

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 16253 OF 2019**

Shavani Sadu Mane

...Petitioner

Versus

State of Maharashtra & Ors

...Respondents

Mr RK Mendadkar , *for the Petitioner.*

Mrs AA Purav, AGP, *for the State-Respondents Nos. 1 and 2.*

**CORAM: S. C. Dharmadhikari &
G. S. Patel, JJ.**

DATED: 15th October 2019

PC:-

1. We have heard Mr Mendadkar appearing on behalf of the Petitioners and Mrs AA Purav, learned AGP for the Respondents Nos. 1 and 2.
2. The Respondents Nos. 3 and 4 are the Maharashtra University of Health Sciences and the Homeopathic Medical College.
3. The Petitioner is the daughter of Sadu Mane. The Petitioner is challenging the order passed by the Caste Scrutiny Committee which is competent to issue caste validity certificate in terms of Maharashtra Act 23 of 2001.

4. The 3rd Respondent is the competent authority who granted admission to the Petitioner in the Bachelor of Homeopathic Medical Science Degree Course. In paragraph 1 of the Petition it is categorically stated that the admission was granted to this post against the reserved seat. Thus the admission is under the Reserved Category and against the seat meant for Schedule Tribes in the academic year 2016-17.

5. The Petitioner claims that she is Koli Mahadeo Scheduled Tribe as entered in the Schedule to the Constitution of India. It is undisputed that once a student is admitted against a reserved seat, it is obligatory that the he or she produces the certificate of validity from the competent scrutiny committee in terms of the Maharashtra Act 23 of 2001 and Rules framed thereunder. The Petitioner entered the Degree Course on the strength of a mere tribe/caste certificate. That is dated 2nd November 2011. The Petitioner produced a copy of the same, got admission and later on this certificate was forwarded to the scrutiny committee for verification and scrutiny of the underlying claim.

6. The Petitioner says that her first cousin grandfather, namely, Maruti Arjuna Hariba was born on 14th April 1929. When he was born his tribe is recorded as Mahadeo Koli in the birth record. Exhibit "C" to the Petition is a copy of the birth extract of this cousin grandfather maintained by the Pandharpur Municipal Council.

7. Her first cousin grand-aunt on 24th October 1935 had the entry against her caste column in the birth record Mahadeo Koli. This again is a record maintained by the same Pandharpur Municipal Council. Her cousin grandfather namely Nagnath Dadarao Mane was issued a caste validity certificate by the scrutiny committee at Aurangabad and after full scrutiny and a vigilance inquiry. This certificate of validity is dated 26th February 2007.

8. Based on the same the Petitioner claimed the reserved seat. Once she entered the process the caste certificate was forwarded but the scrutiny committee found that though the Petitioner is admitted in the first year Degree Course, under the reserved category in the 4th Respondent college, for academic year 2016-2017, the oral and documentary evidence failed to establish and substantiate her claim.

9. Before we refer to Mr Mendadkar's arguments and the findings of the committee as recorded in the impugned order, a brief reference to the statutory scheme is necessary. The statute namely the Maharashtra Act 23 of 2001 with its long title aims at eliminating bogus and false claims. There was a demand from even members of Scheduled Tribes and Castes that those who do not belong to these classes enter the fray by employing dubious means and therefore a strict verification and scrutiny should be in place. That documents and certificates are procured and that the claims are not genuine and bona fide was the general complaint. Taking note of the same the Maharashtra State Legislature enacted this law. On more than one occasion its validity and legality was tested by instituting Writ Petitions before this Court. A bench of three Judges of this Court delivered a verdict upholding the constitutional

validity of this law. After this law was found to be constitutionally and legally valid, individual claims were duly scrutinised and verified by the committees. The orders and directions of the committees rendered in individual cases from time to time have been subjected to very strict judicial scrutiny by this Court. This Court had recorded on occasions very adverse findings against the committee set up under this law. However, this Court never intended to assist anybody holding himself out as a tribal to obtain the concessions and relaxations particularly in Government jobs and Education so also Elections to public bodies when that person could not substantiate and prove the claim. The burden cast by that law is clear. One who asserts a claim of being a tribal or a scheduled caste has to establish and prove it in accordance with the law particularly the Rules framed under this Act.

10. Once the Petitioner knew the rigours of the process and the consequences of the claim being held to be not genuine but false and bogus then the first contention of Mr Mendadkar must fail. The argument of Mr Mendadkar is now that the Petitioner, aged 21 years, having entered the process and completed part of the degree course, should not be visited with the strict consequences mandated by the law. His argument is that assuming without admitting that her claim is not genuine and bogus, the rigours of Section 11 of this law be relaxed so that she can either continue the education as a non-tribal or a general category candidate, obtain a degree but also rely on the same in her future life and academic endeavours. This argument needs only to be stated to be rejected. After the authoritative pronouncement of the Hon'ble Supreme Court in the case of *Chairman and Managing Director, Food Corporation of India vs*

Jagdish Balaram Bahira,¹ we do not think that any argument of this nature deserves to be accepted. Apart therefrom, the language of Section 11 is plain, unambiguous and clear. There is no warrant for applying any principle of statutory interpretation. By Section 11 it has been declared that whoever obtains a false certificate by furnishing false information or filing false statement or documents or by any other fraudulent means or not being the person belonging to any of the Scheduled Castes, Scheduled Tribes etc derives any benefit or appointment exclusively reserved for such classes or tribes or caste in the Government, Local Authorities etc or secures admission in any educational institution against the seat exclusively reserved for such classes or tribes or castes shall on conviction be punished with rigorous imprisonment for a term shall not be less than six months but which may extend up to two years or with fine which shall not be less than Rs.2,000/- but it may extend up to Rs. 20,000/- or both. Now we are not considering a case of a offence punishable under this Act but surely we have been informed authoritatively by the Hon'ble Supreme Court that the fruits of a false claim or a false caste certificate cannot be retained by the concerned person. The conviction and sentence apart the benefit is lost in terms of the statutory condition. The first contention of Mr Mendadkar has therefore no merit.

11. Some misplaced sense of sympathy for this young lady cannot allow us to be wholly unmindful of the mandate of law or brush it aside merely because she has secured admission to a course in medical sciences. There is nothing before us by which we can say that this law does not apply to a particular gender or that a category

1 (2017) 8 SCC 670.

of children or minors should not suffer the consequences. This is not a case of a minor child before us. Assuming it was so it is her parents who should have thought a hundred times before getting admitted against the reserved seat by producing the certificates which had none of the backing required by the law.

12. Apart from the above, on merits we find that the Petitioner has miserably failed to discharge the burden. In that regard one must also refer to the plain language of Section 8 of this law. Section 8 says that where an application is made to the Competent Authority under Section 3 for the issue of a caste certificate in respect of Scheduled Caste, Scheduled Tribes etc and in any enquiry conducted by the competent authority and scrutiny committee or the appellate authority under this Act or any triable offence under this Act, the burden of proving that the person belongs to such Caste, Tribe or Class shall be on the such Claimant or Applicant. Now, the undisputed family tree and genealogy on record denotes that there is a common ancestor. The Petitioner before us has been shown as daughter of Sadu. Sadu is one of the sons of Bhimrao. Bhimrao is the son in turn of Arjuna Hariba Mane. Thus Arjuna Hariba Mane is the great grandfather of the Petitioner. Bhimrao is the grandfather and Sadu is the father. Bhibhishan, Mahadeo and Sudam are the uncles of the Petitioner. The finding of fact recorded in the committee's order says the record produced before the committee reveals that the documentary evidence inter alia is entries in the cast column pertaining to several relatives. The entries are Hindu Mahadeo Koli, Koli Mahadeo, Backward Hindu Koli, Mahadeo Koli and Hindu Mahadeo Koli, or Hindu simpliciter. The entries are thus not consistent. The vigilance enquiry and the home

interviews reveal that in the columns inserted in the birth/school record of several relatives of the Petitioner had entries, prior to 1950 as Koli or Hindu Koli. These are entries dating back to 1913 and 1943. These are thus pre-constitutional or in any event old/ancient entries. In law they have a greater presumptive or probative value. They cannot be discarded easily. There is a trend in that recent entries are either changed, or modified, or there are interpolations or insertions subsequently made. Therefore the old entries to be discarded and brushed aside demands proof of recent origin but absolute in nature. That is wanting in this case. Several opportunities were extended to the Petitioner and her father and other family members to produce such solid documentary proof, i.e. to show that though the pre-constitutional entries were Koli or Hindu Koli, they were actually Mahadeo Koli. Apart from relying on the entry of Arjuna, the applicant and her father produced nothing. As far as Arjuna's entry goes, the finding of fact is that the police/vigilance enquiry revealed that Pandharpur Nagar Parishad Pandharpur had two birth extracts. Arjuna Hairba Mane had one son and one daughter. They were born on 14th April 1929 and 24th October 1935 respectively. The entries in relation to the caste/tribe column of these two persons was Mahadeo Koli. However the vigilance cell examined the original entries of 1929 and 1935 in the books or records maintained in the ordinary and normal course of business by the Chief Officer, Pandharpur Municipal Council. Thus these are records maintained in the course of official duties and due discharge thereof. They revealed that before 1929, the documents pertaining to relatives of the Petitioner and relied upon carried entries in Tribe column of "Koli" simpliciter. In other words before 1929 the relatives of the Petitioner were known as Kolis. They

were not known as Mahadeo Kolis. There is a solitary or single entry of Mahdeo Koli of the year 1929. The overwhelming documentary evidence to the contrary therefore makes it safe for the committee to discard this solitary or lone entry. The entry Mahadeo Koli loses its evidentiary value or does not have any probative significance in the teeth of the contra entries. It has been shown that the entry Koli is to be found in records in relation to other sons of Arjuna. Even in relation to Petitioner's father the entry is not what is demanded by the Statute or the Constitutional document. The schedule maintained in terms of the Constitutional provision namely Articles 340 and 341 of the Constitution of India pertaining to the State of Maharashtra has a specific entry. It is Koli Mahadeo Scheduled Tribe. No description other than that and which has no backing of reasonable and plausible explanation therefore can be relied upon. This is a finding of fact which we do not find to be perverse at all.

13. For our satisfaction, and to ensure there was no summary rejection, we summoned the original record. From the original records we have been able to peruse all the documents which are referred in the impugned order including the genealogy and the family tree and the report of the vigilance cell. All of them would reveal that the Petitioner and her relatives systematically misled the committee and are trying to mislead this Court. It is inconceivable and not believable that in the same family when there is claim through a common ancestor who had four sons that there would be conflicting entries in the caste/tribe column pertaining to each of them. However in this case there is not a lack of consistency, but the reverse. The entries consistently made are Koli. It is only the

exception of Arjuna where we find that the entry is Koli Mahadeo Scheduled Tribe and in precise term but inserted in the year 1929. We are not indulging in any guess work nor resting our findings on conjectures and surmises. We are not attributing to anybody in the family much less Arjuna a deliberate or intentional act. However the fact remains that this entry of 1929 is a stray and solitary one based on which possibly another member of the family was issued a caste validity certificate. That was heavily relied upon. That has been discarded and rightly because of the overwhelming contra evidence. Thus the finding of fact in paragraph 6 of the impugned order cannot be termed as perverse or vitiated by an error of law apparent on the face of the record. The Petitioner cannot therefore say that the caste validity certificate issued in favour of her cousin grandfather clinches the issue. Far from that, the contra material reveals that there is an attempt to obtain the benefits meant for genuine Scheduled Tribes by misleading the committee or raising a false claim.

14. In the light of the above, we do not see any reason to entertain this Petition. It is dismissed but without any order as to costs.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)