

(2009) 02 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 3739 of 2008

Devendra Gurunath Khedgikar and Others

APPELLANT

Vs

The Scheduled Tribe Certificate Scrutiny Committee, Pune
Region and The State of Maharashtra

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 4 BomCR 805

Hon'ble Judges : V.C. Daga, J;Mridula Bhatkar, J

Bench : Division Bench

Advocate : Y.S. Jahagirdar and Sarang Aradhya, in Writ Petition No. 4840 of 2008, A.B. Avhad, in Writ Petition Nos. 4095 and 4840 of 2008 and Rachita Dhuru, in Writ Petition No. 4095 of 2008, for the Appellant; V.A. Gangal, Special Counsel and S.S. Deshmukh in Writ Petition Nos. 4095 and 4840 of 2008, for the Respondent

Judgement

V.C. Daga, J.—Perused petition. Rule returnable forthwith. Learned Counsel for respondents waives service. Heard finally by consent of parties.

2. The Petition, filed under Article 226 of the Constitution of India, is directed against the order dated 25th April, 2008 passed by the Schedule Tribe Certificate Scrutiny Committee, Pune Region, Pune, prima facie; finding that the caste certificate was obtained by practicing misrepresentation and concealing true and material facts amounting to fraud on the authority issuing certificate and calling upon the petitioner to submit his explanation within 15 days as to why the certificate validating his tribe claim should not be cancelled and confiscated.

3. Parties are different but the issue is identical, so a single judgment will dispose of all these writ petitions.

4. For the sake of convenience facts are drawn from Writ Petition No. 3739 of 200.

FACTUAL BACKGROUND:

5. The factual background leading to the petition is that the Petitioner intended to take admission for the course in Bachelor of Engineering in the year 2002 against the seat reserved for scheduled tribe category candidates.

6. The petitioner claiming to be scheduled tribe belonging to Mahadev Koli tribe, applied for issuance of tribe certificate and submitted it to the respondent No. 1 for its scrutiny. The respondent No. 1, the Enquiry Committee validated the tribe claim of the petitioner on 10th June, 2005 and certified that the petitioner is scheduled tribe being "Mahadev Koli".

7. On the basis of the aforesaid certificate, petitioner's sister and another brother also applied for certificate of validity on 15th June, 2005. Their cases were referred to the Vigilance Cell. The Vigilance Cell, during the course of enquiry found that one Mr. Vishal Sidram Khedgikar had obtained tribe certificate by playing fraud on the committee which was the basis of the order in the case of the petitioner and the alleged fraud was not noticed by them while relying upon that certificate in the enquiry when the tribe claim of the petitioner was enquired into.

8. The Scrutiny Committee, prima facie; finding case of misrepresentation amounting to fraud on the committee passed an order communicating the present petitioner that the Scrutiny Committee was misled while obtaining tribe claim validity certificate and called upon the petitioner to show cause as to why his certificate should not be cancelled. This order is the subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

SUBMISSIONS:

9. Mr. Jahagirdar learned Senior Counsel appearing for petitioner submits that respondent No. 1 Scrutiny Committee has no power to review its own order being quasi judicial authority not bestowed with the power of review in the statute. In other words, no such power of review exists in the statute as such the impugned order and show cause notice seeking to review earlier order dated 10th June, 2005 is bad in law and liable to be quashed and set aside.

10. Mr. Jahagirdar, further submits that the tenor of the impugned order dated 25th April, 2008 would unequivocally go to show that respondent No. 1 Scrutiny Committee has already formed its opinion that the validity of certificate has been obtained by practicing fraud on the Committee by the petitioner, as such no useful purpose would be served by answering show cause notice. In his submission, show cause notice is in breach of principles of natural justice since the subject issue has already been prejudged by the Committee.

11. Per contra, Mr. V.A. Gangal, Special Counsel appearing for respondents urged that in the event the validity of certificate is found to be obtained by fraudulent means and concealment of true facts, then Scrutiny Committee certainly has power and jurisdiction to set at nought the said certificate. He further submits

that said exercise of power cannot be termed as exercise of power of review. In his submission, fraud vitiates every thing including judicial or quasi judicial order. He further submits that it is no doubt true that the impugned order calling upon the petitioner to show cause is not very happily worded, as it gives an indication of prejudging the issue. He, thus, submits that the said order be treated as a prima facie; opinion of the committee and show cause notice to the petitioner and further enquiry be ordered by any other independent Scrutiny Committee other than the Committee issuing notice. He, thus, submits that the petition can be conveniently worked out on the line of submissions made by him.

12. In rejoinder, Mr. Jahagirdar urged that this Court should clarify the extent of the power to be exercised by the Scrutiny Committee and that the matter should be allowed to be adjudicated by an independent Scrutiny Committee on its own merits leaving the remedies of the rival parties open.

CONSIDERATION:

13. Having heard rival contentions, it is beyond doubt and now well established that the quasi judicial authority cannot review its own order unless the power of review is expressly conferred by the Statute under which it drives its power. The power of review is not an inherent power. It must be conferred by law either specifically or by necessary implications. No such provision, in fact, is brought to our notice, from which it can be gathered that the Scrutiny Committee has power to review its own order. (See The District Collector of Hyderabad and Others Vs. Ibrahim and Co., etc., and Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others,). In view of the law laid down by the Apex Court, we accept the contention of Mr. Jahagirdar that the Scrutiny Committee has no power to review its own order.

14. The question whether the impugned order is correct or valid in law does not arise for consideration in the present petition so long as the order granting the certificate is not set aside or declared void by the competent authority.

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/decreed 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. v. Jagannath (Dead) By Lrs. and Ors. (1994) 1 SCC

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 misrepresentation 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 power under which the original order was passed. This power is always retained by the authority or Court passing the order.

19. On the above canvass, it is clear that respondent No. 1 while deciding the issue as to whether the certificate was obtained by misrepresentation or fraud will confine itself to the issue of misrepresentation and fraud alone and shall not review its order based on new material. Formation of a second opinion on the same material is not permissible. On merits, the order cannot be interfered with because that would amount to exercising power of review.

20. The order can only be interfered with and set at nought if respondent No. 1 comes to the conclusion that the certificate was obtained by misrepresentation and/or fraud and/or in collusion with some other person or on the basis of the forged documents. The respondent No. 1 shall bear in mind the above distinction between the power of review and exercise of the power to set aside the certificate obtained by praying falsehood and/or fraud.

21. Taking over all view of the matter, looking to the consensus between the parties to the petition, the impugned order dated 25th April, 2008 shall be treated as a prima facie; formation of opinion by the Scrutiny Committee, a basis for issuing a show cause notice to the petitioner, which the petitioner shall reply within 30 days from today and that the matter should be heard and decided by the Committee other than respondent No. 1 Scrutiny Committee meant for Pune Region. As suggested by Mr. V.A. Gangal, Special Counsel the show cause notice shall be adjudicated upon by the Scrutiny Committee meant for Nashik Region, Nashik having its office at Nashik without getting influenced by either of the orders, referred to hereinabove.

22. Needless to mention that after receipt of the reply to the show cause notice, the Committee shall adjudicate upon the show cause notice by a reasoned order following principles of natural justice within eight weeks thereafter. All rival contentions on merits are kept open.

23. Rule in all these petitions is made absolute in terms of this order. No order as to costs.