

(2022) 12 BOM CK 0103
In the Bombay High Court
Case No : Contempt Petition No.516 Of 2022

Raju Bansilal Rasede

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 22-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 136, 215

Citation : (2022) 12 BOM CK 0103

Hon'ble Judges : Ravindra V. Ghuge, J;Arun R. Pedneker, J

Bench : Division Bench

Advocate : Rajendrraa Deshmukkh, Priya Gondhalekar, Sushant C. Yeramwar, S. G. Sangle

Final Decision : Dismissed

Judgement

Arun R. Pedneker, J

1. The present Contempt Petition is filed praying for taking cognizance and to declare that the contemnor Respondent No.2 / Member Secretary of the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad has committed deliberate and willful contempt of order dated 12.10.2020 passed in Writ Petition (Stamp) No.17370 of 2020. The contemnor be punished and penalized under the provisions of the Contempt of Courts Act, 1971.

2. This Court vide order dated 12.10.2020 in Writ Petition Stamp No.17370 of 2020 had directed the Respondent committee to decide the caste verification proceedings of the Petitioner expeditiously and preferably within a period of nine (09) months from the date of appearance of the Petitioner and the Petitioner was directed to appear on 19.10.2020 before the Committee. The proceedings having not been concluded within nine (09) months from 19.10.2020, the Petitioner has filed the present Contempt Petition on 03.08.2022.

3. Ordinarily, we could have restricted ourselves to the orders passed by this Court and sought an explanation from the Scrutiny Committee as to why the

proceedings have not concluded. However, as the matter unfolded a clear case of fraud being played on this Court and the Scrutiny Committee and on various authorities including the employer State, emerged. Thus, it is necessary to briefly summarize the facts and the unfolding of the fraud played upon this Court and other authorities as under,

A. It is the case of the Petitioner as set out in the Writ Petition (Stamp) No.17370 of 2020 that the Petitioner belongs to Naikda, Scheduled Tribe and the competent authority had issued him caste certificate on 05.07.2011, after following due procedure of law.

B. That he appeared for competitive examination and got selected for the post of Police Sub Inspector (PSI) and after completion of requisite training the Petitioner came to be appointed and posted at Gondiya Police Station by order dated 23.06.2005. The Petitioner submits that although he was appointed on the post of PSI against the seat reserved for scheduled Tribe category by an order dated 31.07.2005, his Caste Certificate was referred to the Scrutiny Committee by the Department on 13.02.2017.

C. The Petitioner submitted that the school record of his cousin uncle namely Dalsram Gajiram pertaining to the year 1956, the caste entry is mentioned as Naikda.

D. The Petitioner submitted that considering his excellent performance on the post of PSI, he was promoted to the post of Assistant Police Inspector in the year 2012 and further the State has published the final selection list to the promotional post of Police Inspector and the name of the Petitioner is shown at Serial No.4 and unless the validity is produced he cannot get the promotion. The condition for getting the promotion is that he has to produce the caste validity certificate.

E. On 07.05.2019, Respondent No.3 issued an order of promotion wherein it was mentioned that in absence of validity certificate the Petitioner cannot be granted promotion. The Petitioner submitted that his caste certificate is pending scrutiny before the committee from the year 2017 and that he is not able to get the promotion on account of pendency of the proceedings before the scrutiny committee.

F. The Petitioner then submitted that Respondent No.5 / The Superintendent of Police (Rural), Nashik District, Nashik without giving any opportunity of hearing and without issuing any notice to the Petitioner placed him on supernumerary post when the caste claim is yet to be decided by the Scrutiny Committee and in such circumstance, Respondent No.5 ought not to have taken any action against the Petitioner at least to the extent of service of the Petitioner.

G. The Petitioner further submitted that he was appointed by order dated 23.06.2005, however for the first time the proposal was forwarded to the Scrutiny Committee after the completion of more than 12 years of service and

the Scrutiny Committee has not decided his claim till filing of the Writ Petition.

H. The Petitioner, therefore, prayed that the order dated 22.09.2020, be quashed, by which the Petitioner was placed on the supernumerary post.

I. This Court by order dated 12.10.2020, in Writ Petition (Stamp) No.17370 of 2020 had quashed the order placing the Petitioner on supernumerary post. This Court directed that, if any action has to be taken against the Petitioner, then notice has to be issued to him and further directed the caste verification proceedings pending before the Scrutiny Committee be decided within nine (09) months. On non-compliance of the directions of this Court to complete the proceedings within nine (09) months, the Petitioner, filed the present Contempt Petition before this Court.

4. The learned AGP submitted before this Court a response, which is recorded in our order on 24.08.2022, reads as under:-

"1. The learned AGP is before us and on perusal of the record pertaining to this petition, submits as under:

(a) The competent Amravati Committee invalidated the petitioner's claim on 19.04.2004 under the 2001 Act.

(b) The petitioner acquired another certificate on 05.07.2011 from the Sillod Authority and submitted a claim for validity on 25.08.2011.

(c) On 05.10.2011, within 40 days, the Committee granted validity.

(d) On receiving an anonymous call on 05.10.2011, the same day, the Committee contacted Amravati Committee and on realizing the fraud, recalled the order and cancelled the certificate dated 05.07.2011

(e) Mysteriously, the petitioner produced one more original certificate dated 05.07.2011 i.e. practically an identical certificate as was earlier issued by the Sillod authority and tendered a new proposal on 13.02.2017 for validation.

(f) He then approached us by preferring Writ Petition (St.) No.1730/ 2020 with a grievance that he has been placed on a supernumerary post and he prayed for an out of turn decision in the pending claim.

(g) By order dated 12.10.2020, this Court quashed the posting of the petitioner on a supernumerary post and directed the committee to decide the claim of the petition within 9 months."

5. We accordingly directed the learned AGP that if the above state of affairs are true then he should make the original files available with us for perusal. We had also directed Respondent Committee at Aurangabad to enter an affidavit setting out all the details narrated across the Bar and the Petitioner was also given opportunity to file a Rejoinder affidavit.

6. Thereafter, the Respondent Member Secretary of the STCSC Aurangabad

Division, Aurangabad filed a detailed affidavit dated 26.08.2022. The records available with the Committee demonstrates that the caste claim of the Petitioner has been scrutinized on different occasions by different committees and has rejected the same. But the complete narration of facts is necessary to completely understand the proceedings before us and the fraud played on us.

7. It is revealed through the affidavit dated 26.08.2022 filed by the Member Secretary of the STCSC Aurangabad Division, Aurangabad that the Petitioner was issued Naikda, Scheduled Tribe certificate by the Executive Magistrate, Buldhana, District Buldhana dated 17.09.1993. The proposal for verification of the Petitioner's tribe claim was referred by the Chief Executive Officer, Zilla Parishad, Thane towards STCSC Amravati. The vigilance officer at STCSC at Amravati concluded its inquiry and submitted its vigilance report to the scrutiny committee.

8. Initially first show cause notice was issued on 07.02.2004 directing the petitioner to submit his explanation. The Petitioner was also called for personal hearing alongwith his parents by notice on 09.02.2004. The petitioner was asked to remain present but he did not remain present for the hearing. Again the notice of personal hearing dated 04.03.2004 was issued directing the Petitioner to remain present for hearing on 15.03.2004, wherein also the Petitioner chose to remain absent and last chance was given on 16.03.2004, however the Petitioner remained absent.

9. The STCSC Amravati considered the documents produced on record by the Petitioner and the vigilance cell report declared the Petitioner's tribe claim to be invalid by it's Judgment and order dated 19.04.2004. This order dated 19.04.2004 invalidating the caste claim of the Petitioner is not challenged by the Petitioner in any proceedings.

10. The Petitioner, thereafter, obtained another certificate on 05.07.2011 from Sillod without making reference to his first caste certificate and submitted the claim through the office Superintendent, Commissioner of Police, Nashik on 17.08.2011. The Petitioner was called for hearing and the competent authority granted caste validity certificate to the petitioner. By passing of the Judgment and order dated 05.10.2011 STCSC, Aurangabad granted tribe validity certificate in favour of the Petitioner.

11. The competent authority received a telephonic call from unknown person, that the claim of the Petitioner was already invalidated by the STCSC, Amravati. Therefore, taking into consideration the suppression of the facts by the Petitioner, the then competent authority immediately had given call to the Petitioner and asked him to remain present immediately before the scrutiny committee on the same day. Accordingly on 05.10.2011, the Petitioner remained present before the committee and after hearing him order dated 05.10.2011 was recalled and validity certificate granted in favour of the Petitioner was cancelled by the scrutiny committee. However, the fact that the Petitioner was recalled for hearing on 05.10.2011 is disputed by the Petitioner.

12. The Petitioner, thereafter, for the third time, independently applied for verification of his caste certificate dated 05.07.2011 on 13.02.2017, through the Police Inspector, City Police Station, Chalisgaon, District - Jalgaon. The vigilance was conducted and the vigilance cell report was inconsistent with the claim of the Petitioner. The scrutiny committee issued the show cause notice dated 17/19.10.2020, thereby calling explanation from the Petitioner, but, the Petitioner did not submit any explanation to the said show cause notice. Thereafter, the Petitioner was called for hearing on 24.05.2022 by notice dated 22.04.2022. During the pendency of this proceedings the Petitioner filed Writ Petition (Stamp) No.17370 of 2020 challenging the order dated 22.09.2020, passed by the Superintendent of Police, Nashik converting his appointment on supernumerary post for a period of 11 months and also sought direction to decide the caste claim expeditiously and thereupon, the direction was issued by this Court to decide the claim within nine (09) months from the date of appearance of the Petitioner before the committee.

13. The affidavit filed by the Member Secretary thus depicts that the tribe claim of the Petitioner was invalidated by the Amravati committee on 19.04.2004. The Petitioner has submitted his proposal for validation on two occasions before the Aurangabad committee first on 17.08.2011 and second on 13.02.2017 and suppressed the facts of invalidation by Amravati committee on 19.04.2004.

14. The Petitioner's earlier two invalidations were not brought to the notice of this Court or to the Scrutiny Committee. After filing of the affidavit dated 26.08.2022, by the Member Secretary of Aurangabad Scrutiny Committee, the Petitioner submitted the rejoinder affidavit dated 29.08.2022, explaining the reasons why he could not inform the Scrutiny committee or this Court about the prior invalidation of his caste claim. In his rejoinder affidavit the Petitioner submitted his explanation in a new fact sheet before us. The Petitioner submitted that, he had obtained a caste certificate dated 17.09.1993 as belonging to Naikda, Scheduled Tribe from the Executive Magistrate, Buldhana as the family was residing at Buldhana at the relevant time. The Petitioner's father was doing labour work and being a tribal his father migrated from one place to another for livelihood and when his father was residing at village - Tarapur, Taluka and District - Buldhana, his caste certificate was obtained.

15. The Petitioner had appeared for the Maharashtra Public Service Commission Examination in the year 1999 and was selected for the post of Police Sub Inspector from Scheduled Tribe category. After selection a photocopy of the caste certificate alongwith other necessary documents were submitted to the department for joining. However, the Government due to technical issues, had not issued appointment orders to the Petitioner and similarly situated candidates in the selection process of the year 1999.

16. Meanwhile, the Petitioner applied for the post of Agricultural Officer with Zilla Parishad, Thane and got appointed in August - 2003. After his appointment, immediately the Chief Executive Officer, Zilla Parishad, Thane forwarded his

proposal for verification of tribe certificate dated 17.09.1993 to the STCSC Amravati. However, thereafter, within a period of three (03) months the Petitioner had left the services in November 2003 itself. The Petitioner submitted that since he had left the services as an Agricultural Officer within a short time, all notices served by Respondent No.2 committee with the office of the Chief Executive Officer Zilla Parishad, Thane were not received by him and thus he was unaware of the fact of invalidation of his claim and the decision was ex parte.

17. The Petitioner submitted that he was appointed as a Police Sub Inspector by order dated 11.08.2005. This was in pursuance of the examination held in the year 1999. Since his appointment was as a scheduled tribe and his earlier caste certificate was issued by the Executive Magistrate, Buldhana and now the competent authority being the Sub Divisional Officer, Sillod he had obtained a fresh caste certificate dated 05.07.2011 on the basis of documentary evidence of 1348 Fasli which indicates that his family was ordinarily resident of village Halda, Taluka – Bhokardan, District – Aurangabad. He had resided at the said place for a long period of time.

18. He has given no reference of his birth place and contend that he is unaware of the same. The said certificate dated 05.07.2011 was referred to the STCSC Aurangabad for verification alongwith form 'F' showing genealogy of the Petitioner's family through the Commissioner of Police, Nashik. The Petitioner contends that he was called for hearing by the Aurangabad Committee. However the Petitioner states that there was no conclusion of the hearing and that after inquiring with the committee about the status of his case on various occasions, the Petitioner was informed that his file is not traceable and therefore by application dated 03.02.2017, the Petitioner requested the Sub Divisional Officer, Sillod to issue him a duplicate of caste certificate dated 05.07.2011. Accordingly the Sub Divisional Officer, Sillod issued duplicate copy of the caste certificate dated 05.07.2011. The Petitioner annexed the application dated 03.02.2017 to his reply as Exhibit R-4 and the copy of the duplicate caste certificate issued in favour of the Petitioner as belonging to the Naikda Scheduled Tribe. The Petitioner submitted that after obtaining the duplicate copy of the caste certificate he has obtained recommendation letter dated 08.01.2017 from the Police Inspector, Chalisgaon Police Station and submitted fresh application for verification of tribe claim to Respondent No.2 committee on 13.02.2017 through online process.

19. After submission of the online proposal, vigilance had conducted inquiry and submitted its report to the committee on 25.02.2020, which was served upon the Petitioner by show case notice dated 19.10.2020 directing to file reply. Thus the Petitioner contends that he was not aware of the invalidation of his original certificate dated on 05.07.2011 by the Aurangabad Committee.

20. The learned AGP filed an affidavit dated 15.09.2022 of the Sub Divisional Officer, Sillod affirming that there is no record of application dated 03.02.2017 made by the Petitioner for issuance of duplicate caste certificate and no such

duplicate caste certificate has been issued by the office of the Sub Divisional Officer. This is quite shocking.

21. From the narration of events above and the perusal of records, following facts emerge:-

(i) The Petitioner's caste certificate dated 17.09.1993 as belonging to Naikda Scheduled Tribe, issued by the Executive Magistrate, Buldhana was invalidated by the Amravati committee by order dated 19.04.2004.

(ii) Second caste certificate dated 05.07.2011 was obtained from Sillod Aurangabad, and the same was invalidated by the Aurangabad Committee on 05.10.2011.

(iii) The Petitioner has, thereafter, obtained a fabricated Caste Certificate as a replica of the original Caste Certificate issued by the Sillod authority and given it for reverification. We have examined the alleged duplicate caste certificate ourselves and found that it is not the exact replica of the original, but a serious planned effort to make it resemble the original.

(iv) There is no record that the office of Sub-Divisional Officer, Sillod of having issued a duplicate caste certificate dated 05.07.2011.

(v) There is no record of application dated 03.02.2017 made to the Sub-Divisional Office, Sillod for issuance of a duplicate caste certificate.

On the face of the above facts, it is apparent that the Petitioner has prima facie played a fraud on the State authorities, the Caste Scrutiny Committees and also this Court.

22. Before we pass final order, we need to examine the jurisdiction of this court in contempt proceedings and the effect of final order dated 12.10.2020 in Writ Petition (Stamp) No.17370 of 2020. By final order dated 12.10.2020 in Writ Petition (Stamp) No.17370 of 2020, this court directed the scrutiny committee to decide the claim of the petitioner within a period of nine months. The scrutiny committee on realising the fraud played by the petitioner ought to have brought it to the notice of this court by moving appropriate application in disposed Writ Petition (Stamp) No.17370 of 2020 for recall of order dated 12.10.2020 or should have passed final order in the scrutiny claim of the petitioner pending before it, in terms of the order dated 12.10.2020 in Writ Petition (Stamp) No.17370 of 2020. However, the scrutiny committee has not done so and has chosen to defend the contempt petition by bringing the fact of the fraud committed by the petitioner to the notice of this court in the present contempt petition. This amounts to challenging the final order dated 12.10.2020 passed in Writ Petition (Stamp) No.17370 of 2020 in a collateral proceedings which this court would not ordinarily permit at the instance of the party to whom directions are issued by this court.

23. As per the administrative orders issued by the Hon'ble the Chief Justice of

our High Court, this Bench is having subject matter jurisdiction to deal with the subject of Writ Petition (Stamp) No.17370 of 2020, as on the date of reserving the judgment.

24. Since we have given a verdict in paragraph no.27 of this judgment that the petitioner's caste certificate dated 17.09.1993 being invalidated by the Amravati Committee by order dated 19.04.2004 has attained finality, the subsequent proceedings pending before the scrutiny committee for fresh scrutiny of the subsequent caste certificate has become invalidated / infructuous and is hereby quashed. Thus, we declare that the directions issued by this court by order dated 12.10.2020 in Writ Petition (Stamp) No.17370 of 2020 directing the respondent / scrutiny committee to decide verification proceedings of the petitioner has worked itself out, as the said proceedings before the scrutiny committee stands concluded by our present order.

25. In an identical case, the Kerala High Court in exercise of powers under Article 215 of the Constitution of India had set at naught earlier orders obtained by party by playing fraud on court and the same was upheld by the Hon'ble Supreme Court in the case of Hamza Haji Vs. State of Kerala and another, AIR 2006 SC 3028. The Hon'ble Supreme Court at para 19 held as under:

"19. The order of the Forest Tribunal in the case on hand had merged in the decision in MFA No. 328 of 1981 rendered by the High Court. The governing decision, therefore, was the decision of the High Court. When seeking to question the decision as being vitiated by fraud, the proper course to adopt was to move the court that had rendered the decision, by an application. In a case where an appeal is possible, an appeal could be filed. The House of Lords indicated in *Kinch v. Walcott* (supra) that it will be in the power of the party to the decision complaining of fraud to apply directly to the court which pronounced the judgment to vacate it. The Full Bench of the Bombay High Court in *Guddappa Chikkappa Kurbar v. Balaji Ramji Dange* (AIR 1941 Bom 274) observed that no court will allow itself to be used as an instrument of fraud, and no court, by the application of rules of evidence or procedure, can allow its eyes to be closed to the fact that it is being used as an instrument of fraud. In *Hip Foong Hong v. H. Neotia and Co.* (1918 Appeal Cases 888) the Privy Council held that if a judgment is affected by fraudulent conduct it must be set aside. In *Rex. v. Recorder of Leicester* (1947

(1) K B 726) it was held that a certiorari would lie to quash a judgment on the ground that it has been obtained by fraud. The basic principle obviously is that a party who had secured a judgment by fraud should not be enabled to enjoy the fruits thereof. In this situation, the High Court in this case, could have clearly either quashed the decision of the Forest Tribunal in OA No. 247 of 1979 or could have set aside its own judgment in MFA No. 328 of 1981 dismissing the appeal from the decision of the Forest Tribunal at the stage of admission and vacated the order of the Forest Tribunal by allowing that appeal or could have exercised its jurisdiction as a court of record by invoking Article 215 of the Constitution to

set at naught the decision obtained by the appellant by playing a fraud on the Forest Tribunal. The High Court has chosen to exercise its power as a court of record to nullify a decision procured by the appellant by playing a fraud on the Court. We see no objection to the course adopted by the High Court even assuming that we are inclined to exercise our jurisdiction under Article 136 of the Constitution of India at the behest of the appellant.”

26. In view of the law laid down in the case of Hamza Haji (supra), we are also exercising our power under Article 215 of the Constitution of India to nullify a decision procured by the petitioner by playing a fraud on the court.

27. In view of the above, we accordingly proceed to pass the following order:-

ORDER

[I] We hold that the Petitioner’s Caste Certificate dated 17.09.1993 invalidated by Amravati Committee by order dated 19.04.2004 has attained finality and the Petitioner does not belong to the Naikda, Scheduled Tribe. Thus, all legal consequences of invalidation of the Caste Certificate shall follow, instantaneously.

[II] The Petitioner has prima facie played fraud on various authorities and has obtained Caste Certificate dated 05.07.2011 fraudulently without disclosing about the issuance of an earlier Caste Certificate dated 17.09.1993. Therefore, F.I.R. be registered against the Petitioner under relevant sections of I.P.C. and the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and further action be taken.

[III] The Petitioner has prima facie produced a fabricated document i.e. the duplicate Caste Certificate dated 05.07.2011 on the basis of an application dated 03.02.2017 for issuance of duplicate Caste Certificate, which does not find any reference in the record of Sub-Divisional Office, Sillod, and thus this aspect should also be investigated by registering F.I.R. under relevant sections.

[IV] The Member Secretary of the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad to file the F.I.R. with the concerned Aurangabad Police Station and make available all record for investigation.

[V] The Petitioner shall cooperate with the investigation to be conducted in the F.I.R. and the observations in this Judgment should not prejudice the investigation and trial of the Petitioner. The observations made here are limited to dispose of this Contempt Petition.

[VI] The present Contempt Petition is dismissed with costs of Rs.1,00,000/- (Rs. One Lakh only), to be deposited by the Petitioner in this Court within a period of eight (08) weeks.

[ARUN R. PEDNEKER, J.] [RAVINDRA V. GHUGE, J.]

28. At this juncture, the learned Counsel for the petitioner prays for stay to the Judgment and Order pronounced.

29. The learned AGP opposes the request, on the ground that a fraud has been discovered and no sympathy can be shown towards the petitioner.

30. Considering the above, and the fact that the fraud is uncovered by Judgment, we are not inclined to accept the request, it stands rejected.