

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO.1954 OF 2009
With
CA/8426/2010, In WP/1954/2009
AND
CA/2259/2012, In WP/1954/2009

JYOTI SHESHRAO MUPDE. ... PETITIONER

VERSUS

**STATE OF MAHARASHTRA
AND ORS. ... RESPONDENTS**

...
Advocate for Petitioner : Mr. S.M. Vibhute
AGP for Respondent / State: Mr. K.B. Chaudhari.
Advocate for Respondents : Mr. Tope Sambhaji S.
for R/2

...

**CORAM : R.M. BORDE
&
S.S. SHINDE, JJ.**

Dated: August 22, 2012

PER COURT:

1. The petitioner claims to be belonging to Mannerwarlu Scheduled Tribe. The caste certificate of the petitioner certifying that she belongs to Mannerwarlu Scheduled Tribe was referred to the Committee for scrutiny and

Verification of Tribe Claims, Aurangabad. The Scrutiny Committee, after following the procedure prescribed in that behalf, has invalidated caste claim of the petitioner. There are essentially two reasons recorded by the Committee for invalidation of the caste claim of the petitioner. It is recorded by the committee that the school record of the petitioner's father records his caste as Mannurwar. The father of the petitioner was in employment and attested copy of the first page of his service book was produced before the committee. The record produced before the committee indicates that the caste of petitioner's father was initially recorded in school record as Mannurwar whereas, the same has been later on corrected as Mannurwarlu. The letters "lu" were added in the record in different ink. There is also a remark made by the office in the service book of the father of the petitioner that he was declared as belonging to Scheduled Tribe i.e. Mannervarlu caste as per caste certificate No.1994/Misc/ dt. 5.3.84 issued by Tahsildar. This clearly goes to

establish that the applicant's father has entered the service with Mannurwar as his caste in 1976. However, after obtaining caste certificate in the year, 1984, he changed the entry of his caste as "Mannurwarlu". The contra evidence in the form of school leaving certificate and service record of the father of the petitioner was taken into consideration by the committee for invalidation of the caste claim of the petitioner. The committee has also recorded that the petitioner has failed in the affinity test.

2. The Counsel for the petitioner has strenuously contended that after invalidation of the caste claim of the petitioner, at least six - seven members in the family have been granted validity certificate by the committee. It is contended by the petitioner that the tribe claim of her real paternal cousin Rameshwar Laxman Mupde has been validated on 4.4.2006 whereas, the tribe claim of her another real paternal uncle by name Kerba Ganeshrao Mupde has been validated on 18.7.2007 and that of Parmeshwar Vithalrao

Mupde - her real paternal cousin, has been validated on 12.9.2008 by the committee. It is also submitted by the petitioner that the claim of her real brothers by name Gajanan Sheshrao Mupde and Vijay Sheshrao Mupde has been validated by the committee on 3.5.2006 and 4.8.2006 respectively. The claim of her real sister Swati Sheshrao Mupde has been held valid by the committee in view of the order passed on 29.11.2005. The petitioner thus, contends that in view of the issuance of validation certificates in favour of the blood relations of the petitioner, her claim is entitled to be held valid.

3. The Scheduled Tribe certificate Scrutiny Committee, Aurangabad has tendered an application being Civil Application No.2259 of 2012 requesting this Court to grant permission to reopen the cases / files of the relatives of the petitioner for fresh review of the caste claims since the concerned relatives have submitted false affidavits to the committee. Request is

also made for granting leave to lodge criminal prosecution against the relatives of the petitioner who tendered false affidavits before the committee. It is recorded in the application that in case of Gajanan, Vijay, Rameshwar, Kerba and Parmeshwar false affidavits have been presented with an objective of securing validation of certificates from the scrutiny committee. It is specifically contended by the respondent committee that the brothers and sister of the petitioner have suppressed the fact regarding invalidation of the claim of the petitioner and have fraudulently obtained the validation orders from the committee by suppressing material fact. We have perused the record in respect of the validation of the claim of Swati. On perusal of the record, it does transpire that the sister of the petitioner has not disclosed before the committee in respect of invalidation of the caste claim of the petitioner/her real sister. Since the near relations of the petitioner named in the application have apparently misrepresented the

committee and secured validation certificate by suppressing material fact, it would be open for the committee to take appropriate action against those who received validation certificate by misrepresenting the committee or by placing on record false affidavits. Section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste Certificate) Act, 2000 empowers withdrawal of benefits secured on the basis of false caste certificate. Section 11 of the said Act also provides for a penal action for securing a false caste certificate by furnishing false information or filing false statement or documents or by any other fraudulent means.

4 It is contended by the Counsel appearing for petitioner that the Scrutiny Committee does not have power of review and as such, order passed by the Scrutiny Committee, validating tribe claim of near relations of the petitioner, cannot be reviewed.

5 It is held by this Court in the matter of **Devendra Gurunath Khedgikar Vs. The Scheduled Tribe Certificate Scrutiny Committee, Pune & another**, reported in 2009 (2) ALL MR 869, that the power of review must be conferred by law either specifically or by necessary implications. Relying on the judgment delivered in the matter of **The District Collector of Hyderabad & others Vs. M/s Ibrahim and Co.**, reported in AIR 1970 SC 1275 and in the matter of **Dr.Smt.Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur**, reported in AIR 1987 SC 2186, the Division Bench, in the aforesaid matter, accepted the contentions raised by petitioner therein that since there is no power of review conferred on the Committee, the Scrutiny Committee has no power to review its own order.

6 However, so far as principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigant. The judgment obtained by practising fraud has to be treated as nullity by every

Court, whether superior or inferior and it can be challenged in any Court even in collateral proceedings. Elaborating this aspect, the Division Bench of this Court, in **Devendra's** matter, has observed in paragraphs no.15 to 18, as noted below:

15 Having said so, one thing is absolutely clear in law that the law does not protect either of the parties whose actions are tainted by fraud. Any person obtaining validity certificate must satisfy that he has strictly complied with the provisions of law and approached respondent No. 1 Scrutiny Committee with clean hands disclosing all his cards without suppressing material facts.

16 The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. A person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the

highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party. (See **S.P.Chengalvaraya Naidu (Dead) by Lrs. Vs. Jagannath (Dead) by Lrs. and others** (1994) 1 SCC (sic) (Para 5 & 6).

17 The fraud is, essentially a question of fact, the burden of proof is upon him who alleges it. He who alleges fraud, must do so promptly. There is presumption of legality in favour of statutory order. The order of respondent No.1 Scrutiny Committee validating the tribe claim of the petitioner is presumed to be valid unless proved to be vitiated by misrepresentation or fraud.

18 If the order was obtained by fraud or mis-representation by the party seeking it and if that

comes to the notice of the judicial or quasi judicial authority and if such authority prima facie forms an opinion that the process was abused then such order can always be interfered with and set at nought by the same authority exercising the very same authority exercising the very same power under which the original order was passed. This power is always retained by the authority or Court passing the order.

7 In this matter, it is alleged that the validation certificates have been obtained by the near relations of petitioners by misrepresenting the Committee or by withholding material facts from the Committee. It is alleged in the application, by the Scrutiny Committee, that the certificates have been obtained by practising fraud upon the Committee. Since the allegation of fraud has been made by the Scrutiny Committee, in the application, it would be open for the Committee to issue notices setting out grounds for taking up such of those matters for reconsideration. The Scrutiny Committee shall issue proper notices setting out the grounds and reasons which necessitates reconsideration of validation claims and after receiving replies

from the concerned validity holders, the Committee may reconsider the claims within parameters of law laid down by this Court in various judgments.

8 With such liberty, as set out above, the application tendered by the Scrutiny Committee bearing C.A. No.2259/2012, stands disposed of.

9 So far as the claim of the petitioner in the instant petition is concerned, we are in agreement with the view taken by the Scrutiny Committee, since the record pertaining to the father of the petitioner clearly indicates that he belongs to Mannurwar caste / tribe. The caste / tribe of the petitioner cannot be different than the caste / tribe of the father.

10 Petition is devoid of substance and stands dismissed. Civil Applications stand disposed of.

[S.S. SHINDE, J]

[R.M. BORDE, J]

Kadam/*