

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.106 OF 2010

**PURUSHOTTAM MURLIDHAR SAWALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Mr. M. S. Deshmukh
AGP for Respondent No.1 : Ms. V. N. Patil Jadhav
Advocate for Respondent No.2 : Mr. P. S. Patil
...

**CORAM : RAVINDRA V. GHUGE AND
S. G. MEHARE, JJ.**

DATE : 11th OCTOBER, 2021

PER COURT :

1. By this petition, the petitioner Purushottam Murlidhar Sawale has put forth prayer clause (B), (C) and (D) as under :-

“(B) Kindly issue Writ of Certiorari or any other appropriate Writ or order thereby quash and set aside impugned Judgment & Order passed by Respondent No.2-Scheduled Tribe Certificate, Scrutiny Committee, Aurangabad dt. 10/7/2009 (received on 26/11/2009)

(C) Kindly hold and declare that petitioner belongs to ‘Tokare Koli’, Scheduled Tribe and his tribe certificate (Exh. ‘A’) is held valid and further direct the Respondent No.2- Committee to issue certificate of validity in favour of petitioner as belonging to ‘Tokare Koli’ Scheduled Tribe in a prescribed format within stipulated period.

(D) In the alternate kindly remand tribe claim of petitioner to the Respondent No.2-Scrutiny Committee, which is validly constituted as per Notification dt. 4th June 2003 and Corrigendum dt. 23/6/2003 (Exh. ‘A-1’ (Colly) for a decision afresh in accordance with provisions of Law.”

2. The learned AGP points out that this very petitioner, by

engaging another advocate, preferred Writ Petition No. 4427 of 2014, assailing the same order dated 10-07-2009, by which his claim of belonging to 'Tokare Koli' Scheduled Tribe was invalidated. In the present petition, the petitioner was not granted interim relief. The learned AGP submits that it is obvious that the same petitioner has filed the 2014 petition challenging the same order, so as to snatch an order from this Court. He places before us the oral judgment dated 23-01-2019 delivered by the Co-ordinate Bench of this Court in the said petition. Paragraph Nos. 2, 3 and the operative part of the order dated 23-01-2019 read as under :-

"2) The present proceeding is filed to challenge the order of Caste Scrutiny Committee, Aurangabad dated 10.7.2009 by which the claim of the present petitioner that he belongs to 'Tokare Koli' Scheduled Tribe is invalidated. Both the sides are heard. The submissions made and the record show that in favour of brother of the present petitioner namely Himatlal, the validity certificate came to be issued on 25.9.2002. The claim of the petitioner came to be decided after deciding the claim of Himatlal. Though the copy of the validity certificate issued to Himatlal was produced, as per the record, it appears that the record was not carefully considered. Even when on the basis of same record like same Vigilance Report in the past Caste Scrutiny Committee has issued validity certificate, it is held that the petitioner does not know the traits or customs of 'Tokare Koli' Scheduled Tribe.

3) In similar circumstances, this Court had remanded the matter to Caste Scrutiny Committee in **Writ Petition No. 2365/2013 dated 1.3.2017 [Arun Balasaheb Pawar Vs. State of Maharashtra]**. In view of the dispute raised by the learned AGP that record was not sufficient in the past, this Court holds that the Caste Scrutiny Committee should consider everything afresh.

So, the following order is made :-

ORDER

(I) The petition is allowed by setting aside the order under challenge in this petition. The petitioner shall appear before the Caste Scrutiny Committee on 6.2.2019 at 10.30 a.m. The petitioner is entitled to produce additional documents, if any. The Committee is to decide the claim of the petitioner expeditiously and in any case within three months from the date of appearance of the petitioner before the Caste Scrutiny Committee.

Rule is made absolute in those terms.”

3. The learned AGP submits that pursuant to the above order dated 23-01-2019, the petitioner contested his claim for ‘Tokare Koli’ Scheduled Tribe and the said claim was again invalidated in 2021, which is a subject matter of Writ Petition No. 6229 of 2021 in which this Court has passed an order on 23-04-2021 granting ad-interim protection as under :-

“4. Till then, employer shall not take adverse action against the petitioner only on the ground that caste claim of the petitioner is invalidated.”

4. Mr. Deshmukh, the learned advocate representing the petitioner in this petition, submits that even if the petitioner may have played mischief, he is completely unaware of the same and has no reason to know of the filing of the 2014 petition, since this petition was the very first petition filed by the said petitioner. Writ Petition No. 4427 of 2014 was filed by the petitioner by engaging another advocate. The Writ Petition No. 6229 of 2021 has been filed by engaging the Advocate son of the said advocate. In any

case, he has no reason to gather knowledge that the petitioner has played this mischief after four years of the filing of this petition.

5. The learned advocate for the petitioner solemnly submits that after this matter was adjourned on 07-10-2021 and posted today, he informed the petitioner about this matter having been posted at Sr. No.1 in the daily cause list. However, he has not been issued with any instructions.

6. The Hon'ble Apex Court has dealt with a case of a litigant playing mischief for acquiring favourable orders in *Kishore Samrite v/s State of Uttar Pradesh* reported in **(2013) 2 SCC 398**, in which it has been held as under :-

"Abuse of the process of Court :

31. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision.

32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:-

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'.

Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(viii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer : Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114; Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 and State of Uttaranchal v Balwant Singh Chaufal & Ors. (2010) 3 SCC 402].

33. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In P.S.R. Sadhanantham v. Arunachalam & Anr. (1980) 3 SCC 141, the Court held:-

"15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic 'human-right' of a system which purports to guarantee legal rights."

"16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition."

34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that

dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

36. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287]).

37. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

38. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean

breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].

39. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530).

40. In light of these settled principles, if we examine the facts of the present case, next friends in both the petitions are guilty of suppressing material facts, approaching the court with unclean hands, filing petitions with ulterior motive and finally for abusing the process of the court."

7. Since Writ Petition No. 4427 of 2014 has been allowed by the order dated 23-01-2019, and the impugned decision of the Caste Scrutiny Committee dated 10-07-2009, which is subject matter of challenge in this petition, has been set aside, this petition is rendered infructuous. However, we deem it appropriate not to turn a Nelson's eye to this matter, keeping in view the law laid down by the Hon'ble Apex Court in *Kishore Samrite* case (supra). If this Court blinks at such instances of mischief and the fraud played in the Court, it cannot be ruled out that litigants would get emboldened. The message that would be conveyed to the public at large would be that litigants can get away with mischief by misleading or misrepresenting the Court.

8. In view of the above, this petition is dismissed by imposing cost of Rs.1,00,000/- (Rupees One Lakh Only), which the petitioner shall deposit in this Court on or before 25th November, 2021. The compliance of this order shall be brought to the notice of this Court. In the event of non-compliance, we would direct the District Collector, Aurangabad to recover the said amount with interest as arrears of land revenue by taking recourse to the procedure as is laid down in the M.L.R. Code, 1966.

9. Considering the above, we deem it appropriate to initiate *suo moto* contempt proceedings against the petitioner. The learned Registrar (Judicial) shall register this case as a *suo moto* contempt case and issue a notice under the Contempt of Courts Act against the petitioner, returnable on 30th November, 2021.

10. Office shall issue notice in the requisite format and the petitioner shall remain personally present in the Court on the said date.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)