

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

WRIT PETITION NO.4624/2023

Vijaykumar S/o Madhukar Ingle,
aged about 52 Yrs., Occ. Farmer,
r/o At Post Pandey Galli, Near Gadi
Shegaon, Tah. Shegaon, Distt.
Buldhana 444 203.

... Petitioner

- Versus -

The Vice-Chairman/Member
Secretary, Scheduled Tribe Caste
Certificate Scrutiny Committee,
Amravati.

... Respondent

Ms. Preeti Rane, Counsel for the Petitioner.
Ms. A.S. Fulzele, Additional Government Pleader for the Respondent.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 26.7.2023

ORAL JUDGMENT (Per A.S. Chandurkar, J.)

The claim of the petitioner of belonging to Thakur
Scheduled Tribe was rejected by the Scrutiny Committee on
17.2.2007. That order was challenged by the petitioner in Writ
Petition No.731/2007. The said writ petition was dismissed on

20.2.2007. The Special Leave Petition preferred by the petitioner also came to be dismissed on 27.4.2007. Thereafter the petitioner filed a review application being Miscellaneous Civil Application (M.C.A.) No.66/2009 seeking review of the order passed in the writ petition. By the judgment dated 12.3.2012 the said review application was allowed and the proceedings were remanded to the Scrutiny Committee for adjudication of claim. After remand the Scrutiny Committee by the impugned order dated 14.6.2023 has not adjudicated the claim on merits by observing that since the Special Leave Petition challenging the rejection of the petitioner's claim having been dismissed it was unable to take cognizance of the petitioner's prayer for deciding tribe claim.

2. Mr. A.S. Fulzele, learned Additional Government Pleader waives notice for the respondent.

3. Considering the short issue involved we have heard the learned counsel for the parties by issuing Rule and making it returnable forthwith. The learned counsel for the petitioner has tendered a copy of M.C.A. No.66/2009 for perusal. In para 1 on

page 3 of the miscellaneous civil application it has been pleaded as under:-

“1.The petitioner's caste claim was referred to the Caste Scrutiny Committee who decided the caste claim of the petitioner and rejected the caste claim of the petitioner vide order dated 17.2.2007. Against the said caste claim, the petitioner filed Writ Petition No.731/07 which came to be dismissed by judgment dated 20th February, 2007. Copy of the said judgment dated 20.2.07 is annexed herewith and marked as Annexure No.A. Against the said judgment dated 20th February, 2007, the petitioner filed S.L.P. No.7094/07 before the Hon'ble Supreme Court of India and the said S.L.P. was dismissed on 27.4.2007. After dismissal of the said S.L.P. petitioner came to know that the question of affinity test is referred to the full bench and since this Hon'ble Court dismissed the writ petition on the ground of affinity and affinity is subject matter referred to the full bench and in view of the decision reported in 2000 (6) SCC 359, Puniya V/s. State of Kerala, wherein Hon'ble Supreme Court held that doctrine of merger is neither a doctrine of constitutional law nor doctrine of statutorily recognised.”

It is seen that along with review application copy of the order passed by the Hon'ble Supreme Court in the Special Leave Petition has been annexed as Annexure D at page 37. It is thus clear that while deciding the review application the Division

Bench was aware that the challenge earlier raised by the petitioner to the order in Writ Petition No.731/2007 had failed before the Hon'ble Supreme Court. In view of these pleadings we find that the Scrutiny Committee was not justified in refusing to adjudicate the petitioners claim on merits. The *doctrine of merger* as explained by the Hon'ble Supreme Court in the case of Kunhayammed and others V/s. State of Kerala and another reported in **(2000) 6 SCC 359** would not be applicable since there was a simplicitor dismissal of the Special Leave Petition. In these facts, the petitioner's claim deserves consideration on merits. Accordingly, the following order is passed:-

The order dated 14.6.2023 passed by the Scrutiny Committee is set aside. The proceedings are remanded to the Scrutiny Committee for fresh adjudication in accordance with the observations made in the judgment dated 12.3.2012 in Miscellaneous Civil Application (M.C.A.) No.66/2009. The petitioner shall appear before the Scrutiny Committee on 7.8.2023. Since it is submitted that enquiry of the Vigilance Cell

is over, and the petitioner does not desire to rely on any fresh document, the claim of the petitioner be adjudicated within a period of six months from the date of appearance of the petitioner. Rule is made absolute in the above terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)