

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

WRIT PETITION NO.7049 OF 2009

Sangita d/o Gangadharrao Wasewar,
Age 25 years, Occ. Nil,
R/o Islapur Sangvi, Taluka Kinwat,
District Nanded, presently residing at
Shastri Chowk, Krishnanagar, Vardha,
District Nanded.

... PETITIONER

VERSUS

The Scheduled Tribes Caste
Certificate Scrutiny Committee,
Aurangabad Division, Aurangabad,
through its Vice Chairman,
Kasmira Sadan, Station Road,
Aurangabad.

... RESPONDENT

.....
Mrs. Anjali Dube, Advocate for petitioner
Shri U.S. Malte, Advocate for the respondent
.....

CORAM : R.M. BORDE &
K.U. CHANDIWAL, JJ.

DATED : 16th June, 2011.

JUDGMENT (PER K.U. CHANDIWAL, J.)

1. Heard Smt. Dube, learned counsel for the petitioner
and Shri Malte, learned counsel for the respondent. Rule. Rule

made returnable forthwith. Heard finally with the counsel of learned counsel for the parties.

2. This Bench was assigned with hearing Review Petition No.144/2009 in Writ Petition No.728/2008 and since instant Writ Petition was moved by petitioner's sister, it is assigned to this Bench.

3. Writ Petition No.728/2008 of petitioner's brother, with the identical set of documents, with the identical prayers, asserting that the community Bhil and Naikadi is one and the same, has been turned down by the Division Bench (Coram : F.I.R. Rebello (as the Lordship then was) & K.U. Chandiwal, JJ.).

4. The petitioner Sangita questions order of the Caste Scrutiny Committee, the respondent, rejecting her caste claim to be belonging to Bhil, a Scheduled Tribe. She has asserted that no proper hearing was given to her. The petitioner had submitted her tribe claim before the Scheduled Tribes Caste Certificate Scrutiny Committee (for short the said Committee) along with tribe claim of her brother Vijaykumar. As stated earlier, Vijaykumar's Writ Petition No.728/2008 is dismissed by the Division Bench.

5. Reading the observations of the Scrutiny Committee and the set of documents produced by writ petitioner Sangita, we find there is no material change in the set of documents which were produced by her brother Vijaykumar before the Committee. The contention that Bhil and Naikadi are one and the same has been negated in the earlier Writ Petition. This Court is inhibited from clubbing the two castes Bhil, placed at Sr.No.8 while Naikadi, placed at Sr.No.35 in the Presidential list, to read to be synonymous to each other.

6. The legal position is explained by the Apex Court in the matter of State of Maharashtra Vs. Milind (2001) 1 SCC 4, the Hon'ble Apex Court, in para 15 has stated as under :

“15. . . . Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe is included in any of the entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in Clause (2) of the said article, it is expressly stated that the said Orders cannot be amended or varied except by law made by Parliament. The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with Parliament and that too by making a law in that regard. The President had the benefit of consulting the States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to

be amended, it is Parliament that is in a better position to know having the means and machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament.”

The Hon’ble Lordships have observed, “The courts must read the lists of the Scheduled Castes and Scheduled Tribes under Articles 341 and 342 read with Articles 366(24) and 25 as they find them and accept their ordinary meaning. Neither the Government nor the judiciary can add or subtract to the list of Scheduled Castes and Scheduled Tribes.”

7. The Committee rightly did not apply parameters of Naikadi to be Bhil as coined by the petitioner. The interpretation carried by the petitioner that Naikadi is head of the group, is rejected by the Committee and we do not find any illegality or perversity in such observation. The old document of father of the petitioner is of 1962, which is silent to demonstrate his caste. The subsequent certificate issued by the Railway authorities showing caste of the father Gangadhar to be Bhil, appointed on 6.12.1978, loses its importance and significance in the light of old document of 1962.

8. In the light of all the above discussion, no other view can be taken than the one taken by the Division Bench in Writ

Petition No.728/2008. The writ petition lacks merits, dismissed.

Rule discharged.

(K.U. CHANDIWAL, J.)

(R.M. BORDE, J.)