



WRIT PETITION (ST) NO. 23184 OF 2018

Mr. R. K. Mendadkar for the petitioner.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE :- AUGUST 10, 2018

P.C. :-

1. Heard the learned counsel appearing for the parties.
2. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.
3. In this writ petition, the second respondent-committee has displayed as to how its members are unfit to function as quasi judicial bodies. It is such committee members, who bring into disrepute the entire mechanism and machinery 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, 2001 (hereinafter referred to as “the Maharashtra Act XXIII of 2001”).

4. This petition was heard by us on more than one occasion and on account of a finding of misrepresentation of facts, which is deliberate and intentional in order to grab and snatch the benefits meant for Scheduled Castes and Scheduled Tribes, though not belonging to it, we were constrained to summon the original records from the custody of the Scrutiny Committee.

5. The petitioner states that he belongs to Koli Mahadeo Scheduled Tribe, recognised as Scheduled Tribe (Entry No. 29) under Constitution (Scheduled Tribe) Order, 1950.

6. The petitioner was issued a caste/tribe certificate by the competent authority on 13th July, 2007. Since the petitioner was desirous of pursuing her education in degree course in Engineering and seeking admission against a reserved seat, the claim of the petitioner, relying on this caste certificate was forwarded for scrutiny and verification at the instance of the third respondent to the second respondent-committee. The admission to the fourth respondent-Engineering College was, therefore, conditional upon production of such a certificate of validity and it is issued on a satisfaction that the claim of party

like the petitioner is genuine and bonafide. That will firm up or secure the admission for the academic year 2018-19.

7. Given the seriousness of the proceedings, the Scrutiny Committee was expected to scan very carefully and meticulously the oral and documentary evidence placed before it. Before it discarded the documentary evidence and term that it has lost its probative value, it should have ascertained for itself as to what is the nature of the documents.

8. In this case, the petitioner specifically relied upon a certificate of validity, which was issued to his father Suryakant Kamble. Suryakant was denied the certificate of validity by the Scrutiny Committee at Pune on 28th March, 2007. That order was challenged by Suryakant and he asserted that he belongs to Koli Mahadeo Scheduled Tribe. This court, by an elaborate judgment and order dated 6th February, 2009, allowed Suryakant Kamble's petition being Writ Petition No. 5203 of 2007. In allowing that petition, this court relied upon the certificates of validity issued to Suryakant's brothers Ulhas Madhukar Kamble and Laxmikant Madhukar Kamble and his paternal aunt Smt. Suman Dattatreya Kamble.

9. When such documentary evidence was relied upon by the

petitioner's father, this court called upon the respondents to that writ petition, all of whom are common to the present petition, as to how in the teeth of this voluminous documentary evidence, could the claim of Suryakant be denied. A very fair stand was taken by the Scrutiny Committee before this court and the Research Officer Raosaheb Dagduji Kandekar filed his affidavit. In that affidavit, there is a specific statement that Suryakant Kamble is entitled to be declared as Mahadeo Koli Scheduled Tribe, as his close relatives Ulhas Kamble and Laxmikant Kamble and Smt. Suman Kamble have been declared as Mahadeo Koli Scheduled Tribe by the Scrutiny Committee.

10. It is relying on this affidavit and fair stand taken therein that the Suryakant's writ petition was allowed by this court and he was issued a certificate of validity.

11. This is one more instance where the father of the claimant candidate is declared as Scheduled Tribe, but the claimant candidate is not. The Scrutiny Committee knows and very well understands that caste or tribe is derived from the father. It cannot, therefore easily conclude that the sons claim is not bonafide, but malafide. That would mean father has misled not only the authorities issuing the caste certificate, but even this court.

12. When such is the finding of fact in this case and sought to be supported by the learned AGP, we called upon him to produce the original record. The learned AGP Mr. Kalel would submit that the Scrutiny Committee's order cannot be termed as perverse for the Scrutiny Committee had before it not only the order of this court, the certificate of validity issued to the petitioner's father, but the school records pertaining to the branch of the common ancestor. There are 22 documents on the record of the Scrutiny Committee. All of them are pertaining to the relatives of the petitioner. According to the Committee, there is further overwhelming documentary record, which would indicate that these persons before the committee have managed to change the school entries after the presidential notification. Prior thereto, there are the school records, all of which would denote the tribe to be Hindu Koli or Koli simplicitor. It is only 1951 onwards that the entry to be found in the school record is Hindu Mahadeo Koli. The Scrutiny Committee found that Kamble Vasant Shrirang is the cousin grandfather and he was admitted to a school on 8th June, 1944. His school admission record carries the entry against the caste column as Hindu Mahadeo Koli. Naturally, the Committee must come to some conclusion as to how this entry could reflect the correct description of the tribe. This is at least prior to the constitutional order or presidential notification. Hence, the

Vigilance Cell was told to make the inquiries and during the course of the inquiries, the Vigilance Cell recorded the statement of one Satyajeeet @ Dinkar Kamble. He stated that Vasant is not in his relation. Thus, the petitioner may not have stated anything, much less disowned his relation, Vasant may not have said anything of this nature as well, but the son of Vasant says so and it is relying upon Vasant Kamble's claim as belong to Hindu Mahadeo Koli Scheduled Tribe that everybody, including the petitioner and his uncle and paternal aunt of his father have obtained the certificates of validity. That is how case of misrepresentation stands proved, according to this Committee.

13. We are aghast and shocked at such casual finding rendered by this committee. In the record of this court, there was no such assertion, but there was a positive admission on the part of the Committee, the State Government and the Research Officer, all of whom stated that the petitioner's father's claim is genuine and bonafide. Therefore, we are of the opinion that the petitioner's father's certificate of validity could not have been doubted. Even Satyajeeet's statement has been perused by us from the original record. That does not indicate by any means that the petitioner has done something, which is deliberate and intentional so as to obtain the benefits meant for Hindu Mahadeo Koli Scheduled

Tribe. The petitioner and his father, the petitioner's father's brothers Laxmikant and Ulhas have not done anything nor has the petitioner's father's aunt Suman Kamble have committed an act, by which, this court could have been said to be misrepresented or led to believe that their claim is genuine and bonafide. That a certificate of validity relied upon and from within the family itself have to be discarded, its issuance must be vitiated by fraud. This has to be an established and proven case. Such a finding cannot be on conjectures or surmises, much less a guess work or speculation. Precisely, this is what we find in the instant case. There is no proof of any fraud or misrepresentation and yet, this court's binding order has been discarded and brushed aside.

14. It is in these circumstances, we were constrained and compelled to observe that the members of this Scrutiny Committee are totally unfit for quasi judicial functions and duties. If this is how they understand the law and their function and duty, then, that is not reflective at all of any responsibility, much less a larger obligation to uphold public interest. It is a perfunctory manner of disposing of cases generating litigation within the same family, up to the highest court. This clearly reflects lack of sense of responsibility. The Scrutiny Committee

members have gone to the extent of disobeying and discarding this court's orders without any cogent or satisfactory reasons.

15. As a result of the above discussion, the impugned order is quashed and set aside. The writ petition is allowed. Rule is made absolute in terms of prayer clauses (a) and (b).

16. In the light of the finding recorded above and which is supported by the original record, we impose costs of Rs.25,000/- each, to be paid by the Scrutiny Committee members to the petitioner, within a period of eight weeks from today.

17. The certificate of validity shall be issued on or before 14th August, 2018. However, respondent nos. 3 and 4 shall allow the petitioner to participate in the ongoing admission process on the strength of this order, which shall be communicated by the learned AGP to that authority and official forthwith.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)