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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.639 OF 2018

Varsha Nandkishor Deore

..Petitioner

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. R.K. Mendadkar, a/w. Mr. C.K. Bhanguji a/w. Ms. Komal Gaikwad for the Petitioner.

Mr. S.B. Kalel, AGP for the Respondents.

CORAM : B. R. GAVAI &

B. P. COLABAWALLA, JJ.

DATE : 31<sup>st</sup> JANUARY, 2018

P.C.

1. The Court was required to issue notice to the members of respondent no.2 committee since the Court found that in the present matter, the order passed by Respondent No.2 Committee was in total breach of the law laid down by the Apex Court in the case of Anand Vs.Committee for Scrutiny and Verification of Tribe Claims and others <sup>1</sup> and Division Bench of this Court in the case of Apoorva d/o. Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others <sup>2</sup>.

2. The petitioner's claim for grant of validity belonging to

<sup>1</sup> (2012) 1 SCC 113.

<sup>2</sup> 2010 (6) Mh.L.J.401.

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“Thakur” Scheduled Tribe is rejected by the impugned order.

3. The petitioner has placed on record a document pertaining to her grandfather namely Chinda alias Chindhu Baraku Thakur pertaining to the date 15<sup>th</sup> August 1938. The said document shows the grandfather of the petitioner to be belonging to “Thakur” Caste.

4. The Apex Court in the case of Anand (cited supra) has observed thus :-

*“It is manifest from the aforeextracted paragraph that the genuineness of a caste claim has to be considered not only on a through examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:*

*(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given.*

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*Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant.*

*(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to coordinate the documentary evidence and should not be the sole criteria to reject a claim."*

5. It has been held that, the affinity test cannot be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. It has been further held that, such test can be used to coordinate the documentary evidence. In the present case, the claim is rejected on the ground that the petitioner has failed the affinity test. Though the petitioner is having a pre-constitutional document, which was much prior even before country

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becoming independent, the same have been totally ignored. It could thus clearly be seen that, the impugned order is in total breach of the principles laid down by the Apex Court.

6. The Division Bench of this Court in the case of Apoorva (cited supra) has observed thus.

*“We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fault or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.”*

7. It could thus be clearly seen that, the Division Bench of this Court has held that, if a blood relation of the candidate has been granted validity certificate earlier, such candidate can be granted validity certificate without calling for Vigilance Cell Report. It is, however, observed that if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to grant certificate to the applicant before it.

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8. In the present case, though the petitioner has placed on record the validity certificate issued in favour of the petitioner's first cousin, namely Nilima Panditrao Thakur, the Scrutiny Committee has still conducted the vigilance enquiry. No doubt, we find that the approach of Respondent No.2 Committee in conducting a vigilance cell enquiry so as to find out, as to whether the earlier certificate granted was under fraud etc. cannot be faulted with. However, even the vigilance cell found that the documents pertaining to the petitioner's predecessor from the paternal side also show their caste to be "Thakur".

9. In that view of the matter, in view of the law laid down by the Apex Court in the case of Anand (cited supra) and the Division Bench of this Court in the case of Apoorva (cited supra), the claim of the petitioner ought to have been accepted. However, on an untenable ground and that too totally contrary to what has been laid down by the Apex Court, the members of the respondent committee have rejected the claim of the petitioner.

10. We have, therefore, no hesitation to hold that the action of the members of the respondent committee is contemptuous in

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nature in as much as they have decided the matter totally in breach of the law laid down in the case of Anand (cited supra) and the Division Bench of this Court in the case of Apoorva (cited supra).

11. It may not be out of place to mention here that, both of us have on various earlier occasions have noticed the same conduct by different committees at Aurangabad, Nagpur and Mumbai. In spite of specific directions issued by the Court, there is no improvement in the functioning of the respondent committee. They continue to decide the matters in contravention of the law laid down by either Apex Court or this Court.

12. We could have very well taken the matter seriously and imposed proper penalty against the members of the committee.

13. However, Shri. Sitaram Bhalekar, a Joint Commissioner cum Vice Chairman has filed affidavit and stated thus:-

*“5. I say that, we the Committee Members of the Scheduled Tribes Certificate Scrutiny Committee, Konkan Division, Thane, withdraw the impugned order dated 18.12.2017 and further will issue a validity certificate within a period of two days from today i.e. 31.01.2018 to the Petitioner. I say and submit that henceforth we will take abundant precaution at the time of delivering order.*

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6. *I again tender unconditional apology on behalf of answering Respondents and on behalf of all Committee Members and most respectfully submits that there is no intention to dishonour the orders passed by the Hon'ble High Court and Hon'ble Apex Court. It is my humble request to this Hon'ble Court to recall the order dated 30.01.2018 passed by this Hon'ble Court.*

14. Though in the affidavit, it is stated that there was no intention to dishonour the orders passed by the Hon'ble High Court as well as Hon'ble Apex Court, it is difficult to believe. The members of the committee are educated senior officers. It is presumed that they understand the law as laid down by the Apex Court and this Court. Though there is a reference in the impugned order to the judgment of the Apex Court in the case of Anand (cited supra), the principle laid down therein has been followed only in breach.

15. Be that as it may, since an unconditional apology is tendered, we do not propose to proceed further.

16. A copy of this order be forwarded to the Principal Secretary, Tribal Development Department who shall ensure that a proper training is imparted to all the members of the committee

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with a specific emphasis as to how the judgments of the Apex Court and this Court should be interpreted and followed. We make it clear that, hereinafter if we come across any of the orders which are passed in breach of the law laid down either by Apex Court or this Court, we will be constrained to take a serious view of the matter and impose such penalty as deemed fit and proper in the circumstance of the case.

17. In view of the statement made on affidavit, the purpose of the petition stands served. Learned APP on instruction of Mr. Bhalekar states that the validity certificate will be issued to the petitioner tomorrow at 11.00 a.m.

18. Shri. Mendadkar, learned Counsel for the Petitioner states that, the petitioner would remain present in the office of the Scrutiny Committee tomorrow at 11.00 a.m.

**[B. P. COLABAWALLA, J.]**

**[B. R. GAVAI, J.]**