

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7702 OF 2017

(Nitesh s/o. Tarachand Khapekar .vs. State of Maharashtra and Others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.N.Phadnis, Advocate and Mr.K.Nalamwar, Advocate
for petitioner.

Mr.D.P.Thakare, Additional Government Pleader for
respondent nos. 1 and 2.

CORAM : DIPANKAR DATTA, CJ. &
PUSHPA V. GANEDIWALA, J.

DATE : 3rd February, 2021.

P.C. :

1. An order dated 20th November, 2017 passed under Section 6 of 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, 2000 (Maharashtra Act No.XXIII of 2001) by the Scheduled Tribe Certificate Scrutiny Committee, Nagpur Division, Nagpur is under challenge in this writ petition dated 2nd December, 2017.

2. Mr. N. Phadnis, learned Counsel appearing for the petitioner contends that this is a fit and proper case where the Committee should be directed to re-hear the petitioner and

take a fresh decision. According to him, the petitioner was not granted reasonable opportunity of hearing and this constitutes breach of principles of natural justice. The further contention of Mr. Phadnis is that the petitioner belongs to 'Halba' tribe and based on the materials placed on record before the Committee, a grave illegality has been caused in invalidating the tribe certificate that was previously issued in favour of the petitioner. It has also been contended by Mr. Phadnis that the inquiry made by the Police Vigilance Cell was not proper and the Committee, by placing reliance on such inquiry report, has occasioned failure of justice.

3. Per contra, Mr. D. P. Thakare, learned Additional Government Pleader appearing for the respondents submits that the impugned order is a well-written and well-reasoned order taking into consideration all aspects of the matter and no case has been set up by the petitioner justifying interference.

4. We have heard the learned Counsel for the parties and perused the documents on record including the impugned order.

5. The Supreme Court in its decision in **Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Development and Others**, reported in AIR

1995 SC 94, has laid down the parameters of judicial review of an order of invalidation of caste/tribe status. Paragraph 14 therein being relevant is re-produced below :

“14. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately recorded the finding. Each case must be considered in the backdrop of its own facts. “

6. We must bear in mind the law declared by the Supreme Court quoted above while examining the challenge to the order of the Committee.

7. Also, since perversity in the findings of an order determining rights, which is under challenge, could afford a ground for interference by the Court exercising jurisdiction under Article 226 of the Constitution, meaning thereby that (1) the principles of natural justice have been violated; (2) the decision maker has considered evidence which is irrelevant; (3) the decision maker has failed to consider relevant materials; (4) the findings have been reached by the decision maker on “no evidence”; (5) the decision maker has disabled itself in reaching a fair decision by some considerations extraneous to the evidence and the merits of the case; and (6) the decision maker has based the finding upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, we propose to examine whether on application of the aforesaid legal principle, the challenge deserves to succeed or not.

8. We have found from the impugned order that the petitioner was granted opportunity of hearing on 29th May, 2015 and then again, on 13th November, 2017. On both the occasions, the petitioner stayed away from the proceedings. However, the Committee had before it the version of the petitioner in his submissions dated

4th March, 2014, 16th October, 2017 and 13th November, 2017. Such version was duly considered. Ultimately, the Committee returned a finding that Sumitra d/o. Pandurang Bhatji Hedau is related to the petitioner by blood being the paternal cousin grandmother, whose caste had been recorded as 'Koshti' in the documents which have its origin prior to independence of the country. There are several other documents, which were considered by the Committee, not revealing that either the petitioner or his predecessors do belong to the 'Halba' tribe. The question of the petitioner being deprived of an opportunity of hearing or that the Committee had taken into consideration irrelevant evidence or had not considered relevant evidence or passed an order on 'no evidence' or returned findings which no person acting judicially and properly instructed as to the relevant law could have found, does not arise.

9. It is settled law that if, on a given set of facts, two views can be formed and the view formed by the decision maker is one of two such views, which is not an absurd view, the writ court would not substitute its view for the view taken by the decision maker. The view taken by the Committee being a plausible view given the materials before it, no question arises for taking a different view.

10. For the reasons discussed above, there is no ground to interfere with the well-reasoned order of the Committee. This writ petition is devoid of any merit and, accordingly, stands dismissed. There shall be no order as to costs.

(PUSHPA V. GANEDIWALA, J.) (CHIEF JUSTICE)

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Suraj
Jaiswal

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by Suraj Jaiswal
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