

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10739 OF 2016

Ritesh Rajendra Thakur
Aged- 24 years, residing at
N-53/VF-1/24-3, Patilnagar
Nasik, District, Nasik-5.

...PETITIONER

VERSUS

1. State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai- 400 032.
2. Scheduled Tribe Caste Certificate
Scrutiny Committee, Nasik Divisional
Nasik, through its Deputy Director
and Member Secretary having its
office at Adivasi Vikas Bhavan,
Gadkari Chowk, Nasik.

...RESPONDENTS

APPEARANCES-

Mr. R.K. Mendadkar- For Petitioner.
Mr. M.M. Pabale- AGP for State.

CORAM : S. S. SHINDE &
V. G. BISHT, JJ.

RESERVED ON: 05/03/2020.
PRONOUNCED ON: 18/03/2020.

JUDGMENT (PER S. S. SHINDE, J.)

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the respective parties.

2. By this writ petition the petitioner is challenging the impugned order dated 14.03.2016 passed by Respondent No. 2-Committee thereby invalidating the tribe certificate of the petitioner as belonging to Thakur, scheduled tribe.

3. It is the case of the Petitioner that the Petitioner belongs to Thakur tribe which is recognised as Scheduled Tribe by virtue of Parliamentary Enactment. The Petitioner was thus granted tribe certificate dated 28.06.2007 by the competent authority of jurisdiction after confirming the genuineness of the tribe claim of the Petitioner. Since, petitioner was intending to go for higher education, he moved to Respondent No. 2-Committee for verification of his tribe certificate through his Junior College i.e. HPT Arts and RYK Science College Nashik in the year 2009. Alongwith his application for verification he submitted necessary documents of relatives from paternal side and tribe validity certificate granted to the uncle of the Petitioner. During the pendency of the proceedings before Respondent No. 2-Committee, the Respondent No. 3 granted admission to the petitioner in the first year M.B.B.S. Degree

course in the academic year 2011-2012 under reserved category of Scheduled Tribe. Thereafter, Vigilance Cell conducted home and school enquiry in the case of the petitioner and submitted its report to Respondent No. 2-Committee. During the course of Vigilance Cell enquiry, the Vigilance Cell officer recorded statement in regard to the traits, characteristics, traditions, customs etc. Thereafter, Respondent No. 2-Committee served copy of the said report to the Petitioner by notice dated 30.12.2011. Thereafter, Respondent No. 2-Committee after hearing the petitioner, passed an order thereby invalidating the tribe certificate of the petitioner by its order dated 08.02.2012. Felling aggrieved by the said order, the petitioner filed writ petition no. 2235 of 2012 in this Court. The said writ petition after being adjourned time to time was called for admission on 28.02.2014. After hearing all the parties in detail, the Division Bench of this Court (Coram:- Anoop Mohta & A.A. Sayed, JJ.) relying upon the judgment of this Court in the case of *Madhuri Nitin Jadhav vs. State of Maharashtra & ors.* decided on 26-02-2014 in Writ Petition No. 7343 of 2013 along with other connected petitions, set aside the order passed by Respondent No. 2-Committee dated 08.02.2012 and remanded the matter back to the Committee for reconsideration. The Respondent No. 2-Committee was directed to decide the tribe claim of the petitioner within four months from the date of receipt of judgment/order.

The Petitioner was also directed to remain present before Respondent No. 2-Committee. As per the directions of this Court, the petitioner appeared before the Respondent No. 2-Committee on 18.03.2014 and communicated both the orders passed by this Court in Writ Petition No. 7343 of 2013 (Madhuri Nitin Jadhav & Ors. Vs. State of Maharashtra & Ors.) and Writ Petition No. 2235 of 2012 (Ritesh Rajendra Thakur Vs. State of Maharashtra & Ors).

4. It is the case of the Petitioner that the Respondent No. 2-Committee without assigning any valid reasons referred the case of the petitioner for re-enquiry to its Vigilance Cell. Accordingly, the Vigilance Cell conducted an enquiry in the case of the petitioner and again confirmed the genuineness of the documents produced by him. The Vigilance Cell also visited to the home of the petitioner for recording his statement, however, the father of the petitioner pointed out the vigilance cell that his statement is already recorded earlier on 11.12.2014 and requested to consider the same earlier statement. Thereafter, Respondent No. 2-Committee served the said enquiry report dated 23.03.2015 upon the petitioner and directed him to file his reply alongwith notice dated 08.04.2015. Thereafter, petitioner's father filed detailed explanation to enquiry report on 08.05.2015 and pointed out that information furnished

by him in relation to the traits, characteristic, customs, traditions, etc, is matching towards the Thakur Scheduled Tribe and further shown disagreement to the findings of the Vigilance Cell officer that the information furnished by the father of the petitioner is not matching towards the Thakur, Scheduled Tribe. It was further pointed out that the information furnished by the Vigilance Cell officer in the enquiry report has intentionally mentioned some different information which has not furnished by him in his statement dated 11.12.2014. The father of Petitioner submitted that the Respondent No. 2 Committee should have decided the tribe claim as per directives of this Hon'ble Court in Writ Petition No. 7343 of 2013 Madhuri Nitin Jadhav & Ors. Vs. State of Maharashtra & Ors). The Petitioner's father also pointed out that caste of the grandfather of the Petitioner viz. Ramdas Phula Pawar is recorded as Thakur and his date of birth is 09.02.1933 and it is Pre-Constitution document, therefore, it has great probative value. It is the case of the Petitioner that the real uncle of the Petitioner namely Dinesh Ramdas Thakur has been granted tribe validity certificate. Finally, the father of the petitioner requested the Respondent No. 2-Committee to issue tribe validity certificate to the petitioner in the light of directives of this Court in Writ Petition No. 7343 of 2013(Madhuri Nitin Jadhav & Ors. Vs. State of Maharashtra & Ors) and SLP No. 25000 of 2014 (State of Maharashtra

Vs. Madhuri Nitin Jadhav).

Thereafter, the Respondent No. 2-Committee called the petitioner for hearing on 29.02.2016. Accordingly, the petitioner, his father and one relative of the petitioner appeared before the Respondent No. 2-Committee and filed say in writing. The petitioner pointed out that Hon'ble High Court had remitted the matter back to Respondent No. 2-Committee for reconsideration and also directed to decide the tribe claim in the light of judgment in Writ Petition No. 7343 of 2013 (Madhuri Nitin Jadhav & Ors. Vs. State of Maharashtra & Ors). It was also pointed that the said judgment of this Hon'ble Court was challenged by Respondent No. 1 in SLP No. 25000 of 2014 (State of Maharashtra Vs. Madhuri Nitin Jadhav) which has been dismissed by the Hon'ble Supreme Court. The Petitioner further pointed out that his real uncle namely Dinesh Ramdas Thakur has been granted tribe validity certificate on 17.03.2011 and therefore pointed out that since his paternal relatives i.e. real uncle granted the tribe validity certificate, the Respondent No. 2-committee ought to have validated the tribe certificate of the petitioner. The Petitioner in support of his contention cited the judgment of Hon'ble Apex Court and judgment of this Court in the case of Amol Narayan Wakkar vs. State of Maharashtra & Ors.,¹ Jitendra Mahale Vs. State of

¹ Writ Petition No. 1222 of 2012.

Maharashtra & Ors., Nandkumar Manohar More Vs. State of Maharashtra & Ors², Pramod Wagh Vs. State of Maharashtra & Ors³, Priti K. Thakur, Writ Petition No. 8837 of 2010, Pranav P. Mandlik Vs. State of Maharashtra & Ors, Apoorval Nichale in Writ Petition No. 326 of 2015, Pawan Deore Vs. State of Maharashtra & Ors in Writ Petition No. 6176 of 2012.

Thereafter, it was pointed out that considering the above judgments the tribe claim of the petitioner is required to be considered for grant of Tribe Validity Certificate. However, the Respondent No. 2-Committee passed the impugned order dated 14.03.2016 thereby invalidating the tribe certificate of the petitioner as belonging to Thakur, Scheduled Tribe for second time. Hence, this writ petition.

5. It is submitted that Respondent No. 2-Committee on Page 10 of the impugned order has relied upon the observation of this Hon'ble Court, Bench at Aurangabad in Para 11 of the judgment in Writ Petition No. 2791 of 2011 (Chetan Yuvraj Thakur Vs. State of Maharashtra & Ors.). However, in the present case of the Petitioner, there is no contra material brought on record. Therefore, the said judgment is not applicable in the facts and circumstances of the present case. The Respondent No. 2-

²Writ Petition No. 1602 of 1998

³Writ Petition No. 9356 of 2016

Writ Petition No. 7271 of 2009

committee on Page 8, Para 5 of the impugned order observed that school record in respect of applicant's grandfather pertaining to period 1941 clearly indicate that the family members of the applicant are well educated and well aware about the education and family of the petitioner is living with main stream of the society. This reasoning cannot be sustained in law, as acquiring education can not be a bar to claim reservation benefits. Respondent No. 2-Committee further observed that the school records in respect of petitioner's grandfather itself indicate that family does not fit under classification as ab-original and hill tribe. This observation of the Respondent No. 2-Committee shows total non-application of mind inasmuch as tribe Thakur has been classified as ab-original and hill tribe even before the Constitution. It is submitted that Respondent No. 2-Committee on page 8 of the impugned order has relied upon the order passed by this Hon'ble Court Bench at Aurangabad in Writ Petition No. 8282 of 2006 (Shradha Manohar Suryawanshi Vs. State of Maharashtra & Ors.). However, the said judgment is not applicable at all as the facts of that case and the present case is totally different and distinguishable inasmuch as tribe claim of father of said Shradha Manohar Suryawanshi was already invalidated by the Scrutiny Committee which is not the case of Petitioner.

6. It is further submitted that, Respondent No. 2-Committee ought to have appreciated that the judgment of Shilpa Thakur stand impliedly overruled in the light of judgment of the Apex Court in the case of Anand (supra). The Respondent No. 2-Committee erred in discarding the documentary evidence produced by the petitioner in which tribe is recorded as Thakur on the ground that the caste is not recorded as Thakur, Scheduled Tribe, this finding of the Respondent No. 2-Committee runs contrary to the judgment of this Hon'ble Court in the case of Pandurang R. Chavan Vs. State of Maharashtra & Ors. It is submitted that Respondent No. 2-Committee while invalidating the tribe claim basically on the ground of so called affinity test, ought to have considered the judgment of this Court in the case of Madhuri Jadhav which has attained finality. Learned counsel further submitted that the Respondent No. 2-Committee has relied upon the judgment of Apex Court in the case of Kum. Madhuri Patil Vs. Additional Commissioner, Tribal Development, reported in 1994(6) SCC 241 but completely failed to appreciate subsequent judgment on the same point of law in the case of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims, Nagpur, reported in 2012(1) SCC 113. Therefore, the Respondent No. 2-Committee has taken an arbitrary and unreasonable decision. It is further submitted that Respondent No. 2-Committee ought to have seen and

appreciated that Para 14 to 18 of the judgment in the case of Madhuri Jadhav (supra) it has been amply clarified by this Hon'ble Court that 'No authority after 20th September 1976, enquire and/or ask for any evidence that the "Thakur" Scheduled Tribe falls within restricted or outside area in the State of Maharashtra. There is no reason to insist for the enquiry and/or information and/or evidence from claimant/applicant to bring on record the documents and/or material of a particular area/region within the State'. It has been further clarified that the Act No. 108 of 1976 has no retrospective application and the benefits restricted or extended also cannot be taken away by overlooking document/evidence of any area of the Maharashtra. The Respondent No. 2-Committee dealt with grant of tribe validity certificate to real uncle of the Petitioner namely Dinesh Ramdas Thakur. The reasons given therein are nothing but absurd as the tribe claim of said real uncle was considered by the Respondent No. 2-Committee after due enquiry. The said decision has already become final and conclusive. It therefore, binds the Respondent No. 2 to grant tribe validity certificate to the petitioner. Learned counsel submitted that, the Respondent No. 2-Committee erred in relying upon the judgments on page 20 of the impugned order while discarding the tribe validity certificate granted to the real uncle of the petitioner when the certificate of validity is issued after following due process of law and therefore,

Respondent No. 2-Committee ought to have considered the judgment cited by the Petitioner.

7. Learned AGP appearing for the State invites attention of this Court to the reasons assigned by the Respondent No. 2-Committee and submits that the Respondent No. 2-Committee has considered all the documents placed on record, so also various judgments of this Court and also of Hon'ble Supreme court and thereafter invalidated the tribe claim of the present petitioner. Therefore, learned AGP submits that petition may be rejected.

8. We have given due consideration to the submissions of the learned counsel for the Petitioner and learned AGP appearing for Respondent-State and its officials. With their able assistance, we have carefully perused the grounds taken in the petition, annexures thereto and the reasons assigned by the Respondent No. 2-Committee in the impugned decision. It appears that Respondent No. 2-Committee has not properly appreciated the documentary evidence produced by the Petitioner in which the caste is recorded as Thakur. Upon careful perusal of the list of documents which was produced before the Respondent No. 2-Committee, the document at Serial No. 14, a copy of school leaving

certificate in respect of Petitioner's grandfather Ramdas Fula Pawar issued by Head Master Mahatma Jyotiba Phule Marathi Primary School No. 3, Near Mosam Bridge, Malegaon (Nashik), wherein the caste is recorded as 'Hindu-Thakur' and the date of admission is 21.11.1940. It is true that in the said school leaving certificate 'Hindu-Thakur' is written. But Hindu is a religion. The word 'Thakur' is mentioned in the said document. The fact that Petitioner's real uncle is granted tribe validity certificate is not in dispute. The Petitioner did place information in respect of family tree of the Petitioner's forefathers. Upon careful perusal of said document placed on record, it appears that Phula Thakur is father of Ramdas Phula Thakur and Ramdas Phula Thakur has three sons namely Dinesh Ramdas Thakur, Rajendra Ramdas Thakur and Ganesh Ramdas Thakur. The present petitioner is son of Rajendra Ramdas Thakur. Even the Vigilance Cell has collected the information about the relatives of the Petitioner wherein Dinesh Ramdas Thakur is shown as Petitioner's uncle. As already observed, admittedly the tribe validity certificate has been issued to Dinesh Ramdas Thakur, real uncle of the Petitioner on 17.03.2001. The copy of the said certificate of validity is placed on record by the Petitioner. The said certificate was also submitted before the Respondent No. 2-Committee.

9. This Court in the case of *Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee* reported in 2010(6) Mh.L.J. 401 in para 4 to 6 held as under:-

4. We have considered the matter and we are of the view that the petitioner's caste claim that she belongs to Kanjar Bhat-Nomadic Tribe ought to have been accepted by the Committee merely on the basis that identical caste claim of her sister that she belongs to Kanjar Bhat has been allowed by the Committee, even apart from the Government Resolution.

We are of the opinion that the guidelines provided by the said Govt. Resolution are sound and based on sound principles. It would indeed be chaotic otherwise. If the relationship by blood is established or not doubted, and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent in the committee testing the same evidence and making the same conclusion unless of course the Committee finds on the evidence that the validity of the certificate of such relation has been obtained by fraud.

5. The Division Bench of this Court in Mahesh Pralhadrao Lad v. State of Maharashtra - 2009(2) Mh.L.J. 90 has observed that in the absence of any power under the Rules conferred on the Government to issue a Govt. Resolution, the Govt. Resolution cannot be said to be binding on the committee nor the committee in exercise of its jurisdiction is bound to follow the same. The Division Bench further observed that the Government Resolution may be considered in the context of Rule 12 of the Rules and if the committee while exercising jurisdiction is satisfied that the caste validity certificate issued to a blood relative is genuine then instead of calling the Vigilance Cell Report it may proceed to issue the caste validity certificate. We are in respectful agreement with the view taken by the Division Bench. We would further add that the committee

would be entitled to refuse to follow the caste validity certificate granted to a blood relative if it appears to the committee that the earlier caste certificate has been scrutinized by a Committee without jurisdiction or the validity order is obtained by committing fraud on the Committee.

6. The Supreme Court has laid down this position in the judgment in *Ramsing Vasave vs. Mahesh Deorao Bhivapurkar and ors.*, - 2009(1) Mh.L.J. (SC) 1= (2008) 9 SCC 54. Para 30 to 38 of the said judgment reads as follows :

"30. The principle of *res judicata* is undoubtedly a salutary principle. Even a wrong decision would attract the principle of *res judicata*. The said principle, however, amongst others, has some exceptions e.g. when a judgment is passed without jurisdiction, when the matter involves a pure question of law or when the judgment has been obtained by committing fraud on the court.

31. In *Williams vs. Lourdusamy* this Court stated the law, thus : (SCC p.650, para 11).

"11. The principles of *res judicata* although provide for a salutary principle that no person shall be harassed again and again, have its own limitations. In OS No.402 of 1987, Respondent no.2 was not impleaded as a party. In his absence therefore the issue as to whether respondent 2 had entered into an oral agreement of sale or not could not have been adjudicated upon. The said court had no jurisdiction in that behalf. If that was decided in the said suit, the findings would have been nullities."

32. Two legal principles which would govern a case of this nature are :

(i) A decision rendered without jurisdiction being a nullity, the principle of *res judicata* shall not apply.

(ii) If a fraud has been committed on the court, no benefit therefrom can be claimed on the basis thereof or otherwise.

33. *In support of the first principle, we may at the outset refer to Chief Justice of A.P. Vs. L.V.A. Dixitulu wherein this Court, while discussing the effect of Section 11 Civil Procedure Code on a pure question of law or a decision given by a court without jurisdiction, opined : (SCC p. 42, para 24)*

"24.... Moreover, this is a pure question of law depending upon the interpretation of Article-371-D.

If the argument holds good, it will make the decision of the Tribunal as having been given by an authority suffering from inherent lack of jurisdiction. Such a decision cannot be sustained merely by the doctrine of res judicata or estoppel as urged in this case."

34. *A three-Judge Bench of this Court in Ashok Leyland Ltd. v. State of T.N. held : (SCC p. 44, para 118)*

"118. The principle of res judicata is a procedural provision. A jurisdictional question, if wrongly decided, would not attract the principle of res judicata. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural principles like estoppel, waivers or res judicata. (See also Dwarka Prasad Agarwal vs. B.D. Agarwal; Union of India v. Pramod Gupta and National Institute of Technology v. Niraj Kumar Singh).

35. *So far as the second principle, noticed by us, is concerned, there is no dearth of authority. Fraud vitiates all solemn acts. When an order has been obtained by practising fraud on the court, it would be a nullity.*

36. *In Ganpatbhai Mahijibhai Solanki vs. State of Gujarat this Court held:*

"It is now a well-settled principle that fraud vitiates all solemn acts. If an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with for setting aside the same."

It was further observed :

"In T. Vijendradas vs. M. Subramaniam this Court held: (SCC p. 766, paras 27-28)

"27. When a fraud is practised on a court, the same is rendered a nullity. In a case of nullity, even the principles of natural justice are not required to be complied with. (Kendriya Vidyalaya Sangathan vs. Ajay Kumar Das and A. Umarani vs. Registrar, Co-op. Societies).

28. Once it is held that by reason of commission of a fraud, a decree is rendered to be void rendering all subsequent proceedings taken pursuant thereto also nullity, in our opinion, it would be wholly inequitable to confer a benefit on a party who is a beneficiary thereunder."

37. In K.D. Sharam v. Steel Authority of India Ltd. this Court opined:

"Reference was also made to a recent decision of this Court in A.V. Papayya Sastry v. Government of A.P. Considering English and Indian cases, one of us (C.K. Thakkar, J.) stated : (SCC p. 231, para 22).

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order- by the first court or by the final court- has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.'

The Court defined fraud as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam."

10. Considering the fact that the certificate of validity has been granted to the real uncle of the Petitioner namely Dinesh Ramdas Thakur and also in view of the exposition of Division Bench of this Court (Coram:- S.A. Bobde & A.B. Chaudhari, JJ) in the case of *Approva Vinay Nichale* (supra), we are passing the following order:-

ORDER

- 1) The impugned judgment and order dated 14.03.2016 passed by the Respondent No. 2 Committee is hereby quashed and set aside.
- 2) The Respondent No. 2-Committee is directed to furnish the tribe validity certificate to the Petitioner.
- 3) Rule is made absolute in above terms. Accordingly, writ petition stands disposed of.

(V.G. BISHT, J.)

(S. S. SHINDE, J.)