

Uday S. Jagtap

(Corrected as per speaking to Minutes order dated 28.03.2022)

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

WRIT PETITION NO. 11617 OF 2017

Bharat Bhagwant Tayade
Aged 45 years, R/at Sai Darshan
Society, Chawl No. 10,
Saint Dnyaneshwar Nagar,
Thane (W), Dist. Thane

.. Petitioner

V/s.

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department
Mantralaya, Mumbai 400 032

2. Scheduled Tribe Caste Certificate
Scrutiny Committee, Konkan Division,
Thane through its Member Secretary,
having its office at Vartak Nagar
Ward Committee Office, Opp. Kores
Company Vedant Complex, Vartak
Nagar, Thane (W), Dist. Thane

3. Vartak Nagar Shikshan Mandal's
Snt. Saviridevi Thirani Vidyamandir
and Shri. Sushilkumar Thirani
Jr. College of Commerce and Science,
Vartak Nagar, Thane – 400 606
through its Secretary

4. Sub Divisional Officer,
Thane, Sub Division, Thane,
Dist. Thane

.. Respondents

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Mr. R.K. Mendadkar a/w Mr. Tanaji Jadhav for the petitioner
Mrs. P.J. Gavhane, AGP for the respondent - State

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**CORAM : SUNIL B. SHUKRE &
G.A. SANAP, JJ.
DATE : 15th MARCH, 2022.**

JUDGMENT : (Per Sunil B. Shukre, J.)

1. Heard.
2. Rule. Rule is made returnable forthwith by consent of the parties.
3. This is the second time that the petitioner is required to approach this Court questioning the legality and correctness of the order of invalidation of the caste certificate passed by the respondent no.2 - Scrutiny Committee at Thane. Previously, the respondent no.2 had invalidated the caste certificate of the petitioner and that order was challenged by the petitioner by filing Writ Petition No. 10568 of 2014. It was then found by this Court that the Scrutiny Committee refused to accord the evidentiary value to the validity certificate granted to Kailash Devidas Tayade, cousin of the petitioner from the paternal side, that it deserved in law.
4. It may be stated here that caste or tribe validity certificate granted to any person is a conclusive proof of the social status of that person and it confirms the genuineness of the social status, whether caste or tribe, claimed by that person. A document which stands as a conclusive proof for one person would also stand as a conclusive proof of the social status of another person, if such

other person is a paternal relative of the first person possessing the validity certificate except in a case where the validation of caste or tribe certificate is vitiated by fraud, misrepresentation of facts or suppression of facts.

5. There is a rationale in this approach. In most parts of India, the families are organized on patriarchal basis and follow a patrilineal mode of succession. In such families, members take same caste or belong to same tribe as that of their ancestor traced patrilineally. In such a family, therefore, the relatives cannot be the members of different caste or tribes and must be considered to be in law as having same caste or tribe or community to which their common ancestor from paternal side belonged. It, therefore, appeals to reason that the validity certificate granted to any relative from the paternal side would equally constitute a conclusive proof for the social status of another member of the family, immediate or extended, from the paternal side except in circumstances noted above. This is the law laid down by the Hon'ble Supreme Court in the case of **Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Ors. (2008) 9 SCC 54**, which has been followed by the Division Bench of this Court in the case of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and Ors. 2010(6), Mh.L.J. 401**.

6. Considering the law so well established in the field, this Court while disposing of the Writ Petition No. 10568 of 2014 filed by the petitioner, vide its order dated 20.12.2016 not only quashed and set aside the impugned order of invalidation of respondent

no.2 - Scrutiny Committee but also directed the Scrutiny Committee to decide the tribe claim of the petitioner keeping in view the validity certificate granted to Kailash Tayade, paternal cousin of the petitioner and also keeping in view the law laid down by the Division Bench of this Court in the case of *Apoorva Vinay Nichale (supra)*.

7. So, it was expected that the Scrutiny Committee while exercising its discretion in the matter, would give due consideration to the directions given by this Court in Writ Petition No.10568 of 2014 in its order dated 20.12.2016. But on going through the impugned order we feel disappointed. The Scrutiny Committee in a stereotypical order has once again rejected the tribe claim of the petitioner for the same reason which it gave while rejecting the claim of the petitioner in the earlier round of litigation. In the earlier round of litigation, the Scrutiny Committee had reasoned that validity certificate granted to Kailash Tayade could not be accepted because some of the documents showed that the other relatives belonged to Hindu Other Backward community or Koli and Suryavanshi Koli. It further held that the Scrutiny Committee (Scrutiny Committee at Nashik) was required to deal with each and every case separately on its own merits and by taking into consideration the entire documentary evidences as well as the Vigilance Cell report placed on record, which it did not. The present Scrutiny Committee of Thane then ultimately found that the validity certificate granted to Kailash Tayade by Nashik Scrutiny Committee was not proper and, therefore, it was not worthy of any consideration by it. The observations made by the

respondent no.2 - Thane Scrutiny Committee in the earlier round of litigation are extracted as below :-

“Now coming to the Validity Certificate, issued by the Nashik Committee to the cousin brother of the applicant. The then Committee might have issued this validity certificate on the documentary evidences came before the particular Committee during that time. This validity certificate cannot be considered in this case, because the vigilance enquiry report obtained in this case shows the record of applicant and his cousin grandfather & father as ‘Hindu Other Backward, Koli & Suryawanshi Koli, which is different from the tribe ‘Tokre Koli’, as claimed by the applicant. These documentary evidences, which are of the pre-Presidential Order period, carrying greatest probative and evidential value, may not be available to the then Nashik Committee. Secondly, the Scrutiny Committee has to deal each and every case separately on its own merits and by taking into consideration the entire body of documentary evidences as well as the vigilance call report placed on record.”

8. In the present round of litigation, the respondent no.2 - Scrutiny Committee at Thane has given almost the same reasons as it did in the earlier round of litigation while recording a finding as to why the validity certificate granted to Kailash Tayade was not acceptable to it. Of course, this time the respondent no.2 - scrutiny Committee added few more observations but the basic observations remained same as they were earlier. It would be interesting to see as to what observations have been made by the respondent no.2 - Scrutiny Committee. They are, therefore, produced as below :-

“Now coming to the Validity Certificate, issued by the Nashik Committee to the cousin brother of the applicant,

namely, to Shri. Kailash Devidas Tayade, this committee is of the considered view that the then Committee (Nashik Committee) might have issued that validity certificate on the basis of the documentary evidences which were came before that Committee. This validity certificate cannot be considered in this case, because the vigilance enquiry report obtained in this case shows that the record of applicant, his cousin grandfather & father as 'Hindu Other Backward, Koli & Surayvanshi Koli respectively, which are different from the tribe 'Tokre Koli', as claimed by the applicant. It is pertinent to note here that the School record pertaining to applicant's father shows caste entry as 'Suryawanshi Koli' of the period 1945 i.e. this document is of pre-Presidential Order period, carrying greatest probative and evidential value, which may not be available to the then Nashik Committee. The other very important document, pertains to applicant's cousin grand father, namely, Shri Sitaram Kitkul Tayade, reveals his caste as Koli, of the period 1920. This is the oldest documentary evidence, brought by the Vigilance Cell, by way of enquiry, having greatest probative value of evidence. These are very important documentary evidence, which might not been available to the then Nashik Committee, resulting in validating the tribe claim of the applicant's cousin brother."

9. It would be clear from the above referred observations that they are almost similar to the observations made earlier by the Scrutiny Committee and, therefore, we find that the respondent no.2 - Scrutiny Committee has disregarded the directions issued by this Court in its judgment dated 20.12.2016 passed in Writ Petition No. 10568 of 2014.

10. Failure of respondent no.2 – Scrutiny Committee for not giving appropriate consideration in complying with the directions given in the judgment of this Court, dated 20.12.2016 delivered in

Writ Petition No. 10568 of 2014 has, in fact, resulted in judicial indiscipline committed by quasi judicial authority like respondent no.2 – Scrutiny Committee. The Hon'ble Supreme Court has in its several judgments reiterated the need for following and accepting the verdict of the superior courts and the law laid down by them. It has observed that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. It further observed that in case of the public Authorities entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, must set an example by their own conduct exhibiting full commitment to the constitutional ideals. The Supreme Court further observed that this principle of law is required to be followed with greater rigour by the members of the judicial fraternity, who have been bestowed with the power to adjudicate upon the important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. It also held that discipline is a *sine qua non* for effective and efficient functioning of the judicial system. The observations made by the Apex Court in the case of **Official Liquidator Vs. Dayanand and Ors. (2008) 10 SCC 1** in paragraph 90 and 91 are relevant and they are reproduced as under :-

“90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the

facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. *We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of the judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.”*

11. We find in the present case that respondent no.2 – Scrutiny Committee has acted in utter disregard to the law laid down by the Apex Court in the case of *Official Liquidator (supra)*, which is discussed earlier and has went on to disobey the directions given

by this Court on 20.12.2016. We must emphasize here that the caste or tribe Scrutiny Committee is a Quasi Judicial Authority and, therefore, it must abide by judicial discipline and rule of judicial propriety. If a quasi judicial or any judicial Authority fails to maintain the judicial discipline, it would result in lowering down the prestige of the system of administration of justice and undermine the respect the citizens of India hold for it. We, therefore, once again sound a caution to not only respondent no.2 – Scrutiny Committee but also to all other Scrutiny Committees against venturing to disobey orders of superior Courts and scrupulously follow the directions issued by the superior courts. We make it clear that, in future, if it comes to our notice that these directions have not been followed by any of the Scrutiny Committees, this Court shall take a serious view of the breach that may be committed by any of the Scrutiny Committees.

12. Now, coming back to the present controversy, we find that the respondent no.2 - Scrutiny Committee has virtually sat in appeal over the decision of the another Scrutiny Committee at Nashik, which it could not have done by any legal standards. It could also not have reconsidered the decision of Nashik Scrutiny Committee, for two reasons. Firstly, it lacked territorial jurisdiction over Nashik region and secondly, there was no allegation that validity of certificate granted to Kailash Tayade was vitiated by fraud, misrepresentation or suppression of facts (see cases of *Apoorva d/o Vinay Nichale* (supra) and *Jyoti Sheshrao Mupde Vs. State of Maharashtra* in Writ Petition No. 1954 of 2009) decided on 22.08.2012). Yet, it found fault with validity certificate

of Kailash Tayade and illegally rejected it.

13. The validity certificate granted to Kailash Tayade could not have been rejected by the Scrutiny Committee here, there being no allegation of it having been obtained by fraud or misrepresentation or suppression of facts. It then follows that the said validity certificate did constitute conclusive proof of social status claimed by the petitioner. We are thus of the view that the Scrutiny Committee here ought to have accepted the said validity certificate as offering reliable proof to the social status claimed by the petitioner and accordingly allowed the claim, but it did not. The impugned order, therefore, must go.

14. In the result, the petition deserves to be allowed and it is allowed accordingly.

15. The impugned order is quashed and set aside. The respondent no.2 – Scrutiny Committee is directed to issue validity certificate to the petitioner that he belongs to Tokre Koli Scheduled Tribe within a period of two weeks from the date of receipt of copy of the order.

16. We direct the respondent no.3 to regularly pay the salary to the petitioner, if it is not being paid. Petition is made absolute in the above terms. No order as to costs.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]