



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

Writ Petition No.1664 of 2001

Shrirang S/o Baburao Dhakate,

Aged about 39 years,

Resident of Armori,

District Gadchiroli.

... **Petitioner**

Versus

1. The State of Maharashtra,

through its Secretary,

Tribal Development Department,

Mantralaya, Mumbai-32.

2. Committee for Scrutiny & Verification

of Tribe Claims,

Giripeth, Adivasi Vikas Bhavan,

Amravati Road, Nagpur.

3. The Senior Regional Manager,

Hindustan Petroleum Corporation Limited,

Oriental Building, Second Floor,

Kamptee Road, Nagpur.

... **Respondents**

Ravindra Maroti Naitam,

Aged about 45 years,

Occupation – Agriculturist,

Resident of Armoti, District Gadchiroli.

... **Intervenor**

Ms Preeti D. Rane with Ms Geeta R. Tiwari, Counsel for Petitioner.

Ms N.P. Mehta, Additional Government Pleader for Respondent No.1.

Shri A.M. Quazi, Counsel for Respondent No.3.

Shri S.P. Bhandarkar, Counsel for Intervenor.

CORAM : A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.

Date on which arguments were heard : 13th October, 2023

Date on which judgment was pronounced : 30th November, 2023

JUDGMENT (PER A.S. CHANDURKAR, J.) :

1. The challenge raised in this writ petition is to the order dated 21-4-2001 that has been passed by the Committee for Scrutiny and Verification of Tribe Claims, Nagpur thereby invalidating the petitioner's claim of belonging to 'Halba' Scheduled Tribe. Pursuant to an advertisement dated 17-9-1984 issued by the Hindustan Petroleum Corporation Limited – HPCL – respondent No.3 inviting applications for appointment of Distributors for supply of Liquefied Petroleum Gas – LPG at Gadchiroli for persons belonging to the Scheduled Tribe Category, the petitioner applied for the same. Pursuant to the interview held on 28-2-1986, the name of the petitioner alongwith two others was empanelled for appointment. Thereafter the petitioner was awarded LPG Distributorship and he commenced the said venture on 16-7-1990. The selection of the petitioner came to be challenged by one Shri Shriram D. Madavi by filing Writ Petition No.3135 of 1989. Though a grievance was raised that the petitioner did not belong to the Scheduled Tribe Category, the writ petition was not entertained at the behest of said petitioner for the reason that said petitioner was himself not eligible to get the dealership. The writ petition came to be dismissed on 26-3-1990. Subsequently on the basis of the Government Resolution

dated 9-9-1999, the claim of the petitioner of belonging to 'Halba' Scheduled Tribe was referred to the Scrutiny Committee. The initial order passed by the Scrutiny Committee came to be set aside on the ground that the procedural requirements had not been satisfied. Ultimately by the impugned order 21-4-2001, the petitioner's claim was invalidated.

2. The present writ petition was decided on 13-6-2016. This Court found that since the petitioner had been running the LPG Distributorship since 1989 which was almost a period of 27 years, it held that the order of invalidation could not be used to deprive the petitioner of his dealership. It was clarified that the said order would not be used to the prejudice of any blood relation of the petitioner while verifying their caste claim. In the said writ petition, Civil Application No.760 of 2010 for intervention had been preferred by one Shri Rajivshah Bhagwanshah Meshram. By the order dated 25-3-2010, this Court had directed that the intervention application would be heard alongwith the writ petition. Since the applicant was not heard when the writ petition was decided, he filed a review application being Misc. Civil Application No.1074 of 2018. On the ground that the applicant was not heard while deciding the writ petition, this Court thought it fit to grant such opportunity to the applicant and by order dated 23-3-2023 the writ petition was restored for fresh consideration. It is in this backdrop that we have heard the learned counsel for the parties.

3. In the application for intervention, the applicant has pleaded that he had made a complaint as regards the social status of the petitioner. On 6-6-2008, the HPCL issued a communication to the petitioner stating therein that in the event the distributorship of the petitioner would be terminated, then as per the policy of the HPCL the distributorship would be re-advertised for appointment of another person from the Scheduled Tribe Category. For that reason, it was stated that the petitioner's claim was not liable to be considered. It is on this basis that the application for intervention was preferred by the applicant.

4. Ms Preeti Rane, learned counsel for the petitioner, submitted that when the writ petition was decided earlier on 13-6-2016, this Court examined the entire record and found that there were various old documents relied upon by the petitioner having the entry 'Halba'. It further noted that the petitioner was not served with a copy of the report of the Vigilance Cell which was necessary in the light of the judgment of the Hon'ble Supreme Court in ***Kum. Madhuri Patil and another Versus Additional Commissioner, Tribal Development and others [AIR 1995 SC 94]***. Though the provisions of the Maharashtra Act No.23 of 2001 came into force on 18-10-2001, the proceedings for validity were decided much earlier. It was thus submitted that after noting all these aspects, the Court did not find it necessary to pronounce upon the merits of the issue and instead it granted protection of the LPG Dealership that was operating in favour of the

petitioner since 1989. On this basis, it is urged that this Court may not re-open the proceedings and the decision taken earlier be maintained. In any event, the intervenor would not automatically be entitled to such dealership in case the petitioner's dealership was cancelled. In that regard, the learned counsel has referred to the decision of the Hon'ble Supreme Court in *Chief Regional Officer, Oriental Insurance Co. Ltd. Versus Pradip and another* [AIR 2020 SC 4858] and the judgment of the Division Bench at Aurangabad in *Writ Petition No.903 of 2020 [Raja Tukaram Shinde Versus The State of Maharashtra and another]* to urge that since the Division Bench had granted protection prior to the decision of the Hon'ble Supreme Court in *Chairman and Managing Director, Food Corporation of India and others Versus Jagdish Balaram Bahira and others* [2017(8) SCC 670], the proceedings need not be re-opened.

5. Shri A.M. Quazi, learned counsel for the respondent No.3-HPCL, submitted that considering the prevailing policy when the advertisement was issued on 17-9-1984, it was not necessary for a candidate to furnish a validity certificate. The stand of the HPCL had been made clear in its communication dated 6-6-2008 and the same did not undergo any change. The HPCL had accepted the earlier decision of this Court that was rendered on 13-6-2016 and the same did not warrant any interference.

6. Shri S.P. Bhandarkar, learned counsel for the intervenor, on the other hand submitted that by virtue of the Government Resolution

dated 9-9-1999 the claim of the petitioner had been referred for verification. It was on that basis that the proceedings had been examined by the Scrutiny Committee. Since the petitioner was the beneficiary of the tribe certificate that had been invalidated, the consequences as provided by Section 10 of the Act of 2001 ought to follow. In that regard, the learned counsel placed reliance on the decision in *Chairman and Managing Director, Food Corporation of India and others* (supra), *Chandrabhan Versus State of Maharashtra and others* [(2021) 9 SCC 804], *Chief Regional Officer, Oriental Insurance Company Limited* (supra) and *Ramesh Suresh Kamble Versus State of Maharashtra and others* [2007(1) Mh.L.J. 423]. It was thus prayed that the order passed by the Scrutiny Committee be maintained.

7. We have heard the learned counsel for the parties and we have given due consideration to their respective submissions. At the outset, it may be stated that the petitioner has come up with a specific case that the Scrutiny Committee did not supply him copy of the report of the Vigilance Cell so as to enable him to reply to the same. This was contrary to the guidelines laid down by the Hon'ble Supreme Court in *Ku. Madhuri Patil* (supra). This specific assertion has not been denied by the Scrutiny Committee. Taking note of this aspect, the Division Bench while deciding the writ petition on 13-6-2016 has referred to the same in Paragraph 13 of the said judgment. On this basis, it was held that the order passed by the

Scrutiny Committee violated Clauses 4 to 6 of the judgment in ***Kum. Madhuri Patil*** (supra). Even today, we find no denial to the said factual assertion by the Scrutiny Committee. It was in this backdrop that the Co-ordinate Bench deemed it appropriate at that point of time to hold that since the petitioner had been running the dealership for almost 27 years, it would not be in the interest of justice to deprive him of the same. In other words, instead of remanding the proceedings to the Scrutiny Committee again, the LPG Distributorship was protected and it was clarified that the order passed by the Scrutiny Committee would not cause prejudice to any blood relative of the petitioner. The decision of the Hon'ble Supreme Court in ***Chairman and Managing Director, Food Corporation of India and others*** (supra) was delivered thereafter on 6-7-2017. The consequences to follow pursuant to the order of invalidation have been indicated therein. It is however necessary to note that in ***Chief Regional Officer, Oriental Insurance Company Limited*** (supra), the Hon'ble Supreme Court considered the issue with regard to protection of services attaining finality prior to the decision in ***Chairman and Managing Director, Food Corporation of India and others*** (supra). In the present case, this Court by its order dated 13-6-2016 had sought to protect the dealership of the petitioner after noting that for a period of 27 years he had been operating the same. This order has been accepted by the HPCL which has awarded the dealership to the petitioner. We are inclined

to continue this protection for the reason that even according to the HPCL in case of termination of the dealership granted to the petitioner, the intervenor would not be automatically entitled to the same. It has stated that the distributorship would be re-advertised for appointing a new dealer belonging to the Scheduled Tribe Category.

8. We note that the judgment dated 13-6-2016 is sought to be re-considered only on the ground that the intervenor was not heard in the said proceedings. Since the HPCL has made it clear that the intervenor would not be automatically entitled to distributorship in case of termination of the petitioner's dealership since the merit panel is valid only for a period of one year, we do not find any reason to take a different view from the one that was taken in the judgment under review. The said judgment seeks to achieve the ends of justice in the peculiar facts of the case.

9. Hence for aforesaid reasons, the judgment of this Court dated 13-6-2016 stands restored. The same shall accordingly govern the parties.

10. Rule is disposed of in aforesaid terms with no order as to costs. Pending civil applications are also disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)