

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

WRIT PETITION NO. 223 OF 2009

Md. Zubair Md. Aleem Dandu	}	Petitioner
versus		
State of Maharashtra and Ors.	}	Respondents

WITH

WRIT PETITION NO. 9562 OF 2015

Md.Firoz Md.Aleem Dandu	}	
and Anr.	}	Respondents
versus		
State of Maharashtra and Ors.	}	Respondents

Mr.R.K.Mendadkar with Mr.C.K.Bhangoji and
Mr.T.V.Jadhav for the petitioners in both the petitions.

Ms.R.A.Salunkhe-AGP for State.

**CORAM :- S. C. DHARMADHIKARI &
R. I. CHAGLA, JJ.**

DATED :- JANUARY 7, 2020

P.C. :-

1. Heard Mr.Mendadkar appearing for the petitioners in both the petitions. Perused the writ petitions together with all annexures thereto.
2. Since the facts in both the petitions are similar, we take the facts from Writ Petition No. 223 of 2009.
3. This writ petition under Article 226 of the Constitution of India challenges an order dated 20th August, 2008 of the Scheduled Tribe Certificate Scrutiny Committee, Pune Region, Pune.

4. From the record, it appears that this petition was placed before a Division Bench of this court, who heard it on 16th September, 2009. It dismissed it on merits. However, an application to recall that order was made, namely, Civil Application No. 117 of 2012. That was allowed on 12th July, 2016 and the writ petition was restored to file.

5. Thereafter, this petition, which is pending for nearly 12 years in this court, was listed on 10th March, 2017 and the court directed the respondents to file reply indicating the present status of the petitioner's admission. Since no reply was filed, on 24th March, 2017, the court directed that the respondents should allow the petitioner to appear in the second year MBBS degree course examination and to declare the results. Now, it is claimed that the petitioner is in the third year of MBBS degree course (final semester).

6. The petition was listed before us yesterday and we declined the request of Mr.Mendadkar to grant leave to the petitioner to amend the petition. We also declined the request of the learned AGP made yesterday as also reiterated today that the original record of this case be called for. We do not think that the respondents are justified in seeking adjournment when they do not comply with the order and directions of this court. Hence,

constrained as we were because of the long pendency of this case in this court and its prior listing on 15 occasions, we directed both sides to argue the case on the available material. Accordingly, we have heard Mr.Mendadkar appearing for the petitioners.

7. Mr.Mendadkar's first contention is that the Scrutiny Committee, which passed the order impugned in this petition, was not properly constituted. Its composition is not in accordance with the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2001 (Act 23 of 2001).

8. The second contention of Mr.Mendadkar is that this court had remanded the matter to the Scrutiny Committee for consideration of the claim afresh. That was because the Scrutiny Committee had, on the prior occasion, omitted from consideration a vital document, namely, a copy of the school leaving certificate issued in favour of one Jafar Sab Khataalsab Dandu. This school leaving certificate says that this man was born on 4th May, 1942 and was admitted to a primary school in Solapur on 30th June, 1946. He left the school on 1st April, 1948. The school leaving certificate, copy of which was produced before the Scrutiny Committee bears the date 5th June, 1992 and it says the religion

and caste/ tribe of the certificate holder as Musalman (Koya). Further, the Scrutiny Committee should have taken into consideration a judicial order passed by this court in Writ Petition No. 43 of 1997. This order is dated 10th January, 1997. It says that as far as Scheduled Tribes are concerned, religion is not the criteria. The Scheduled Tribes are found in almost all religions and therefore, merely because the petitioner in that case professed muslim religion, does not mean that he is not a Scheduled Tribe.

9. Mr. Mendadkar says that in a perfunctory manner, the whole matter is decided by the Scrutiny Committee. Mr.Mendadkar invited our attention to the writ petition and particularly para 5 at page 6 to urge that none of the facts, which have been stated in the memo, are controverted. Therefore, on the ground that principles of natural justice have been violated, the impugned order should be set aside and the declaration must follow or the matter should be remanded back for a fresh consideration to the Scrutiny Committee.

10. We have found that the learned AGP is neither ready with the matter nor the record. Therefore, with the assistance of Mr.Mendadkar, we have perused the petition and annexures thereto. The petition proceeds on the footing that the petitioner before us was aged 19 years on the date of filing of the petition. He

said that he belongs to Koya, Scheduled Tribe recognised as such under the Presidential Notification issued under Article 342(1) of the Constitution of India. The respondents before this court are the statutory authorities and the Dean of the Government Medical College. The petitioner was granted admission under reserved category of Scheduled Tribe in the first year of MBBS degree course during the academic year 2007-2008 in Dr.Vaishampayan Memorial Government Medical College, Solapur. The petitioner says that on 22nd June, 2004, the competent authority issued the tribe certificate certifying the petitioner as belonging to Koya, Scheduled Tribe. This certificate is dated 22nd June, 2004. The Koya was recognised as Scheduled Tribe in the State of Maharashtra in the year 1977. The petitioner applied to the Scrutiny Committee for verification of the claim and produced, according to him, the primary school leaving certificate of one Jafar Sab Khataalsab Dandu. The document relates to a relative of the petitioner, namely, the brother of grandfather of the petitioner. Thus, this gentleman is claimed to be the cousin grandfather of the petitioner. The document was placed on record in the month of March, 2008 and the Scrutiny Committee does not refer to it at all is the grievance of Mr.Mendadkar. Further, the Scrutiny Committee has listed 9 documents and omitted from consideration the others. The Scrutiny Committee's findings appear to have been

based on a document, namely, the school leaving certificate of the petitioner's father. It is claimed by the petitioner before us that the original school records are always kept in the custody of the school Headmaster. Nobody can have access to them. Hence, the allegation that the word "Koya" has been inserted in different ink and there is an overwriting is entirely uncalled for.

11. We have carefully perused the writ petition and its annexures. What we have found from the annexures to the petition is that the petitioner before us is Md. Zubair Md. Aleem Dandu. He is a recipient of a tribe certificate issued by the Deputy Collector and Competent Authority, District Solapur. As far as the school leaving certificate of Jafar Sab Khataalsab Dandu is concerned, that carries an insertion against the caste column Musalman (Koya). Then, there is another document in relation to Dandu Mohammed Zubair Mohammed Aleem. Copy of that is at page 40 of the paper book and though that has been issued by a school at Solapur, in that, the entry against caste column is "Islam Koya". The person is supposed to have been born on 2nd October, 1989, admitted to school on 14th June, 1999 and left the school on 31st May, 2005. Then, at page 41 is a copy of the Bonafide Certificate issued by the school. As far as page 42 of the paper book is concerned, that is issued by the very school which has

issued the certificate at page 39. At page 42 is the school leaving certificate issued to A.Gani Khatalso Dandu. He is born on 1st April, 1932 and the date of admission is 13th July, 1942. The date of leaving the school is 15th April, 1945. Now, a copy of the certificate issued by *Koya Samaj Sudhar Mandal, Solapur* dated 10th June, 2004 is at page 43 of the paper book together with extract from the Birth and Death Register maintained by Solapur Municipal Corporation. A copy of the order passed in the case of Shri Abdullah A. Gani Dandu vs. State of Maharashtra and Ors. in Writ Petition No. 43 of 1997 is at pages 46 to 50 of the paper book. There is no hesitation as far as the finding of fact and to the effect that religion will be of no consequence as far as the claim of Scheduled Tribe is concerned. However, there is, at page 51 of the paper book, an affidavit affirmed by Abdullah A. Gani Dandu. He says that he belongs to Koya Tribe. His father's name is A. Gani Khataalsab Dandu. Ahmadsab Khataalsab Dandu was the real brother of the father of the affiant. Ahmadsab Khataalsab Dandu had 4 sons, whose names are listed in this affidavit. Thus, the persons named at serial numbers 1 to 4 are the cousin brothers from the paternal side of the affiant.

12. However, when the report was placed on the file of this Scrutiny Committee by the Vigilance Cell, in that, it is clear that

the inquiry was in relation to the claim of the petitioner. Once again, the petitioner is Md. Zubair Md. Aleem Dandu. The affidavit has been filed by one Abdullah A. Gani Dandu. The Vigilance Cell found from the home inquiry and visit to the educational institution that there was an inquiry held in the case of the cousin uncle of the petitioner from the paternal side, namely, Khataalsab Md. Kasim Dandu. In the case of Khataalsab Md. Kasim Dandu, he also claimed to be belonging to Koya, Scheduled Tribe. The inquiry report dated 7th March, 2005 reveals that the said person had claimed that there were 7 others, including real brother and sister of this Khataalsab Md. Kasim Dandu. The information that was provided would reveal that the person gave the name of the school, but that school was closed. In any event, the first certificate in the point of time was the school record of Abdul Gani Khataalsab. He was cousin of Khataalsab Md. Kasim Dandu. His name is A.Gani Khataalsab Dandu. The Vigilance Cell found that the word “Koya” is written in different ink later on. That is the statement made to the Vigilance Cell by the Headmaster of the concerned school. The other record could not be verified.

13. Now, on the basis of this report, which was placed before the Scrutiny Committee in the instant case, the Scrutiny Committee found that one Khataalsab Md. Kasim Dandu, who was also a

relative of the petitioner and in whose case a report was submitted to the Scrutiny Committee, it was revealed that the original residence of this person was Etapalli, District Gadchiroli. The grandfather of Khataalsab Md. Kasim Dandu is claimed to have resided in Sakhar Peth 100 years before the statement came to be recorded. That statement was recorded on 24th February, 2005. This person was in service of the Maharashtra State Road Transport Corporation as Senior Clerk. In relation to the verification of his caste/ tribe claim, the genealogy and family tree was submitted by him. That carries the signature of Khataalsab Md. Kasim Dandu. The information provided by this person reveals that the whole community is spread over in Gadchiroli, Kerala State, Amravati in Vidarbha Region of the Maharashtra State. Hence, when this report was placed on the file of the Scrutiny Committee investigating the claim of the present petitioner, it expressed a natural doubt and suspicion. It scrutinized the claim of the petitioner meticulously. It found that at the time of verification of the tribe claim of Khataalsab Md. Kasim Dandu, the applicant/ petitioner's cousin uncle, a school and home inquiry was conducted through the Vigilance Cell and the inquiry officer submitted his report dated 7th March, 2005 together with relevant documents. The documents included a copy of the statement of the petitioner's cousin uncle Khataalsab Md.

Kasim Dandu dated 24th February, 2005. Thereafter, there was a copy of an extract of School Admission Register issued by Head Mistress, Mahanagar Palika Urdu Kendra Shala No. 5, Solapur. That extract carries details of the relatives of the petitioner. The reference to these relations in the impugned order may not have been made correctly, but there is no dispute in relation to the fact that before us is a gentleman Md. Zubair Md.Aleem Dandu and Khataalsab Md.Kasim Dandu is related to the petitioner from the paternal side. Thus, he is a cousin uncle from the paternal side. The extract of the School Admission Register in Mahanagar Palika Urdu Kendra Shala No. 8 pertains to the petitioner's cousin and father. In that school, Abdul Gani Khataalsab Dandu was a student and the caste was entered as Musalman (Koya) at the time of admission and that was 3rd July, 1942. The word "Koya" is written in different ink and later on.

14. It is not as if this court was oblivious of this aspect and on the first occasion, when it was approached by Khataalsab Kasim Dandu by way of Writ Petition No. 244 of 2006, it made an order on 5th February, 2007. That order directed a re-inquiry. That re-inquiry was conducted through the officer of the Vigilance Cell for verification of the school leaving certificate of the present petitioner's father and the inquiry officer submitted his report on

30th March, 2007 and 4th May, 2007. On a careful perusal of this document, the Scrutiny Committee came to the conclusion that the name of the petitioner's father is not recorded at serial number 659. The contemporaneous record does not reveal that such a student was admitted in M.H.Vijapur Aided Primary School, Sakhar Peth, Solapur. On the other hand, the school admission entry of the petitioner's father appeared in Book No. 1 at Serial number 8 in the same school. That says that the date of birth is 15th May, 1927 and the date of admission is 1st July, 1935. The name of the present petitioner is Md.Zubair Md.Aleem Dandu. The caste is recorded as Musalman. The inquiry revealed that the school leaving certificate pertains to the applicant's father. It is very clear that this person was born in Gadchiroli District. In fact the Gadchiroli District is newly formed district in the State of Maharashtra. Its formation is notified on 26th August, 1982. It is when this district was not in existence, its name could not have been recorded in the school leaving certificate issued at the time of leaving the school. The school to which admission was taken on 1st July, 1935 issued the school leaving certificate after the candidate left the school. It is in these circumstances that the report in relation to the petitioner's close relatives from the paternal side was a relevant and germane document. That report contains all the factual findings. The factual findings include a

misrepresentation to the Scrutiny Committee about the place of residence. The second misrepresentation was in relation to the insertion of the word “Koya”. That was found to have been later on inserted in the document. If that is how the word “Koya” appeared in the original document, but without any explanation, then, all the more the present petitioner’s claim was termed as suspicious and doubtful. The finding of fact is that the school record is a fabricated document. The subsequent insertion has absolutely no explanation.

15. We have found from the impugned order that each and every document produced by the petitioner has been carefully scrutinised. The finding is that the statement of the petitioner’s cousin uncle Khatahsab Md.Kasim Dandu revealed that the information provided does not tally or concur with the traits, characteristics and customs observed by the members of Koya community. Thus, the Scrutiny Committee rendered a conclusion as impugned before us. This conclusion is rendered on a careful consideration of the oral and documentary evidence placed on record. That is on the basis of the inquiry reports placed on record. That is not a finding of fact which can be termed as perverse or vitiated by error of law apparent on the face of the record.

16. We do not think that the claim has been incorrectly or erroneously rejected. We do not find that the claim has been rejected merely by referring to the school leaving certificate of one Jafarsab Khataalsab Dandu. That carries the case of the petitioner no further. The earliest document and in relation to the petitioner's father and close relative from the paternal side prior to 1942/ 1946 carries dubious entries. In these circumstances, the finding recorded by this court in the order passed in Writ Petition No. 43 of 1997 is also of no assistance. We have not gone by the fact that the Muslim religion has no members of Scheduled Tribe or Muslim religion have not been treated as Scheduled Tribe. We have gone through the material placed on record in an individual case. We find that the Scrutiny Committee's exercise is not vitiated as complained by the petitioner.

17. The writ petition (Writ Petition No.223 of 2009) has no merit and is, therefore, dismissed.

18. As far as Writ Petition No. 9562 of 2015 is concerned, the same is filed by the real brother and sister of the petitioner in Writ Petition No. 223 of 2009. For the aforesaid reasons, this writ petition also fails and stands dismissed accordingly.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)