

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

986 WRIT PETITION NO.8088 OF 2022

**RUDRAKSHA RAJENDRA KOLI THROUGH HIS NATURAL
GUARDIAN RAJENDRA BABURAO KOLI**

VERSUS

**THE SCHEDULED TRIBE CERTIFICATE SCRUTINY COMMITTEE
AND OTHERS**

...

Advocate for Petitioner: Mr. Santosh S. Jadhavar

AGP for Respondents No.1&2: Mr. P. S. Patil

ASG for Respondent No.3: Mr. A. G. Talhar

...

CORAM: RAVINDRA V. GHUGE

AND

ARUN R. PEDNEKER, JJ.

DATE: 02nd AUGUST, 2022

PER COURT:

1. The Petitioner is a child of 11 years taking education, and has appeared in this Petition through his biological father Rajendra Baburao Koli.

2. The Petitioner has put-forth prayer clauses 'B', 'C', 'D', 'E' and 'F', as under:-

"B) By issuing writ of certiorari or any other appropriate writ, order or direction, the Common Judgment and Order dated 27.07.2022 passed by respondent

No.1 Committee in File No.OSD/APP/43/2021 and OSD/APP/18/2022, so also Order dated 07.07.2022 passed by respondent No.2, rejecting application of the petitioner for issuance of tribe certificate belonging to Koli Mahadeo, Scheduled Tribe, may kindly be quashed and set aside.

C) By issuing writ of mandamus or any other appropriate writ, order or direction, respondent No.2 may kindly be directed to issue tribe certificate in favour of the petitioner, belonging to Koli Mahadeo Scheduled Tribe.

D) By issuing writ of mandamus or any other appropriate writ, order or direction, the respondent No.3, may kindly be directed to admit petitioner in respondent No.3 school provisionally till issuance of tribe certificate by respondent No.2.

E) Pending hearing and final disposal of the present Writ Petition, respondent No.3 may kindly be restrained from cancelling selection of the petitioner for admission in 7th standard in Jawahar Navoday Vidyalaya, Tuljapur,

District Osmanabad and it may be further restrained from admitting any another student against the seat for which petitioner has been selected.

F) Ad-interim relief in terms of prayer clause "E" may kindly be granted in favour o the petitioner."

3. The biological father has sworn a verification stating therein that the contents of the Petition and the grounds set out as well as the prayer clauses are explained to him in Marathi and the same are true and correct.

4. We have considered the extensive submissions of the learned Advocate for the Petitioner and the learned AGP on behalf of Respondent Nos.1 and 2 and the learned ASG on behalf of Respondent No.3, on 01.08.2022 and today.

5. The events and the facts that have unfolded during the course of the hearing as it progressed, compelled us to decline leave to the Petitioner, who is present in the Court, to

withdraw this Petition. As we deal with the facts hereinafter, the reasons would become obvious as to why we have not permitted the Petitioner to withdraw this Petition.

6. The Petitioner is aggrieved by the rejection of his request for a tribe certificate of belonging to Koli Mahadev, Scheduled Tribe. He has relied upon the Koli Mahadev, Scheduled Tribe certificate issued to his uncle namely Walmik Baburao Koli. Walmik has also been granted a validity certificate on 06.01.2006. It is, therefore, submitted that when there is a validity amongst the blood relatives of the Petitioner, there is no legal impediment to grant the Koli Mahadev, Scheduled Tribe certificate to the Petitioner.

7. We called upon the learned Advocate for the Petitioner to take instructions as to why his biological father Rajendra is not submitting his tribe certificate and not willing to file an affidavit that he belongs to the Koli Mahadev,

Scheduled Tribe. On instructions, the learned Advocate submitted that Rajendra is an agriculturist. He never sought any certificate. His real brother Walmik has Koli Mahadev, Scheduled Tribe validity and this is the best piece of evidence.

8. Since we were intrigued by the above stated facts, that we called upon the learned AGP to place before us the original file pertaining to Walmik, so as to ascertain from the record as to whether the Petitioner really belongs to the Koli Mahadev, Scheduled Tribe.

9. The learned AGP has placed before us the original file pertaining to Walmik Baburao Koli bearing Serial No.460 with the bar code AURO27133 (scanned file). Our attention is drawn to Page 46 of the said file which discloses the Zilla Parishad, Osmanabad Primary school at Devlali, Taluka — Kalamb, student register No.101, Certificate No.81 which is the school entry of the Petitioner Rajendra who is also known as Rajababu

or Rajabhau Koli. His religion and caste is mentioned as 'Hindu Koli'. Thus, the reason why the Petitioner was not filing his personal affidavit and not tendering a copy of his school record, is exposed. Another blood relative whose record is available with the Committee is Kumar Koli Bhalchandra from the same school. His religion and caste is also shown as 'Hindu Koli'.

10. We have, therefore, got an answer to the query as to why the Petitioner Rajendra was wholly relying on the validity certificate of his biological brother Walmik. Few family members who have been to school, have a record of 'Hindu Koli' which will not make them eligible to have the Koli Mahadev, Scheduled Tribe certificate. We also have got an answer as to why the Petitioner pretended to be an agriculturist. He was attempting to create an impression that he had not been to the school.

11. The above facts as are revealed, remind us of the view taken by the Hon'ble Supreme Court

in Paragraph No.32 (32.1 to 32.8) and 33 to 39 in Kishore Samrite Vs. State of Uttar Pradesh and others, (2013) 2 SCC 398, which read as under:-

"32. The cases of abuse of 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 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:

32.1 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 are entitled to any relief.

32.2 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.

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

32.4 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 overshadowed the old ethos of litigative values for small gains.

32.5 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.

32.6 The court must ensure that its process is not abused and in order to prevent abuse of process of 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.

32.7 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.

32.8 The court, especially the Supreme Court, has to maintain the strictest vigilance over the abuse of 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., (2010) 2 SCC 114, Amar Singh v. Union of India, (2011) 7 SCC 69 and State of Uttaranchal v. Balwant Singh Chaufal (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 process of court. In P.S.R. Sadhanantham v. Arunachalam, (1980) 3 SCC 141, the Court held: (SCC p. 148, paras 15-16)

"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 to be 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 pleading, 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 process of 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 an abuse of process of 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 an abuse of process of court. A litigant is bound to make "full and true disclosure of facts". (Refer: Tilokchand Motichand v. H. B. Munshi, (1969) 1 SCC 110, A. Shanmugam v. Ariya

Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, (2012) 6 SCC 430, Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421, Abhyudya Sanstha v. Union of India, (2011) 6 SCC 145, State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639, Kalyaneshwari v. Union of India, (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 a 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 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 court. (K.D. Sharma v. SAIL, (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 v. K. Parasaran, (1996) 5 SCC 530.)"

12. We also deem it appropriate to rely on Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others, (2013) 11 SCC 531, wherein the Hon'ble Apex Court has observed in Paragraph Nos.42 to 44, as under:-

"42. While dealing with the conduct of the parties, we may also notice the submission of the learned counsel for Respondent 1 to the effect that the petitioners are guilty of suppression of a material fact from this Court, namely, the rejection on 2-5-2003 of the first application for extension of time filed

by the trustees and the finality attached to it. These facts have not been clearly disclosed to this Court by the petitioners. It was submitted that in view of the suppression, special leave to appeal should not be granted to the petitioners.

43. The learned counsel for the petitioners submitted that no material facts have been withheld from this Court. It was submitted that while the order dated 2-5-2003 was undoubtedly not filed, its existence was not material in view of subsequent developments that had taken place. We cannot agree.

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court. True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality."

13. In view of the above, it is apparent that a cloud of doubt hovers over the caste validity granted to Walmik. The possibility would also be that Walmik may not be a biological brother of Rajendra. We, therefore, find that the scrutiny

committee will have to initiate steps as may be permissible in law to verify as to whether Walmik really belongs to the Hindu Koli (SBC) category or whether he belongs to the Koli Mahadev, Scheduled Tribe or is not the biological brother of Rajendra. We, therefore, leave this aspect to the wisdom of the committee to enquire into by following the due procedure laid down by law. We make it clear that we have not expressed a view with regard to the validity granted to Walmik and neither do we intend to say that the said validity is bad. There is a possibility that many family members of Walmik as well as Rajendra, may rely on the validity certificate of Walmik and if at all there is a fraud, the fraud would be perpetuated.

14. In so far as this Petition is concerned, we find that the Petitioner has failed in making out a case for interference in our writ jurisdiction. This Petition is, therefore, dismissed.

15. In view of the law laid down in **Kishore Samrite Vs. State of Uttar Pradesh and others** (*supra*) and **Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others** (*supra*), we grant costs of Rs.10,000/- (Rs. Ten Thousand only) which the Petitioner shall deposit in this Court on or before 15.09.2022. The Registry shall transfer Rs.5,000/- (Rs. Five Thousand only) to the Government Medical College and Hospital at Aurangabad and Rs.5,000/- (Rs. Five Thousand only) to the Government Cancer Hospital at Aurangabad.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]

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