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wp 8581.21 F-1.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8581 OF 2021

1. Paresh s/o. Vikram Deoraj,
Age 35 years, Occ. Education,
R/o. 4, Chaitanyanagar,
near Girls High School,
Jalgaon, District Jalgaon.
2. Mayur s/o. Vikram Deoraj,
Age 37 years, Occ. Service,
R/o. 4, Chaitanyanagar,
near Girls High School,
Jalgaon, District Jalgaon.

.. PETITIONERS.

VERSUS

1. The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralalya, Mumbai-32.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar
through its Member Secretary.

.. RESPONDENTS.

Mr. S.R. Barlinge, Advocate for the petitioners
Mr. S.K. Shirse, AGP for respondent Nos. 1 and 2

CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 18th JANUARY, 2024.
PRONOUNCED ON : 6th FEBRUARY, 2024.

Judgment (per S. G. Chapalgaonkar, J.) :-

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocate appearing for the parties.

2. The petitioners have approached this court under Article 226 of the Constitution of India, thereby impugning the notice dated 8th June, 2021 issued by the respondent No.2 Scheduled Tribe Certificate Scrutiny Committee, Nandurbar, calling upon them to show cause as to why validity certificates issued in their favour should not be reviewed and cancelled. Since, during pendency of present writ petition committee passed further order dated 4.10.2021, thereby cancelled the caste validity certificates issued in favour of the petitioners and further directed them to surrender originals within a period of 8 days, by way of amendment, the petitioners have assailed said order.

3. Mr. S.R. Barlinge, learned advocate for the petitioners would submit that the petitioners belong to Tokre Koli Scheduled Tribe. They were conferred with the Validity Certificates to that effect by the Scheduled Tribes Certificate Scrutiny Committee, Nasik in the year 2001 and 2005, respectively. The caste validity was granted by the Scrutiny Committee after following due process of law based on Vigilance Cell Inquiry Report. He would submit that the petitioners had relied upon the School Admission Record of their father dated 1st June, 1951, wherein, his caste has been entered as "Tokre Koli".

4. He would further submit that recently, Validity Certificates issued in favour of the petitioners were relied upon by Usha Prakash Koli, in support of her caste claim pending verification. During process of her

caste claim, Vigilance Cell Report dated 28.2.2014 was received to Committee. Taking base of certain adverse remarks therein, Scrutiny Committee issued notices to the petitioners with an intention defeat caste claim of petitioner's brother, namely Yash Vikram Deoraj. Mr. Barlinge would further submit that the contents of show-cause-notice served to petitioners nowhere records that the petitioners have either fraudulently obtained caste validity or they misrepresented Committee. Lastly, he would submit that even otherwise, the statutory scheme under the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes, Vimukta Jatis, Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste Certificate) Act, 2000, do not confer powers of review upon the Scrutiny Committee. This Court as well as the Supreme Court of India in catena of judgments reiterated the aforesaid legal position. Therefore, the show cause notice to re-open the concluded claim and consequential order of cancellation of validity certificate by committee is without jurisdiction. In support of his contentions, he relied upon the judgments in following cases :-

- (i) Bharat Nagu Garud Vs. State of Maharashtra .
2023 DGLS (Bom.)5029.*
- (ii) Anil s/o. Shivram Bandawar vs. The District Caste Certificate
Verification Committee, Gadchiroli and another (W.P. No. 8107
of 2019) dated 26.7.2021.*
- (iii) J. Chitra Vs. District Collector and Chairman State Level
Vigilance Committee, Tamil Nadu and others reported in
(2021) 9 SCC 811*

4. Per contra, Mr. S.K. Shirse, learned AGP appearing for the respondents vehemently opposes the petition. He would submit that fraud and justice can not go together. In the present case, during scrutiny of the caste claim of Usha Prakash Koli, the Vigilance Report dated 28.2.2014 has been received by the Committee. Based on the remarks in the Vigilance Report, the files pertaining to the caste validity granted in favour of the petitioners were called and upon consideration of the material relied by the petitioners it was revealed that a false statement regarding blood relationship with validity holders was made and contra entries, were suppressed. He would submit that the petitioners had relied upon the caste validity in favour of Mr. Devendra Sahebrao Deoraj while pursuing their claim. However, as per the report of the Vigilance Cell, inconsistent material is found in respect of such relationship. He would therefore submit that the Committee had rightly issued show cause notice dated 8.6.2021 indicating number of reasons. and solicited reply of the petitioners. However, petitioners failed to explain adverse remarks, consequently Committee recalled their Validity Certificates. He would submit the Committee is within its powers to issue such show cause notice and call upon the petitioners to explain the circumstances so also cancel validity granted earlier, when fraudulent means were adopted while obtaining such validity.

5. We have considered the submissions advanced on behalf of the respective parties and perused the documents annexed alongwith the petition. During the course of hearing, the original files in respect of the petitioners were also placed before us. Apparently, on 8.6.2021 impugned show cause notice appears to have been issued. The gamut of show cause notice is as under :-

- i) Petitioner No. 1 obtained validity based on the validity certificate granted to his real brother i.e. Petitioner No.2 Mayur Vikram Deoraj.
- ii) Petitioner No.2 Mayur suppressed the contra evidence and also falsely projected blood relationship with unconcerned persons.
- iii) During the scrutiny of the caste claim of petitioner's cousin aunt, namely, Usha Kalu Deoraj, the contra entries right from 1922 to 1966 indicating caste of blood relatives as "Koli" "Suryawanshi Koli" has been noticed.
- iv) Petitioner No.2 Mayur Vikram Deoraj relied upon the validity granted to Devendra Sahebrao Deoraj. However, no evidence depicting his relationship with Devendra Sahebrao Deoraj has been produced.

Pertinently, contents of the show cause notice nowhere depict that the petitioners had adopted fraudulent practices or misrepresented the committee while persuing their caste claim. Perusal of the original files received from committee depict that an affidavit of Sitaram Goba Deoraj, who is cousin uncle of the petitioners was filed in support of relationship of the petitioners with Devendra Sahebrao Deoraj. So far as the contra entries alleged to have been surfaced during recent vigilance inquiry, it is difficult to gather that the petitioners were aware about any such contra entries, which are for the period from 1922 to 1966. Pertinently, the entry of the caste as "Koli" in record of some blood relatives is considered as contra entries by the Committee. However, entry of caste "Koli" without further bifurcation of sub-caste may be observed in many cases. During pre-constitutional era, many persons chosen not to enter sub-castes like "Dhor" Or "Tokre" due to social conditions and chosen to enter only "Koli" as caste. Therefore, the entry as "Koli" in pre-constitutional documents may not be treated as contra

entry, in each and every case.

6. Therefore, taking into consideration the contents of the show cause notice, it is difficult to make out case of fraud or misrepresentation against the petitioners. The Committee while cancelling caste validity conferred upon the petitioners, observed that it was obtained by misrepresenting that Devendra Sahebrao Deoraj is their blood relative but such evidence could not be tendered by the petitioners. It is further observed that the contra evidence has been surfaced during the vigilance inquiry of Usha Kalu Deoraj. Pertinently, the Committee was not supposed to re-verify the caste claim of the petitioners so also petitioners were not supposed to re-establish their claim. Now, it is no more res-integra that the Committee does not possess the powers of review of its own decision, being a quasi judicial authority. At this stage, reference can be given to judgment of the Division Bench of this Court in the case of ***“Bharat Nagu Garud Vs. State” (supra)***, where, in para.46 this Court observed thus :-

“46. Thus in our opinion, the Caste Scrutiny Committee, being a statutory body exercising quasi adjudicatory functions, would not have any jurisdiction to suo motu verify the past records and initiate an action to reopen past decision and invalidate the caste validity certificates already granted. If an inherent power of review is to be read in the provisions of the 2000 Act, it would lead to a monumental uncertainty and absurdity in the functioning of the Caste Scrutiny Committee, as it can be at the *ipse dixit* of the Caste Scrutiny Committee to reopen concluded cases. This would lead to patent arbitrariness. For such reasons it is not possible to come to a conclusion that any inherent power of review is available with the Caste Scrutiny Committee.”

Similar view was taken by the Division Bench of this Court in

the case of *Vishnu Rajaram Thakar Vs. State of Maharashtra 2022(3) Mh.L.J. 629* and *Anil Shivram Bandawar Vs. District Caste Certificate Scrutiny Committee in W.P No. 8107 of 2021*.

7. Looking to the aforesaid legal position and the factual aspects of this case, even if it is assumed that in cases of fraud or misrepresentation or gross suppression of material facts, the Committee would have limited scope to re-open the claim, the committee has to prima facie record the finding of existence of aforesaid elements and then only issue show cause notice. Pertinently, in present case Committee could not arrive at concrete finding and support impugned order giving adequate reasons. There is nothing to indicate that petitioner No.1 Mayur was not blood relative of Devendra Sahebrao Deoraj or contra evidence relied by committee was within their knowledge and same was intentionally suppressed from the Committee.

8. Pertinently, the impugned order is passed after 20 years of granting validity of tribe claim in favour of petitioners. We have perused original files of committee in respect of the caste scrutiny of petitioners. It shows that report of the vigilance cell was called. The requisite procedure was followed. There was nothing to object genealogy or relationship of the petitioners with Devendra – validity holder. In fact, petitioner No.2 Mayur relied on affidavit tendered by Devendra himself confirming his relationship with the petitioners. Similar affidavit is given by Sehebrao Ramsing Deoraj and Sitaram Goba Deoraj. Apparently, the finding recorded by the Committee is contrary to the material available in the original claim files of petitioners. Consequently, in absence of the powers of review, the Committee could not have cancelled the caste validities after a period of 20 years, which may have devastating

consequences on families of the validity holders.

9. In view of the aforesaid reasons, we have no hesitation to hold that the Committee fell in jurisdictional error while issuing impugned show cause notices and passing consequential order of cancellation of validity granted in favour of the petitioners. Hence, we proceed to pass the following order :-

: O R D E R :

- [a] Writ petition is allowed;
- [b] The impugned order dated 4.10.2021 passed by the respondent No.2 Committee thereby recalling the earlier decision granting validity of tribe certificates to the petitioners and invalidating the tribe certificates, is quashed and set aside;
- [c] Consequently, the original orders granting caste validity certificates in favour of the petitioners stand restored.
- [d] Rule made absolute in aforesaid terms, with no orders as to costs.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-