

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8139 OF 2019

Sandhya Pundlik Wankhede,
Aged 50 years, residing at 103,
Shakti Apartment, Khadki,
Pune – 411 003.

.... Petitioner

- Versus -

1. State of Maharashtra
through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai-400 032.
2. Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar through its
Member Secretary, having its
office at Sakri Road, near RTO office,
Nandurbar, District Nandurbar.
3. Mumbai Municipal Corporation
through its Commissioner having
its office at 1, Mahapalika Marg,
Fort, Mumbai-400 001.
4. Education Officer,
Brihanmumbai Mahanagarpalika
having its office at Triveni Sangam
Municipal School, Curry Road,
Mumbai-400 012.

.... Respondents

Mr. Tanaji Jadhav i/by Mr. R.K. Mendadkar for
the Petitioner.

Mr. B.V. Samant, Assistant Government Pleader,
for Respondent Nos.1 & 2.

Mr. Vinod Mahadik for Respondent Nos.3 & 4.

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

DATE : AUGUST 07, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. **Rule.** The respondents waive service. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal. Heard.

2. On this petition, on 29-7-2019 and 1-8-2019, the following orders were passed:-

“29-7-2019

1. We direct the learned AGP to produce the record. We want to ascertain from the original record as to whether the Certificate of Validity issued to Rekha Pundalik Wankhede, the real sister of the petitioner, has been taken on record, in the sense, a certified true copy thereof, so also, the copy of the order of the Division Bench of this Court preceding that Certificate of Validity. This order is passed because Mr. Mendadkar raises a grievance that, Rekha filed a Writ Petition being Writ Petition No.5788 of 2014 in this Court which was decided on 1st March, 2018 by a Division Bench and that Division Bench directed a Certificate of Validity to be

issued to Rekha.

2. If this material and very vital to the case of the petitioner has been ignored or omitted from consideration, then we would not hesitate to impose personal costs on the Members of the Committee. We may also direct action to be initiated against them for flouting the orders of this Court, so openly and brazenly.

3. We come to this tentative conclusion because Mr. Mendadkar, shows us a copy of the rojnama of the Committee and in the subject proceedings (pages-196 and 197 of the paper-book) dated 19th November, 2018 which demonstrates that this certified true copy of the Certificate of Validity issued to Rekha was indeed produced together with the copy of the judgment of this Court.

4. Stand over to 1st August, 2019.”

“1-8-2019

1. In pursuance of the order passed on the earlier occasion, the original records are produced. We have perused the same.

2. We have seen from the record as well that the certificate of validity, which was issued to Smt. Rekha Pundalik Wankhede and heavily relied upon, was indeed produced before the Committee. The petitioner has stated in the petition that the real sister of petitioner from the paternal side-Smt. Rekha Wankhede has been adjudged as belonging to Thakur Scheduled Tribe by this Court. The petitioner produced it and it is now proved from the record that a certified true copy of the certificate of validity issued to Smt. Rekha Wankhede as also the judgment of this Court in the case of Smt. Rekha Wankhede.

3. We have found that the same has been discarded by assigning reasons, which are wholly unsatisfactory and

untenable in law. After referring to the certificate of validity produced by the petitioner and issued by the very Committee, namely, Scheduled Tribe Certificate Scrutiny Committee, Nandurbar, the remark is that in the case of Smt. Rekha, the certificate of validity is issued by this Court, but in the school records of 1970 and 1980, the entries, Hindu-Maratha as against the tribe or caste column have not been pointed out and this Court has been misled into accepting the claim or version of Rekha and Avinash.

4. *We are shocked and surprised that such a remark is entered so as to doubt the binding nature of the orders of this Court. The Committee need not be worried and bothered about who has misled this Court and in what manner. Pertinently, in the case of Smt. Rekha, Writ Petition No.5788 of 2014 was allowed on 1st March, 2018. On 20th March, 2014, the Committee invalidated her claim and this Court passed an order on 1st March, 2018. Four years were available for the Committee to point out to this Court the alleged misrepresentation of facts by Avinash and Rekha. The Committee could have moved an appropriate application or filed an affidavit as to how this Court is being misled by them. The Committee does nothing of this kind. However, the remark does not end and in the impugned order, an additional remark is entered that in the case of the petitioner's relatives from the mother's side, there are certain persons who are of the same tribe and in relation to such relations from mother's side, the entries in their caste column are Hindu-Thakur or Bramhabhat or Hindu Bramhabhat. It is in these circumstances that the Committee feels that the petitioner's claim of being a tribal cannot be accepted.*

5. *Thus, alleged suppression of material facts by Rekha and Avinash is not the only ground to discard the certificates of validity issued to them and the binding judgments of this Court. This additional remark means that the Committee cannot conclusively establish that there was any suppression of material facts or attempt to mislead this Court. It is in these circumstances that while*

we do not pass the judgment in open Court today and defer it, we allow Mr. Mendadkar to place an affidavit.

6. *Mr. Mendadkar says that when this Court has come down and very heavily on the Committee and its members and imposed personal costs to be paid by them to the aggrieved parties like the petitioner, the State Government has been moved by this Committee members to reimburse to them the costs, which this Court directed the members to bear personally. There is no licence to reimburse, much less, any authority flowing from this Court's orders and yet the State Government is approached to refund or reimburse the Committee members. In that as well, the attempt of the Committee members is to demonstrate that this Court has unduly criticised them and the manner in which they conducted the proceedings before them. In fact, the Committee members project their total innocence. Mr. Mendadkar submits that until and unless we do something very drastic, Committees after Committees will brazenly brush aside binding judgments of this Court and Hon'ble Supreme Court. They would continue to conduct themselves and with impunity in such a manner in future as well.*

7. *We allow Mr. Mendakar to tender an affidavit so as to establish and prove the oral statements made by him today. We allow him to annex such documents in proof of the assertions in this affidavit, which is proposed to be filed as well. Let that affidavit be filed on 5th August, 2019 and we post this matter for passing final orders on 7th August, 2019."*

In continuation of that, we have found from the undisputed facts on record that the petitioner relied upon the Certificate of Validity issued to a very close relative from the paternal side. In

one of the grounds in this writ petition it has been contended that the real sister of the petitioner, Rekha, belongs to Thakur Scheduled Tribe. She succeeded before this Court in a Writ Petition filed by her, which resulted in the quashing and setting aside of the order of the Scrutiny Committee and upholding her status as Thakur Scheduled Tribe. That order and the Certificate of Validity issued on the strength of it, were produced. The other Certificate of Validity produced by the petitioner was of the father.

3. The petitioner relied upon the Certificate of Validity which was issued to the brother Avinash Pundlik Wankhede. He has been issued the Certificate of Validity on 13-11-2005. Once the real brother and sister of the petitioner have been issued the Certificates of Validity, then, so long as they stand, there cannot be a non-tribal in a tribal family. Both Rekha and Avinash so also the present petitioner are the children of Pundlik. Pundlik Wankhede had claimed the status as Thakur Scheduled Tribe. In his school record, the entry against the Tribe/Caste column is Hindu Thakur and that is of 5-6-1942.

4. It may be that in the case of Pundlik, his entry is Hindu Thakur but as far as Rekha and Avinash are concerned, the entry in their school records is Hindu Maratha. This does not mean that the earlier entry in the case of their father and which is pre-constitutional, is washed out. Once that has not lost its probative value and relying upon that, both Rekha and Avinash have been certified as belonging to Thakur Scheduled Tribe, then the third child/daughter, namely, the petitioner before us, cannot be considered separately. There is a clear discrimination now at the hands of this Committee. That is the reason why we had passed the earlier two orders.

5. On the strength of these two orders and the additional reasons recorded today, this writ petition succeeds. The order passed by the Scrutiny Committee on 21-6-2019 (Exhibit-A to the petition) stands quashed and set aside. Now a Certificate of Validity be issued to the petitioner.

6. It is claimed by the petitioner that she has rendered meritorious service as an employee of the Mumbai Municipal

Corporation/respondent No.3. The Education Officer to whom her pension papers have been forwarded was insisting on production of Caste Validity Certificate. Merely because that was not produced, the Gratuity, Leave Encashment, arrears of Salary/Wage revision, Bonus, Leave Travel Allowance and other retirement benefits have been withheld. The petitioner stood retired voluntarily from the service of this Corporation with effect from 1-2-2017.

7. Now that we have directed issuance of the Caste Validity Certificate, which shall be issued positively by 27-8-2019, on the production of the same, respondent Nos.3 and 4 shall release all retirement benefits and fix the petitioner's pension accordingly. The petitioner must be entitled to draw her pensionary benefits in accordance with law.

8. Purely because Mr. Samant, the learned AGP, has produced before us a communication of 5-8-2019, which we have taken on record, and on his persuasion that we are not imposing personal costs on the Committee members in this

matter. We hope and trust that the contents of the further affidavit filed in this writ petition and the communication from the Government of Maharashtra, dated 5-8-2019, will send right message and signals to the Scrutiny Committees at Thane, Nandurbar, Pune, Nagpur and Gadchiroli and hereafter should personal costs be imposed on them for their brazen disregard and disrespect to the binding Judgments of this Court and the Hon'ble Supreme Court of India, such costs should be personally borne by each of them. There will be no reimbursement or repayment of the same from the public exchequer or public funds to such officers.

9. Rule is made absolute in the above terms. No order as to costs.

10. All concerned to act upon an authenticated copy of this order.

(G.S. PATEL, J.)

(S.C. DHARMADHIKARI, J.)