

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

WRIT PETITION NO. 7137 OF 2019

Rahul Raju Bhosale and Anr.	...	Petitioners
Vs		
State of Maharashtra and Anr.	...	Respondents

Mr.R.K.Mendadkar, Mr.T.V.Jadhav,
Mr.Chintamani Bhangoji, Ms.Komal
Gaikwad, Ms.Priyanka Shaw and
Ms.Tejaswini Bhamare for the Petitioners.

Mrs.R.A.Salunkhe, AGP for State.

Mr.Sachin Subhash Jadhav, Senior
Research Officer present.

Mr.Vikas Sudam Daund, Law Officer
present.

**CORAM :- S. C. DHARMADHIKARI &
 G.S.PATEL, JJ.**

DATE :- JULY 4, 2019

P.C. :-

1. We have heard both sides.
2. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.
3. The order under challenge is passed by the Scrutiny Committee and particularly, styled as the Scheduled Tribe Certificate Scrutiny Committee, Pune Division, Pune. By its order dated 2nd April, 2019, it has held that the petitioners are not

entitled to Caste/Tribe Certificate certifying them as “Thakar Scheduled Tribe”.

4. The petitioners are cousins of each other. The first petitioner before us is a student and he says that to avail of educational opportunities, he sought the Tribe Certificate. The second petitioner is the cousin sister (first cousin from the paternal side) of the first petitioner.

5. They say that “Thakar Scheduled Tribe” is entered at Entry No.44 of Second Schedule, Part IX appended to the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976.

6. A certificate of tribe was granted by the competent authority on 7th July, 2014 to these petitioners.

7. As is well settled and the law mandates, one cannot, on the strength of the caste or tribe certificate alone, avail of the relaxation/concession in education and jobs meant for the Scheduled Castes and Scheduled Tribes in the State of Maharashtra. Once such caste certificates and tribe certificates are produced for seeking admissions in the educational institutions against reserved seats, mandatorily, these certificates and the underlying claims are referred to the competent Scrutiny Committee for verification and scrutiny of the claim.

8. The Scrutiny Committee then issues notices to these parties and calls upon them to satisfy the Committee as to why a certificate validating their claim should be issued.

9. The home inquiry then is conducted and the Scrutiny Committee does not rest its final opinion on the material produced by the claimants alone. The law envisages that a home inquiry/investigation has to be made. Further, the police machinery of the State carries out a vigilance inquiry and study and then the vigilance report is forwarded to the Committee. The contents thereof are not binding and the Scrutiny Committee either way calls upon the party to satisfy itself as to why these findings in the vigilance report should not be discarded or disbelieved, in the event they are favourable to the claimants. On such material being produced and parties being heard, ultimately, an order has to be passed.

10. In support of their claim, the petitioners relied upon several documents, copies of which are compiled and annexed to this petition as 'Exhibit C (collectively)'. It is stated that the Scrutiny Committee has completely overlooked that the present family before it is not just raising a stray or isolated claim. In fact, the very Scrutiny Committee, relying on identical materials, issued certificate of validity to the blood relatives of the petitioners from

paternal side. The Committee is aware of such certificates having been relied upon.

11. In order to satisfy ourselves, we called for the original record and in the original record itself, it is stated that there were certificates of validity issued in the family. These certificates of validity have been issued to the father of the first petitioner-Raju Bhagwan Bhosale and three others.

12. However, the only contention raised before us on behalf of the respondents is that these certificates of validity have lost their probative value. They have lost their probative value simply because a notice to show cause has been issued to the certificate holders. The Committee is of the opinion and *prima facie* that the certificates of validity issued to the paternal relatives of these claimants or relatives from paternal side are tainted. They are vitiated by fraud or misrepresentation.

13. The *prima facie* finding is that there are certain entries in old and the preconstitutional documents in the instant inquiry which would indicate that in the caste column, the caste or tribe is not mentioned as 'Thakar', but 'Bhat' and 'Maratha'. Therefore, on these questionable documents, the certificate of validity could not have been issued to the family members and particularly in this case, the father of the first petitioner.

14. The argument, therefore, is that once the show cause notice is issued, the certificates of validity relied upon can be safely omitted from the consideration. Once they are so omitted, there is no other material on the basis of which the claim can be held as proved. For these reasons, we must uphold the impugned order.

15. Mr.Mendadkar has invited our attention to an order dated 13th December, 2018 in Writ Petition No.10194 of 2018 (*Akshay Sanjay Gawali and Anr. Vs. The State of Maharashtra*). Mr.Mendadkar would submit that this order concludes the controversy in favour of the petitioners.

16. Pertinently, in that order as well, the petitioners were aggrieved by an exercise carried out by the Scrutiny Committee invalidating their claim towards 'Thakar Scheduled Tribe'. Pertinently, in that case also, the caste certificates were cancelled though the first petitioner in that petition was enrolled and admitted as a student of an Engineering Degree course. Not only the first petitioner completed the Engineering Degree Course, but even the MBA Post-graduate degree course. The second petitioner was not given the benefit though she had completed her Post-graduate degree course in Commerce. She did not complete that by availing concession and relaxation meant for Scheduled Tribes. Rather, she was deprived of it.

17. It is clear from the order (supra) that the benefit of the same could not have been derived by her. It is extremely unfortunate that the Scrutiny Committee invalidates the claim on a mere *ipse dixit*. The Committee does not assign cogent and satisfactory reasons nor it elaborates on what is a fraud, perpetrated by whom and in what facts and circumstances. Further, pertinently, how the claimants before the Committee are parties to the fraud is never clarified. We have this routine, mechanical and stereotype exercise of invalidating the claims simply because there is a suspicion. We do not find real circumstances being brought on record. We have noticed that the fraud, on the basis of which the claims are being rejected and set aside, is not proved. It may be that in a given case, the machinery of the Scrutiny Committee is a party to that fraud. It may be that the Committee is misled to issue the caste validity certificate by intentionally or deliberately suppressing the material documents with full knowledge that the claimant does not belong to the caste/tribe claimed by him. On occasions, it could be case of acting in concert to uphold a fraudulent claim. But, we do not find any exercise being undertaken to pinpoint the guilt. Far from punishing the guilty though directed by the Court, we have been noticing the trend of invalidating every claim.

18. We had, in one of the orders passed by us to which S.C.Dharmadhikari, J. is a party, severely criticised the approach of the Committee by holding that this could be an attempt to shield and protect the guilty. The guilty could be the officials within the machinery. The guilty may be highly placed officials. Therefore, this Court had not upheld the contentions as are placed before us by the learned AGP.

19. By mere issuance of a show cause notice, the probative value of the caste validity certificate or the documentary proof in support thereof is not lost entirely. It is in these circumstances, by merely claiming the documents to be tainted or terming them, during the course of oral arguments, as doubtful, we cannot uphold the finding of the Scrutiny Committee.

20. The Scrutiny Committee should indicate, at least *prima facie*, that there is a fraud and perpetrated on the state machinery by the party obtaining such certificate. That party had misled it and deliberately and intentionally. That party held back from it very vital and crucial documents or placed them selectively. It is that party which is guilty either of fraud or misrepresentation. It is then possible to go after the relatives of that party or claimant and in the event the fraud is not a unilateral act of the party or claimant and there are others who

have connived or colluded with it, then, those guilty should also be prosecuted. This exercise is hopelessly lacking and it is left entirely to this Court to find out what is or could be termed a fraud. We do not think that we should indulge in such factual exercise when the state machinery is not serious at all.

21. Once we find that the order of the Scrutiny Committee is vitiated by non application of mind or perversity or errors of law apparent on the face of the record, then, we cannot sustain it. Presently, we do not think that the impugned order can be sustained for it omits from consideration materials which had great probative value. It is nothing but perversity and to say that these materials have lost their probative value simply because the show cause notice has been issued to the certificate holders. By taking a consistent view and following the case of Akshay Sanjay Gawali (supra), we quash and set aside the impugned order.

22. As a result of the above discussion, the impugned order can be safely termed as perverse as well. The writ petition succeeds. The impugned order is quashed and set aside. The petitioners will now be issued the certificate of validity on identical terms as have been issued to their father and uncle. Rule is made absolute in terms of prayer clauses (a), (b) and (c). The Committee shall issue the certificates of validity within two weeks from today. The

competent authority to consider the claims of the petitioners for admission, if otherwise, permissible and eligible by not insisting on production of certificate of validity from the second respondent-Scrutiny Committee. The competent authority shall proceed on the footing that our orders are but upholding their claims and they belong to 'Thakar Scheduled Tribe'.

23. However, we clarify that in the event the certificate of validity issued to the father of the first petitioner and uncle of petitioner No.2 is recalled or quashed and set aside on the ground that it is vitiated by fraud or misrepresentation of facts, then, the petitioners before us would not be allowed to avail of any benefits and concessions meant for 'Thakar Schedule Tribe'. They will lose their status as scheduled tribe candidates and they have to prosecute their studies by seeking admissions to non-reserved seats. This will be in addition to the prosecution that may be launched against them for having perpetrated a fraud.

24. The original record and proceedings are returned to the learned AGP.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)