



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

WRIT PETITION NO. 1759/2024

(ZADE SAMAJ BAHUUDDESHIY VIKAS SANSTHA, GADCHIROLI **VERSUS** THE STATE OF
MAHARASHTRA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Nitin Meshram, Advocate with Shri Shankar Borkute, counsel for the petitioner.
Smt.T.H. Khan, Assistant Government Pleader for the respondents.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : MARCH 13, 2024

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Heard the learned counsel for the parties.

2. The petitioner-Society has come out with following prayers:-

“(i) issue any directions/orders/writs under Article 226 of the Constitution of India to the respondents commanding to; constitute a Commission of Inquiry under the Commission of Enquiry Act, 1952 to ascertain and find out which of the Zade Community which is notified by the Govt.Resolution dated 17/01/1990 (Annexure-15); and further direct the respondents to identify the similarly situated or synonymous community and to find out whether Zade Kunbi, Zadya Kunbi, Zade Ku., Za.Ku., Zariya & Zariya Kunbi, etc. are falls within the notified Zade Community or notified Zade Community and these are one and same community entitle for the purposes of aforesaid Govt.Resolution;

(ii) issue any directions/orders/writs under Article 226 of the Constitution of India to the respondents commanding to; issue Nomadic Tribe-C Caste/Tribe certificates and validity certificates to Zade Kunbi, Zadya Kunbi, Zade Ku., Za.Ku., Zariya & Zariya Kunbi etc. holding them that these communities are one and same communities are notified Zade Community by the Resolution dated 17/01/1990 (Annexure-15);

- (iii) direct the respondents-State Govt. to place report of the Commission of Inquiry constituted under Inquiry Commission Act 1952 in accordance with direction to be issued by this Hon'ble Court as per prayer clause (I); before this Hon'ble Court, and until pass any orders, directions or writs; commanding respondents to grant validity certificates in the interim in accordance with prayer clause (ii);*
- (iv) issue any directions/orders/writs under Article 226 of the Constitution of India to the respondents to recall the orders passed by the respondent No.4 & 5 respective Caste Scrutiny Committees; invalidated Caste/Tribe claims of Zade Community and consider them a fresh on their own merit and without being prejudice by the different nomenclature of Zade Community in accordance with law;*
- (v) direct the respondent No.4 & 5 respondent respective Caste Scrutiny Committees Chandrapur and Gadchiroli to not to insist the Zade Community people to submit any documentary proof of Dhargar-Zade and showing affinity with Dhargar community since Zade is independent community is recognized as Nomadic Tribe-C;*
- (vi) grant any interim relief in the nature of direction in rem to stay the effect, operation and implementation of the orders invalidating the caste/tribe claims of Zade Community candidates passed by the respondent No.4 & 5 respective Caste Scrutiny Committees of Gadchiroli & Chandrapur until the final disposal of this petition;*
- (vii) during pendentilite direct the respondent No.1-State Govt. and instruct all Sub-Divisional Officer/Competent Authorities throughout Maharashtra to issue caste certificates to the people belongs to Zade Community being Nomadic Tribe-C without prejudice by the different nomenclature of Zade Community and further direct the Caste Scrutiny Committees to issue validity certificates to Zade Community people being Nomadic Tribe-C;*
- (viii) grant ex-party ad interim relief in terms of prayer clause vi & vii above in the interest of justice;*
- (ix) Grant any other relief which this Hon'ble Court may deem fit, just and proper in the circumstances of the case, in the interest of justice and equity."*

3. The facts in support of the prayers made by the petitioner-Society are as under:-

The petitioner claims to be a society registered under the Societies Registration Act, 1860 which was formed with an object to protect the rights and interests of the people belonging to Zade NT-C category. It is the case of the petitioner that the respondent no.3-Other Backward Bahujan Welfare Department is created by the State Government *vide* notification dated March 09, 2017 for the effective implementation of various schemes for the economic, social and educational development of Vimukta Jatis, Nomadic Tribes, De-Notified Tribes and Special Backward Classes. The respondent nos.4 and 5 are the Caste Scrutiny Committees.

4. According to the petitioner since Zade community is backward and dwelling near forest areas, they are very less in number. The entries like Zade, Zade Kunbi, Zadya Kunbi, Zade Ku. Za.Ku., Zariya & Zariya Kunbi, etc. could be noticed in various records of pre-Constitutional and post-Constitutional era, particularly in the revenue, school and Gram Panchayat records. It is claimed that since all the entries are in relation to the people residing in Gadchiroli and Chandrapur districts of State of Maharashtra, they are entitled for the issuance of not only the caste certificate of NT-C category but also the tribe validity certificates. According to the petitioner as per the report of 'The Territories of the Rajah of Nagpore' submitted to the Supreme Government of India in 1872, Jharia community is described as 'the Jarria Gond of Chanda' and 'the Marree Gond of Telingana and Bustar'. It further refers to word 'Koonbee' having wide significance applicable to thirteen classes of cultivators. As such, it is claimed that Zade community is synonymous to Gond community.

5. Some other reports are also sought to be relied on by the counsel for the petitioner-Society which are produced at Annexures 5, 6, 7, 8A, 8B, 9, 10, 11, 12A, 12B, 13A and 13B so as to substantiate the claim that all people belonging to abovereferred Zade community are entitled to be categorized in NT-C category, they being synonymous to Gond community. According to the petitioner, the status of Jharia and Jharia Kunbi tribes is extinct which were not included in the Scheduled Castes and Scheduled Tribes lists. The Maharashtra State Gazetteers Bhandara District published a report in 1979 stating that Kunbi in Bhandara are most numerous castes with the exception of Mehras. Jhare Kunbis who belong to Zari or Forest are the oldest settlers and no doubt have an admixture of Gond blood. The petitioner claims that the State Government has created a separate category of Nomadic Tribes *vide* Government Resolution dated May 25, 1990 and caste Zade is accordingly included in the same under Nomadic Tribe-C category at Serial Number 15. It is claimed that though 'Zade' caste is equivalent to Dhangar caste, it is an independent caste. According to the petitioner, after 1950, Jharia or Jharia Kunbi were completely amalgamated with Zade community and people belonging to Zade community were identified as belonging to Nomadic Tribe-C category having no affinity with Dhangar caste. It is claimed that the customs, cultures and tradition of people belonging to Zade, Zade Kunbi, Zadya Kunbi, Zade Ku. Za.Ku., Zariya & Zariya Kunbi, etc. community matches with persons belonging to Zade NT-C category and that being so, they are entitled to be included in Zade NT-C category. It is claimed that inconsistent entries in revenue and school records in relation to Zade community has to be read as belonging to Zade NT-C category. In this background, it is the case of the petitioner-Society that it is entitled for grant of reliefs prayed.

6. Shri Nitin Meshram, counsel for the petitioner, from the available annexures which are in the form of old studies carried out and notified in the post-independence era, has tried to substantiate his claim of interpreting NT-C category which according to him include synonymous entries such as Zade, Zade Kunbi, Zadya Kunbi, Zade Ku. Za.Ku., Zariya & Zariya Kunbi, etc. So as to substantiate his contentions, he would draw support from the judgment of the Apex Court in *B. Basavalingappa Versus D. Munichinnappa* [AIR 1965 SC 1269] so as to claim that in view of the mandate provided under Article 341(1), 342 and 366(25) of the Constitution of India, the State Government have the legislative competency to take a decision regarding inclusion and exclusion of a caste/tribe in the NT-C category. He would claim that though the respondent nos.4 and 5 are armed with the statutory powers to decide the tribe claims, they have rejected the tribe claims without appreciating the old literature in support of the entries such as Zade, Zade Kunbi, Zadya Kunbi, Zade Ku. Za.Ku., Zariya & Zariya Kunbi, etc. According to him, under Article 340 of the Constitution of India, it is the respondent no.3- Other Backward Bahun Welfare Department of the State of Maharashtra which is empowered to investigate the status of the persons belonging to backward class categories and in such an eventuality, the benefit of NT-C category needs to be extended in favour of the persons belonging to Zade, Zade Kunbi, Zadya Kunbi, Zade Ku. Za.Ku., Zariya & Zariya Kunbi, etc. According to him, even if in 1990 the State Government has notified tribe Zade as NT-C category, the same can be interpreted to include entries such as Zade, Zade Kunbi, Zadya Kunbi, Zade Ku. Za.Ku., Zariya & Zariya Kunbi, etc.

7. As against above, it is the contention of Smt.T.H. Khan, Assistant Government Pleader that the entry has to be read as it is and the entry in the NT-C category is that of 'Zade'. Such entry of 'Zade' cannot be extended to mean that the same include entries such as Zade, Zade Kunbi, Zadya Kunbi, Zade Ku. Za.Ku., Zariya & Zariya Kunbi, etc. According to her, Kunbi is an independent caste in the Other Backward Class category. As such, according to her, the relief claimed in the writ petition of constituting a Commission of inquiry under the Commission of Enquiry Act, 1952 to interpret the entry of 'Zade' in NT-C category is contrary to the constitutional mandate and framework. That being so, she has sought for dismissal of the writ petition.

8. We have considered the rival contentions.

9. At the outset, we would like to deal with the judgment of the Apex Court in *B. Basavalingappa* (supra). In the said case, the status of the candidate belonging to Scheduled Castes was under challenge on the ground that his caste certificate of belonging to scheduled caste was obtained by practicing fraud. The Apex Court while dealing with such argument has observed that once the notification is published under Article 342(1) of the Constitution of India, the power to include or exclude any entry in the Presidential Order is with the Parliament alone. When any caste or tribe is included in the Presidential Order, it is impermissible for the Courts to conduct enquiries to determine if a tribe or sub-tribe is part of the Scheduled Tribe mentioned in the Presidential Order. It has also been observed that the Courts cannot expand the scope so as to include any sub-caste in the Presidential Order.

10. The Apex Court has dealt with a similar issue which came up before it for consideration in *State of Maharashtra Versus Milind & Others* [(2001) 1 SCC 4]. In the said case, the respondent was claiming to be belonging to Halba Scheduled Tribe. While dealing with his claim, the Court held that it is not at all permissible to hold any inquiry to determine whether any tribe or sub-tribe is a part of the Scheduled Tribe. The Apex Court has specifically made it clear that the notification issued under Article 342(1) of the Constitution of India can only be amended by law to be made by the Parliament and not by judicial, administrative or quasi-judicial Authority who sans power to interpret the entry that is included in the Presidential Order. Similarly in *Maroti & Others Versus Deputy Director & Member Secretary & Others* [(2023) 6 ABR 419], the Full Bench of this Court has held that it is impermissible to conduct enquiries to determine if a tribe or sub-group is a part of the Scheduled Tribe unless it is expressly provided in the Presidential Order. It is further held that the Presidential Order issued under Article 342(1) of the Constitution of India is final and binding and the power to amend, alter or modify the same lies with the Parliament only.

11. As such, consistently it is the position of law through various authoritative pronouncements that the Presidential Order of the Constitution of India holds the final authority to determine any caste, tribe, sub-group or sub-tribe to be the one under Article 341 or 342 of the Constitution of India and there is a prohibition of enquiry by the Courts or administrative bodies to interpret the caste/tribe or what is covered in its ambit which is not expressly mentioned in the Presidential Order. The State Government through Government Resolution dated May 25, 1990

has included the caste 'Zade' under Nomadic Tribes-C category. As there is a prohibition of enquiry so as to interpret the entries included in the Presidential Order similarly even the entries included in the list of Nomadic Tribes-C category by the State Government cannot be looked into by this Court. The Doctrine of Constitutional Supremacy has to be respected so as to re-enforce the Constitutional mandate and to have primacy over the administrative and judicial actions by preserving the integrity of the Constitutional framework. Apart from above, if we consider the issue of scope of interpretation of entries in the Presidential Order, we are bound by the authoritative pronouncement by the Full Bench of this Court in *Maroti & Others* (supra). The Full Bench of this Court while dealing with the similar issue which is sought to be canvassed in the present writ petition has observed as under:-

“14.5 The power to add/include, delete/exclude a tribe(s) or tribal community(s) or parts of or groups within such tribes or tribal communities in a notification once published under Article 342(1) of the Constitution, then vests in the Parliament alone and not with the president. Thus even the President having once issued a notification under Article 342(1) of the Constitution, is then denuded of the power to, in any manner add/include, delete/exclude a tribe(s) or tribal community(ies) or part(s) of or group(s) within such tribe(s) or tribal community(ies) in such notification. If that be so, then no other authority, including the Courts, can embark on an exercise to consider whether any tribe(s) or tribal community(ies) or part(s) of or group(s) within such tribe(s) or tribal community(ies) is included in any of the tribe or is a part of or group within any such tribe or tribal community as specified in any entry in such notification. That is then, the sole domain of the Parliament under Article 342(2) of the Constitution.”

12. In the aforesaid background, the contentions raised by the counsel for the petitioner that there has to be a reading down of an entry of 'Zade' incorporated in the NT-C category so as to include entries such as Zade, Zade Kunbi, Zadya Kunbi, Zade Ku. Za.Ku., Zariya & Zariya Kunbi, etc. is beyond the scope of the powers of the Court under Articles 226 and 227 of the Constitution of India.

13. The contention of the petitioner-Society of interpreting the entry 'Zade' or reading down the same in the Presidential order cannot be in any way be carried out by constituting the Commission of Inquiry as the same will be running contrary to the mandate provided in the Constitution of India. The Full Bench judgment of this Court in *Maroti & Others* (supra) in categorical terms has dealt with the said issue and as such, no enquiry as sought by the petitioner can be permissible.

14. That being so, there is no substance in the writ petition. The same sans merit and as such stands dismissed. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)