

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

WRIT PETITION NO. 3448 OF 2020

Rupali Madhukar Chaudhari and anr vrs. The SCheduled Tribe Caste
Certificate Scrutiny Committee and ors

AND

WRIT PETITION NO. 3495 OF 2020

Yuvraj Moreshwar Morke vrs. The SCheduled Tribe Caste Certificate
Scrutiny Committee and ors

AND

WRIT PETITION STAMP NO. 11875 OF 2020

Swati Sahebrao Sonone vrs. The SCheduled Tribe Caste Certificate
Scrutiny Committee and ors

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Ashwin Deshpande, Advocate for petitioners in all petitions.
Shri N.R.Patil and Shri A.A. Madiwale, AGPs for Respondent-State
Shri N.S.Khubalkar, Advocate for Respondent No.6

**CORAM :- SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED :- 21.12.2020

Common Order

In all these three petitions, interim relief has
been granted to the petitioners therein respectively on
16.12.2020, 17.12.2020 and 27.11.2020.

The interim reliefs were granted by following
the law declared by this Court in the case of *Adim
Gowari Samaj Vikas Mandal and others vrs. State of
Maharashtra and another* reported in 2018 (5) Mh.L.J.
468. The view taken in the said judgment was that
"Gond Gowari" caste was extinct in the year 1911 and
since then there was not in existence any caste or tribe,

such as "Gond Gowari" and what was in existence was only tribe "Gowari" and therefore, the relevant entry in the Constitution Order of 1950, as amended from time to time, relating to "Gond Gowari" be read as "Gowari (ST)".

This view has now been set aside by the Supreme Court in its recent judgment rendered in the case of *State of Maharashtra and anr vrs. Keshao Vixshwanath Sonone and anr (Civil Appeal No. 4096 of 2020)* alongwith other connected matters, on 18.12.2020. The Supreme Court formulated various questions in this judgment and also gave categorical answer to each of the questions framed. Out of which, Question Nos. 1, 3 and 6 being relevant are referred to here.

Question No.1 was about the correctness of the High Court in entertaining the claim of caste "Gowari", not included as Scheduled Tribe in the Constitution (Scheduled Tribes) Order, 1950, for a declaration that a Scheduled Tribe as "Gond Gowari" which is included at Item No. 18 of the said Order of 1950 in the State of Maharashtra is "Gowari (ST)" and whether High Court could have taken evidence to make any adjudication upon such a claim.

The third question was relating to the correctness of the High Court in entering into the adjudication of the issue that "Gond Gowari", Scheduled

Tribe mentioned in Scheduled Tribes Order, 1950, as amended up to date, is no more in existence and it went extinct before 1911.

Both these questions have been answered in the negative in the said judgment delivered by the Supreme Court of India. The Supreme Court has also taken a view that no caste or tribe could be added or deleted from the Scheduled Tribe Order, 1950 and that no evidence can be taken by the High Court for making a declaration that a particular caste or tribe is included in Scheduled Tribe Order, 1950.

Question No. 6 was to the effect that as to whether or not the High Court was correct in its view that "Gond Gowari" shown as Item No.28 in Entry 18 of the Scheduled Tribe Order, 1950, was not a sub-tribe of "Gond" and whether the validity of caste certificate to "Gond Gowari" was to be tested on the basis of affinity test as specified in Government Resolution dated 24.04.1985. The Supreme held that it was not correct on the part of the High Court to take a view that "Gowari" are entitled to Scheduled Tribe certificate of "Gond Gowari" as the entire basis of the judgment of the High Court, the basis being "Gond Gowari" tribe having been eradicated before 1911, was found by the Supreme Court as having lost its ground.

Of course, in paragraph 101 of the said judgment, the Supreme Court has directed that the

admissions taken and employment secured by the members of "Gowari" community on the basis of Scheduled Tribe Certificate granted to them between 14.08.2018 till the date of the judgment i.e. 18.12.2020 shall not be affected by the judgment and that they shall be allowed to retain the benefit of Scheduled Tribe certificate obtained by them.

In the present case, by the orders passed on 16.12.2020, 17.12.2020 and 27.11.2020, no benefit of "Gond Gowari" has been finally granted to the petitioners and what has been given to them is only provisional admission, subject to final decision of the petition. Any provisional admission does not create any right or equity in favour of the student who is provisionally admitted. So it cannot be said that such a student would be entitled to the protection granted by the Supreme Court in paragraph No. 101 of the said judgment. This would enable us to find that due to declaration of law by the Supreme Court during pendency of the petitions, these petitions now cannot be entertained and they deserve to be dismissed. The petitions stand dismissed. No costs.

JUDGE

JUDGE

Rvjalit