

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

PUBLIC INTEREST LITIGATION NO.16 OF 2017

Mrs. Nanda Chandrabhan Parate
and another

... Petitioners

- Versus -

The State of Maharashtra and
others

... Respondents

Shri S.P. Bhandarkar, Advocate for petitioners.

Shri A.R. Chutke, Assistant Government Pleader for respondent nos.1
and 2.

Shri N.S. Deshpande, Deputy Solicitor General of India for
respondent no.3.

Shri M.M. Sudame, Advocate for respondent no.4.

Shri S.R. Narnaware, Advocate and Shri A.A. Dhawas, Advocate for
interveners.

CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.

DATED : SEPTEMBER 22, 2022

We had heard this matter for some time yesterday and
formed an opinion that considering the reliefs sought in this petition
and also inadequacy of data supporting the claim of the petitioners,
this petition would not be maintainable and it would be better for

the petitioners to either wait until the report of the Experts' Committee is submitted and a foundational cause of action arises as a result of submission of the report of the Experts' Committee or pursue their independent remedy. Shri Bhandarkar, learned Counsel for the petitioners, then submitted that he would have to seek instructions from the petitioners in the matter and, therefore, this petition was placed on board for today under the category "for withdrawal".

2) Today, Shri Bhandarkar, learned Counsel for the petitioners, on instructions, submits that the petitioners do not wish to withdraw the petition nor do they wish to pursue any independent remedy nor do they wish to wait until the report of the Experts' Committee is submitted. In other words, the petitioners are seeking to prosecute this petition without there being any foundational cause of action and without there being any sufficient material to support their case. Their case is that "Koshti" is a profession of weaving and all "Halbas/Halbies" pursue this profession and, therefore, "Koshties" are also entitled to be declared as synonyms of "Halbas/Halbies" (Scheduled Tribe).

3) Law in this regard is already settled. In the case of **Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar and others** {(2008) 9 SCC 54}, the Apex Court has held very clearly that the Court does not have jurisdiction to substitute any caste or tribe in the Constitution (Scheduled Castes) Order, 1950 and Constitution (Scheduled Tribes) Order, 1950. In para 20 of the judgment, the Supreme Court held that in terms of Article 342 of the Constitution of India, the Constitution (Scheduled Tribes) Order, 1950 was issued and in this Order, tribe “Halba” finds place, but the community “Koshti” is not mentioned in the said Order. It further held that the community “Koshti” in the State of Maharashtra comes under “Special Backward Class” and the occupation of the members of this community may be the same, but it is well settled that before a person can obtain a declaration that he is a member of the Scheduled Tribe, he must be a member of the tribe. For this proposition of law, the Supreme Court referred to the case of **Nityanand Sharma vs. State of Bihar** {(1996) 3 SCC 576}. For these reasons, the Supreme Court has held that the Court does not have any jurisdiction so as to enable it to substitute any caste or tribe. The relevant observations of the Supreme Court as they appear in para 21 of the judgment are reproduced as under :

“21. Parliament, it is trite, alone can amend the law and the schedule for the purpose of including or excluding therefrom a tribe or tribal community or part of or group within the same in the State, district or region and the declaration made by Parliament is conclusive. For the said purpose, the court does not have any jurisdiction so as to enable it to substitute any caste and tribe.”

4) In the earlier case of the **State of Maharashtra vs. Milind and others** (2001(1) Mh.L.J. 1), the Supreme Court held that it is not at all permissible for a Court to hold any enquiry or let in evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though not specifically mentioned in the concerned entry in the Constitution (Scheduled Tribes) Order, 1950. It declared in no uncertain terms that the Constitution (Scheduled Tribes) Order, 1950 must be read as it is and it is not permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Constitution (Scheduled Tribes) Order, 1950, if not so specifically mentioned.

5) The position of law discussed above would indicate that in the absence of any foundational cause of action having arisen on account of acceptance by the Government of an unequivocal report of the Experts concluding that the community “Koshti” is synonymous to “Halba” or “Halbi” (Scheduled Tribe) or that “Koshti” as a community itself is included in the Scheduled Tribes Order, this Court will have no power to make any declaration that the “Koshti” community is also a part of the “Halba” or “Halbi” (Scheduled Tribe). Such foundational cause of action is absent in this case. In para 13 of the judgment in the case of Milind and others (supra), the Apex Court has held that the States have no power to amend the Presidential Orders. It means that if this Court is to grant any relief prayed for in this petition, it would amount to amending the Presidential Order and would also amount to breach of the law declared by the Supreme Court. It must be stated here at the cost of repetition that as of now there is no report of any Experts’ Committee concluding that “Koshties” are identical to “Halbas” or “Halbies” (Scheduled Tribe), much less any acceptance of such report by the State Government.

6) The above referred law has been reiterated by the Full Bench of this Court in the case of **Shilpa Vishnu Thakur vs. State of Maharashtra and others** (2009 (3) Mh.L.J. 995) when in paragraph 27 of the judgment, the Full Bench has held thus :

“27. ... A Constitution Bench of the Supreme Court has held in Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another vs. State of Kerala and another (supra) that the Presidential Order “has to be applied as it stands and no inquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it.” (para 18, page 365). The Court cannot assume the jurisdiction to hold an enquiry or let in evidence to determine whether the terms of the Presidential Order include a particular community though not specifically named...”

7) The main prayers made in this petition are reflected in prayer clauses (ii), (iii), (iv) and (iv-a). For the sake of convenience, they are reproduced as under :

(ii) by an appropriate writ, order and/or direction, quash and set aside the entry number 16 of the

Government Resolution dated 24th April, 1985 issued by the respondent no.2;

(iii) by an appropriate writ, order and/or direction, direct the Respondent number 2 to issue the Caste Validity Certificates during the pendency of this Public Interest Litigation to such candidates belonging to Halba, Halbi community specifically staying in Central Province and Berar and the profession of whom was weaving and hence, they were called as Koshti by professional name based on the ancient history.

(iv) direct the Respondent number 2 not to take any action against the candidates whose claim of Halba, Halbi (Scheduled Tribe) – Scheduled Tribe Caste Committee in Maharashtra was rejected by the Certificates Scrutiny;

(iv-a) by an appropriate writ, order and/or direction hold that Halba, Halbi from the geographic areas of erstwhile Central Provinces and Berar have adopted profession of weaving and recorded in revenue, birth and School records as Koshti, a vernacular synonymous word for weaver. In pre-independence/pre-Constitution area, by virtue of provisions in Rules and Order under Births, Death and Marriages Act No.6 of 1886, the Registration Act No.16 of 1908, Central Provinces Ethnographic Survey B Draft Articles on

Forest Tribes (Second Series) printed in 1911 and other historical Government reports/documents available since 1827, brought out in this petition.”

8) The prayer clause (ii) of the petition contains a basic prayer and remaining prayer clauses contain consequential prayers. The prayer clause (ii) seeks to question the legality and validity of the Government Resolution dated 24th April 1985 whereby community “Koshti” has been shown to be the non tribal and also a community which takes advantage of its similarity with “Halba” or “Halbi” community for the purpose of illegally and unjustifiably obtaining tribe validity certificates. This prayer proceeds on the premise that since “Koshti” is the community, which carries on occupation of weaving for earning livelihood and since all “Halbas” or “Halbies” (Scheduled Tribe) also carry on the occupation of weaving, person who is shown as “Koshti” in any relevant documents standing as proof of social status of that person, must be declared to be identical to and as equal to “Halba” or “Halbi” (Scheduled Tribe). On this basic premise, further prayer clauses have been made, such as validation of all tribe claims of the persons on the ground that the entries in various relevant documents disclose those persons to

be belonging to “Koshti” community and not Halba/Halbi community and so on.

9) Now if such prayers are to be granted, it would be necessary for the petitioners to support their claim either on the basis of the Constitution (Scheduled Tribes) Order, 1950 or conclusion made in the report of experts that anthropologically and socially “Koshties” are identical to and similar to “Halbas” or “Halbies” (Scheduled Tribe), which is accepted by the Government and, therefore, they also deserve to be included in the Constitution (Scheduled Tribes) Order, 1950. There is neither any Constitutional Order nor any such report of the Experts, which favours the contention of the petitioners. It is clear that the law declared by the Supreme Court and discussed hereinabove squarely applies to the facts of this case and the petitioners are not at all entitled to pursue the non existent cause of action by filing a public interest litigation and consuming precious public time.

10) At this stage, Shri Chutke, learned Assistant Government Pleader for the respondent nos.1 and 2, points out that the petitioner no.1’s husband Chandrabhan Parate’s tribe claim as

belonging to “Halba” (Scheduled Tribe) was invalidated by the Scheduled Tribe Certificate Scrutiny Committee, Nagpur on 1/2/2016 and that the challenge raised by him to the order of the Scrutiny Committee by filing Writ Petition No.2153/2016 was also rejected by this Court by its judgment delivered on 6/4/2016 and thereafter the judgment of this Court dated 6/4/2016 was upheld by the Apex Court when it dismissed civil appeal being Civil Appeal No.370/2017 filed by Chandrabhan Parate, husband of the petitioner no.1, on 10/8/2021. He submits that the petitioner no.1 being wife of Chandrabhan Parate has knowledge of all these events and now, by suppressing these material facts from the Court, she has made an attempt to obtain something from this Court, which her husband could not succeed in getting it.

11) Shri Narnaware, learned Counsel for the applicant/intervener in Civil Application No.1525/2019 filed by Halba Samaj Mahasangh, submits that the tribe claim of the husband of the petitioner no.1 and not that of the petitioner no.1 was rejected by this Court and the petitioner no.1 has got nothing to do with all those events and there is no reason why the petitioner no.1 should possess knowledge of those events.

12) Learned Counsel Shri Narnaware having not filed any Vakalatnama on behalf of petitioner no.1 Mrs. Nanda Chandrabhan Parate, has no authority in law to represent her case and, therefore, we are constrained to ignore his submission. Even otherwise, it is not the case of the petitioner no.1 that she is living separately from her husband and that she has no knowledge about what was done and what is being done by her husband. It is also not her case that she would not claim the social status of “Halba” or “Halbi” (Scheduled Tribe) in future. Therefore, we are of the view that the petitioners ought to have averred about the material facts of the husband of the petitioner no.1 having lost his tribe claim of belonging to “Halba/Halbi” (Scheduled Tribe) before this Court and right upto the Supreme Court.

13) In our view, the petitioners are guilty of suppression of material facts and we also find that the petitioners have their some personal agenda to follow by filing this petition. Such an attempt by the petitioners to pursue private agenda under the garb of public interest litigation must be curtailed.

14) In the result, we find that this petition is devoid of any merit and appears to be an attempt to pursue private agenda under the cloak of public interest litigation. The petition stands dismissed with nominal costs of rupees ten thousand to be paid jointly and severally by the petitioners. The costs shall be deposited in the Account of the High Court Bar Association, Nagpur for the purpose of development of Library including e-Library within four weeks from today.

JUDGE

JUDGE

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