the petitioner is migrant.

3 The petitioner is employed as "Postman" with respondent No.3 against the post reserved for the Scheduled Tribe. Since the appointment of the petitioner was on the post reserved for the Scheduled Tribe, his tribe claim was sent to respondent No.2-Scrutiny Committee for verification. The

Scrutiny Committee has invalidated the claim of the petitioner only on the ground that the petitioner is a migrant and the petitioner's father originally belong to Balsad, District Surat of Gujarat State. Respondent No.2-Committee has observed in the impugned order that the family of the petitioner has migrated after enactment of Bombay Reorganization Act, 1960. The petitioner is a resident of Mumbai. However, it is to be noted that tribe 'Dhodia' finds place in the category of Scheduled Tribe in both the States, namely, Maharashtra as well as Gujarat.

4 The facts in the present case are similar to the facts in the case decided by the Apex Court in *Sudhakar Vithal Kumbhare Vs. State of Maharashtra & Ors.*<sup>1</sup> wherein the Court observed thus :-

“5 The question is as to whether the appellant being a Scheduled Tribe known as Halba/Halbi which stands recognized both in the State of Madhya Pradesh as well as in the State of Maharashtra having their origin in Chhindwara region, a part of which, on States' reorganisation, has come to the State of Maharashtra, was entitled to the benefit of reservation. 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.”

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1 ((2004) 9 SCC 481

5      In the present case, the petitioner is belonging to 'Dhodia' Tribe and his forefathers were residing at Balsad prior to re-organization on the date of enactment of Bombay Reorganization Act, 1960. If such a person migrates to the other part of the State, which, after reorganization, has become a part of another State where said Tribe is also recognized as a Schedule Tribe, the claim of such candidate cannot be invalidated. Undisputedly, both Balsad as well as the present place of residence of the petitioner, i.e., Mumbai are parts of the State of Bombay. After re-organization, the area of Balsad has gone to Gujarat State and the area of Mumbai has come within the jurisdiction of the State of Maharashtra. Undisputedly, in both the States, i.e., State of Maharashtra and State of Gujarat, the 'Dhodia' is recognized as a Scheduled Tribe. In that view of the matter, the petition deserves to be allowed on this short point.

6      The petition is, therefore, allowed.

7      The impugned order dated 31<sup>st</sup> May 2012 passed by the Scheduled Tribe Certificate Committee-respondent No.2 is quashed and set aside. The matter is remitted back to the Scrutiny Committee for considering it afresh on its own merits. Needless to state that the claim will not be rejected only on the ground of migration of the petitioner from Balsad to Mumbai.

8 Till the claim of the petitioner is decided and in the event, the order passed by respondent No.2-Committee is adverse to the interest of the petitioner, for a period of three weeks from the date of the receipt of communication and the order, the petitioner's service shall stand protected.

9 Rule is made absolute in the aforesaid terms with no order as to costs.

[N.J. JAMADAR, J.]

[ B.R. GAVAI, J.]