



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

CIVIL APPLICATION (W) NO. 811/2024 IN WRIT PETITION NO. 988/2024

(MAHESHWARI DURGAPRASAD SURAJJOSHI **VERSUS** THE SCHEDULED TRIBE CASTE CERTIFICATE
SCRUTINY COMMITTEE, GONDIA & OTHERS)

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

Court's or Judge's order

Shri R.L. Khapre, Senior Advocate with P.A. Deshpande, counsel for the petitioner.
Shri M.K. Pathan, Assistant Government Pleader for the respondent nos.1, 2 and 4.
Shri S.S. Taram, counsel for the respondent no.5.
Shri S.I. Ghatte, counsel for the respondent no.6.

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

DATE : MARCH 18, 2024

P C.

Since the prayer for amendment of the writ petition is not objected, the same is granted. Amendment be carried out forthwith.

2. The civil application stands allowed and disposed of.

WRIT PETITION NO. 988 OF 2024.

The writ petition is heard finally with the consent of the learned counsel for the parties.

2. The challenge in this writ petition is to the order dated January 25, 2024 passed by the respondent no.1-Scheduled Tribe Caste Certificate Scrutiny Committee, Gondia (for short, 'the respondent-Committee') whereby the petitioner was directed to surrender the original tribe certificate dated February 20, 2019 and conditional validity certificate issued in her favour on January 17, 2020, which was made subject to final decision of the Special Leave Petition Nos.15044 of 2020, 15045-15047 of 2020, 7901 of 2019 and Diary No.17886 of 2020. The respondent-Committee thereafter cancelled and confiscated the tribe certificate of 'Gond Gowari' issued in favour

of the petitioner by the Sub-Divisional Officer, Tiroda on February 20, 2019.

Further direction is issued to the Sub-Divisional Officer, Tiroda and Tahsildar, Bhandara to take necessary action against the petitioner as per paragraph 101 (sic. 116) of the judgment of the Apex Court in the matter of *State of Maharashtra Versus Keshao Sonone* [(2021) 12 SCC 336] in accordance with the provisions of Sections 10 and 11 of the Maharashtra Act No.XXIII of 2001.

3. The facts necessary for deciding the petition are as under:-

(i) The petitioner had earlier obtained a caste certificate of belonging to Gowari – Special Backward Classes from Sub-Divisional Officer, Sakoli.

(ii) After the judgment of this Court in **Writ Petition No. 4032 of 2009** [*Adim Gowari Samaj Vikas Mandal & Others Versus State of Maharashtra & Another*] dated August 14, 2018, the petitioner obtained the tribe certificate of belonging to ‘Gond Gowari’ on February 20, 2019.

(iii) On the basis of the tribe certificate obtained from the Sub-Divisional Officer, Tirora on February 20, 2019, the petitioner submitted her tribe claim for verification to the respondent-Committee on July 11, 2019.

(iv) The respondent-Committee forwarded the claim of the petitioner to the Vigilance Cell enquiry.

(v) The Vigilance Cell submitted its report on October 07, 2019.

(vi) Thereafter, the committee issued a conditional validity certificate on the basis of the judgment passed in the case of *Adim Gowari Samaj*

Vikas Mandal (supra) dated January 17, 2020 with a disclaimer that the same is subjected to the final decision of the Apex Court as they have challenged the order in Writ Petition No. 1742/2007 dated August 14, 2018 and other decisions before it.

(vii) The Hon'ble Supreme Court in Civil Appeal No. 4096 of 2020 on December 18, 2020 set aside the aforesaid orders of the Hon'ble High Court.

(viii) In view of the Apex Court's decision, the petitioner on February 15, 2021 and again on February 18, 2021 was asked to submit her conditional validity certificate of belonging to "Gond Gowari" but, she failed to surrender the same.

(ix) The petitioner was then elected as a Zilla Parishad Member at Zilla Parishad Kinhi/Ekodi, taluka Sakoli, District Bhandara on January 19, 2022.

(x) One Smt. Asha Madavi who had also participated in the aforesaid election filed a complaint on November 9, 2022 against the petitioner for cancellation of tribe validity certificate issued in her favour.

(xi) As a sequel of above on January 25, 2024, the impugned order was passed by the respondent no.1.

4. While questioning the impugned order dated January 25, 2024, Shri. Khapre, learned Senior Advocate and Shri. Lohia learned advocate appearing on behalf of the petitioner would urge that the petitioner belongs to 'Gond Gowari Scheduled Tribe' which is enlisted at entry no. 18 in the list of Scheduled Tribes in Part IX of the Schedule relating to the State of Maharashtra. He would claim that by virtue of the Government Resolution dated April 24, 1985, the persons

belonging to Gowara or Gowari who show affinity to 'Gond Gowari' are entitled for the benefit of belonging to the Gond Gowari Scheduled Tribe and the aforesaid government resolution has been upheld by the Supreme Court in Civil Appeal No. 4096 of 2020. It was also urged that the above referred judgment of the Apex Court has been misread as the said judgment provides that even the person belonging to Gowari showing affinity to Gond tribe is entitled for tribe validity certificate. The documents produced and the information furnished by the petitioner on record sufficiently shows the affinity to the Scheduled Tribe. So as to establish their claim of belonging to 'Gond Gowari', the petitioners would draw support from the pre-independence documents which reflects the tribe as 'Gowari'. Reliance is placed on the Entry dated December 31, 1928 depicting the petitioner's great grandfather-Urkuda Gowari being blessed with a son and entry in the school record of 1934 of petitioner's grandfather-Shiva Urkuda. They have also placed reliance on the entry of 1953 recorded in the school leaving certificate of Reva Urkuda cousin grandfather of the petitioner whereby the tribe is reflected as 'Gowari' and the school transfer certificate of the petitioner dated June 27, 1985 as well as Pratigya Lekh dated June 27, 1985 where her tribe is mentioned as 'Gond Gowari'.

The Senior Advocate representing the petitioner has further argued that the respondent no. 1 has no jurisdiction to reopen the case of the petitioner on a complaint made by a third party in view of the judgement of the Supreme Court in the matter of *Ayyub Khan Pathan Versus State* [AIR 2012 SCW 6177]. The respondent committee has erred in passing the impugned order as the committee has not been

clothed with power of review. Once the caste validity certificate has been granted the same cannot be cancelled by the committee. The same has been reiterated in various decisions rendered by the Bombay High Court *viz. Rakesh Umbarje and other Versus State of Maharashtra* [Writ Petition no. 5364/2023] decided on May 30, 2023 and *Vishnu Rajaram Thakar Verus State of Maharashtra* [(2023) 3 Mh.L.J 629]. Therefore, they have prayed for quashing of the impugned order.

5. The learned Additional Government Pleader Shri. Pathan appearing for the respondent nos. 1, 2 and 4 alongwith Shri. Taram, the learned counsel appearing for the respondent no. 5 and Shri. Ghatte, the learned counsel appearing for the respondent no. 6, taking an exception to the submissions of the learned counsels for the petitioner would support the impugned order dated January 25, 2024. They would urge that the entire controversy is covered by the judgement of the Supreme Court in the case of *Keshao Sonone (supra)*. Pursuant to the aforesaid decision, the petitioner has to establish that it is an offshoot of alliance of 'Gond Scheduled Tribe' and 'Gowari non-Schedule Tribe'. Firstly, it has to be proved on the basis of documentary evidence that the petitioner belongs to 'Gowari Non-Scheduled Tribe' and thereafter it is necessary to establish affinity with 'Gond Scheduled Tribe' as provided in the guidelines laid down in the government resolution dated April 24, 1985 and unless these two conditions are satisfied, the claim for 'Gond Gowari Scheduled Tribe' cannot be accepted. The above referred two conditions have not been satisfied by the present petitioner and therefore, they have prayed for dismissal of the petition.

6. We have heard the rival submissions of the learned counsel appearing for the parties.

7. Upon perusal of the impugned order dated January 25, 2024, the respondent no.1-Committee has observed that the petitioner has failed to prove her claim of that of belonging to the 'Gond Gowari Scheduled Tribe'. Firstly, the documentary evidence depicts that the entries of close blood relatives from paternal side is recorded in Government record as 'Gowari' and 'Gwara'. The entries are as follows:-

Sr. No.	Nature of Document	Name	Relation with the petitioner	Caste recorded	Date/year
1.	Birth extract	Urkuda Gowari	Great Grandfather	Gowari	December 31, 1928
2.	School Record	Shiva Urkudya	Grandfather	Gwara	1934
3.	School record	Reva Urkuda	Cousin grandfather	Gowari	1953
4.	School record	Jagnnath Shivaji	Paternal uncle	Gowari	November 19, 1957
5.	School record	Rupchand Devaji	Cousin uncle	Gowari	1963
6.	School record	Durgaprasad Shivaji	Father	Gowari	April 27, 1961
7.	School record	Jashoda/Yashoda	Paternal aunt	-	-
8.	Pratigya Lekh	Anusayabai Shivaji Surrajoshi	Paternal aunt	Gowari	July 9, 1966
9.	Pratigya Lekh	Gyaneshwar Shivaji	Paternal uncle	Gowari	April 30, 1967
10.	Pratigya Lekh	Devkala Surrajoshi	Paternal aunt	Gowari	June 24, 1970
11.	School record	Durgaprasads Surrajoshi	Father	Gowari	-
12.	School record	Narendra Surrajoshi	Brother	Gowari (S.B.C)	-

It has also been observed that the brother of the petitioner had obtained caste certificate of belonging to 'Gowari' – Special Backward Classes dated July 30, 1997. On the basis of the said caste certificate, he has obtained a caste validity certificate of belonging to 'Gowari' – Special Backward Classes on September 13, 1999. Thereafter, he has obtained employment based on the aforesaid caste validity certificate and is serving as an Assistant Teacher on a post reserved for Special Backward Classes category. Even the petitioner had earlier obtained a caste certificate of belonging to Gowari – Special Backward Classes from Sub-Divisional Officer, Sakoli.

8. Secondly, the petitioner has also failed to establish her affinity with the 'Gond Gowari Scheduled Tribe'. According to the decision in *Keshao Sonone* (supra) it is held that the caste 'Gowari' and 'Gond Gowari' are two distinct and separate castes. In the information provided by the petitioner, she has mentioned traditional occupation as milking the cows however, the people belonging to 'Gond Gowari' do not milk the cows but they do animal farming whereas the people belonging to Gowari- SBC are responsible for production of milk. This information furnished by the petitioner does not establish the claim for proving the affinity so as to accept his claim of belonging to 'Gond Gowari' Scheduled Tribe. It shows that the ancestors of the petitioner belonged to the caste 'Gowari' and not 'Gond Gowari Scheduled Tribe'.

9. The fact remains that the real brother (Blood Relation) of the petitioner had obtained a caste validity certificate of belonging to 'Gowari' – Special Backward Classes and on that basis, he has obtained employment and is serving as an Assistant Teacher on a post reserved

for Special Backward Classes category. Two members of the same family are holding two different caste certificates, one of whom has secured permanent employment in Government department. Even the petitioner prior to the decision in the matter of *Adim Gowari Samaj Vikas Mandal* (supra) had obtained a caste certificate from Special Backward Class. Only after the above referred decision, she obtained a tribe validity certificate of belonging to 'Gond Gowari'. Further, all the documents related to the members of the family tree bear the entry 'Gowari' in the caste column and the documents pertaining to 1928 and 1934 bear the entries 'Gowari' in the caste column and have more probative value being pre-Constitutional documents.

10. The Apex Court judgment in the matter of *Keshao Sonone* (supra) is also not helpful to the petitioners as though it states that 'Gond Gowari' is a sub-tribe of 'Gond' but it further states that the validity of tribe certificate has to be tested on the basis of affinity test as specified in the government resolution dated April 24, 1985. The petitioner has failed to prove her affinity with 'Gond Gowari' Scheduled Tribe as the information given by the petitioner for proving socio-cultural traits, characteristics, traditional way of life and customs does not co-relate with the established customs of 'Gond Gowari' Scheduled Tribe. She has failed to establish that she is an offshoot of alliance of 'Gond Scheduled Tribe' and 'Gowari non-Schedule Tribe'. Only for securing undeserving benefit, the petitioner had obtained the tribe certificate of belonging to 'Gond Gowari' Scheduled Tribe. The foregoing judgment further grants protection to the people who have secured admissions and employments by taking benefit of the

Scheduled Tribe between August 14, 2018 to December 18, 2020 however, the petitioner is not protected by the same as she has been elected as a Zilla Parishad Member at Zilla Parishad Kinhi/Ekodi, taluka Sakoli, District Bhandara on January 19, 2022.

11. As far as the argument canvassed by the learned counsels for the petitioner about availability of statutory power of review with the Scrutiny Committee, it is a settled position of law that the Scrutiny Committee cannot review its own order, there being no provision expressly provided in the Statute. However, in case of fraud or suppression of material facts or misrepresentation of facts, the Scrutiny Committee can reconsider the order of validity passed by it earlier and upon consideration of merits of the matter confined to aspects of fraud, suppression or misrepresentation of facts, it can recall its order. The same has been reiterated in catena of cases *viz. Devendra Gurunath Khedgikar Versus the Scheduled Tribe Scrutiny Committee, Pune & Anr.* [2009 (2) ALL MR 869], *Jyoti Sheshrao Mudpe Versus State of Maharashtra* [Writ Petition No. 1954/2009] decided on August 22, 2012, etc. In the present case, the petitioner has suppressed the fact about her brother and his recruitment under the Special Backward Category. Further, the fact remains that the tribe validity certificate dated January 17, 2020 was a conditional tribe validity certificate and the same was subjected to the decision in the matter of *Keshao Sonone* (supra). Therefore, the committee was correct in directing the petitioner to submit her original tribe certificate and conditional validity certificate.

12. In this background, since the writ petition *sans* merit, the same stands dismissed. In the facts of the case, there shall be no order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

APTE