
(2019) 10 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 16 Of 2016, Interim Application No. 1 Of 2019

Seema Satyawan Bhadekar

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 09-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 32, 226

Citation : (2019) 10 BOM CK 0007

Hon'ble Judges : Ranjit More, J;N.J. Jamadar, J

Bench : Division Bench

Advocate : R.K. Mendadkar, R.M. Shinde

Final Decision : Dismissed

Judgement

N.J. Jamadar, J

1. Rule. Rule made returnable forthwith and heard finally at the admission stage.
2. This petition under Article 226 of the Constitution of India represents the fifth round of litigation before this Court at the instance of the petitioner. A matter of certification of social status of being a member of 'Thakar-Scheduled Tribe' has been pursued by the petitioner with relentless tenacity. Pursuing a cause in vindication of a claim within the bounds of law is not objectionable. However, the facts of the present case manifest a very distressing state of affairs and an intent to drive a desired outcome at any cost and by resorting to means which are not commendable.
3. The multiple rounds of litigation have their genesis in the following facts, which we have noted in detail :
 - (a) The petitioner claims to belong to 'Thakar'- a notified tribe under the Constitution (Scheduled Tribes) Order, 1950. The competent authority issued a certificate on 26th December 2000 certifying that the petitioner belongs to 'Thakar' Scheduled Tribe. The certificate came to be submitted to the Scheduled

Tribe Certificate Scrutiny Committee, Pune Region, Pune ('Scrutiny Committee')- the respondent No.2. After adhering to the procedure prescribed in the 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, 2000 and the Rules thereunder, the Scrutiny Committee negated the claim of the petitioner and tribe certificate came to be invalidated.

(b) The petitioner assailed the said order of the Scrutiny Committee, dated 31st August 2007, by preferring a writ petition, being Petition No. 2175 of 2008. A Division Bench of this Court found no reason to interfere with the order passed by the Scrutiny Committee and dismissed the writ petition on 16th June 2008. Paragraph 4 of the order dated 16th June 2008 reads as under :-

"4 We have seen that the Petitioner produced photo copies of the certificate and birth extracts which were considered by the Committee in paragraph 6 of its order. Believe these extracts because of the conclusive records of the school which was available with the Committee. This Court perused the record from the period 1915 till 1962 and this record also shows that they were referred as "Maratha". The record pertains to grand father's cousins, grand father's sisters, grand fathers another sisters and cousin grand father's sister. Therefore, on the basis of this record, the Authorities came to the conclusion that the Petitioner belongs to the "Maratha" Community and not from "Thakar" Community. The second contention that the sister of the Petitioner was granted the certificate, which was approved by this Scrutiny Committee, cannot become a precedent for the Petitioner to get certificate. If the certificate has been granted to the Petitioner's sister that must have been granted in the immediate past and cannot become a reason for granting the certificate to the Petitioner."

(emphasis supplied)

(c) The petitioner filed Review Petition No. 40 of 2009 on the premise that the petitioner had come in possession of some new material in justification of her tribe claim and, thus, professed to seek review of the order dated 16th June 2008 passed by the Court in Writ Petition No.2175 of 2008. Though this Court found no ground to review the order dated 16th June 2008 and dismissed the review petition, yet, since the matter pertained to the tribe claim of the petitioner, liberty was given to approach the Scrutiny Committee with a direction to the latter to consider the claim of the petitioner on merits and pass appropriate order.

(d) The order dated 7th September 2009 passed in Review Petition No.40 of 2009 reads as under :

"1 This petition has been filed for review of our order dated 16th June, 2008 passed in Writ Petition No.2175 of 2008. The said writ petition has been dismissed for the reasons mentioned in the order. The petitioner wants review of the judgment of this Court on the ground that he has in possession some new

material. On the basis of new material, this Court will not be in a position to appreciate controversy as it involves. The matter is relating to the caste of the petitioner, therefore, if the petitioner is in possession of some material which shows that he belongs to a particular caste, he may approach the concerned Caste Certificate Scrutiny Committee- Respondent No.2. On his approach the Committee - Respondent No.2 may consider the claim of the Petitioner on merits and pass appropriate order. We have not gone into the relevancy of the material and that would be a question to be decided by Respondent No.2. In this view of the matter review petition is dismissed and accordingly disposed of."

(emphasis supplied)

(e) The Scrutiny Committee examined the tribe claim of the petitioner afresh in deference to the order passed by this Court in Review Petition No. 40 of 2009. Certain additional documents were produced before the Scrutiny Committee. Upon appraisal of the material, the Scrutiny Committee was again persuaded to reject the claim of the petitioner by order dated 16th June 2010.

(f) In the second round of litigation, the aforesaid invalidation of the tribe claim was challenged by the petitioner by instituting Writ Petition No.5623 of 2010. A Division Bench of this Court, by order dated 7th October 2010, found no fault with the said order of the Scrutiny Committee. The Division Bench, thus, rejected the petition observing, inter-alia, as under :-

"1.That Review Petition was disposed of by order dated 7.9.2009. The Division Bench did not recall its earlier order, but only granted liberty to the petitioner to approach the scrutiny committee showing additional material. The petitioner produced before the scrutiny committee additional material i.e. a document dated 1.10.2010 in relation to Mr.Chandra Vithu Sadu Bhadekar who had claimed that in that document her caste is shown as Thakar. The petitioner claims that Mr.Chandra Vithu Sadu Bhadekar is related to him. The Scrutiny Committee has considered that document in its order and has discarded the same. We find that Mr.Chandru s father s viz. Mr.Vithu s documents have already been considered by the Scrutiny committee in the earlier round and it was found that entries relating to him are Maratha , and same is the case of Mr.Sadu who is father of Mr.Vithu. He was also found to be Maratha. Considering the matter from any point of view, no fault can be found with the order of the Scrutiny Committee. The petition is, therefore, rejected."

(emphasis supplied)

(g) Unsatisfied the petitioner sought to review the order dated 7th October 2010 by filing Review Petition No. 124 of 2013. A Division Bench of this Court, by order dated 10th March 2014 allowed the review petition, recalled the order dated 7th October 2010 in Writ Petition No.5623 of 2010, quashed and set aside the order of the Scrutiny Committee dated 16th June 2010 and remitted the matter back to the Scrutiny Committee for reconsideration.

(h) The Division Bench was persuaded to pass the said order in view of the reasons set out in paragraph Nos.2 to 4. They read as under :-

"2] The Petitioner who claims to belong to a Scheduled Tribe (Thakur, Thakar) basically contended that the Scrutiny Committee after considering the material placed on record Validity Certificate of her real sister, therefore, there was no reason not to grant the same relief to the Petitioner. The Petitioner preferred this Review Petition based upon the judgments of this Court as well as the Supreme Court with regard to the issue of relative's certificate and prayed to grant the same relief.

3] This Court in the case of Madhuri Nitin Jadhav vs. State of Maharashtra & Anr. Writ Petition No. 7343 of 2013 & others decided on 26.02.2014 already considered this aspect and remanded back the matter for reconsideration of all the connected issues.

4] In view of this and in the interest of justice, we are inclined to allow this Review Petition. The Review Petition is accordingly allowed. Impugned order dated 07.10.2010 is revoked. The matter is remanded back for consideration on all points."

(i) Pursuant to the second remand, the Scrutiny Committee again examined the tribe claim of the petitioner. An opportunity was given to the petitioner to lead further evidence. Despite a fresh consideration, the Scrutiny Committee could not persuade itself to take a different view of the matter and reiterated its finding that the petitioner has failed to establish that she is a member of Thakar, Scheduled Tribe. Resultantly, the tribe certificate dated 26th December 2000 was directed to be cancelled and confiscated.

(j) The petitioner has, thus, approached this Court on the fifth occasion, assailing the impugned order dated 3rd September 2015.

4. We have heard Shri R.K. Mendadkar, the learned counsel for the petitioner and Smt. R.M. Shinde, the learned AGP at some length.

5. Shri Mendadkar was at pains to demonstrate that the Scrutiny Committee has committed manifest error in discarding the documents of great probative value which establish that the petitioner is a member of Thakar Scheduled Tribe. A number of documents, which pre-date Constitution and a couple of validity certificates in favour of the near relatives of the petitioner have been unjustifiably discarded by the Scrutiny Committee, urged Shri Mendadkar. An endeavour was made by Shri Mendadkar to take us through the documents and material tendered before the Scrutiny Committee, a compilation of which was also tendered before the Court today. We declined invitation of Shri Mendadkar to delve into the questions of fact and examine the matter afresh on merits so as to test the legality, propriety and correctness of the impugned order, not only on account of the constraints of the writ jurisdiction but for a very substantial and compelling reason since we found that the petitioner has not invoked the writ

jurisdiction of this Court with clean hands and, in fact, made an endeavour to misdirect this Court in remitting the matter back to the Scrutiny Committee on the second occasion.

6. As indicated above, in the first round of litigation, i.e., Writ Petition No.2175 of 2008, this Court had examined the matter on merits and considered the material on record. What is of material significance is that in addition to the sustainability of the claim in the backdrop of the material on record, this Court had specifically noted that the factum of grant of validity certificate in favour of the petitioner's sister was of no avail and did not create any vested right in the petitioner to claim validity on the strength of the validation of the tribe claim of her sister. This Court had in terms observed that "The second contention that the sister of the Petitioner was granted the certificate, which was approved by this Scrutiny Committee, cannot become a precedent for the Petitioner to get certificate. If the certificate has been granted to the Petitioner's sister that must have been granted in the immediate past and cannot become a reason for granting the certificate to the Petitioner."

7. It is imperative to note that the aforesaid observations conclusively determined the matter so far as the claim of the petitioner based on the grant of the validity certificate to her sister. Even in Review Petition No.40 of 2009, the petitioner did not endeavour to question the correctness of the said view and the review was sought on the ground that the petitioner had then came in possession of some new material. Secondly, in Review Petition No. 40 of 2009, the Court did not recall the order dated 16th June 2008. The Court, on the contrary, dismissed the review petition. However, the only liberty that was granted to the petitioner was to approach the Scrutiny Committee and tender new material for a fresh determination of the tribe claim on merits. In this backdrop, the finding of this Court in Writ Petition No.2175 of 2008, that the validity of the sister's claim did not inure for the benefit of the petitioner had attained finality.

8. Even while assailing the correctness of the order passed by the Scrutiny Committee dated 16th June 2010 (on first remand), it seems that the matter was restricted to the adjudication of the claim by the Scrutiny Committee in the backdrop of the additional material, in the form of the documents pertaining to one Mr.Chandra Vithu Sadu Bhadekar. In fact, that was the only aspect which remained open for consideration in terms of the order passed in Review Petition No.40 of 2009.

9. In the light of the aforesaid material, if the order passed by this Court in Review Petition No.124 of 2013 (in Writ Petition No.5623 of 2010) is considered, an inference becomes inescapable that the petitioner resurrected the ground of validation of the tribe claim of her sister and review was sought specifically on that count. We have no manner of doubt that the fact the said contention was raised and expressly rejected by the Division Bench of this Court in the first round of litigation itself, in Writ Petition No.2175 of 2008, was not brought to the notice of the Court when the order dated 10th March 2014 was passed in Review

Petition No.124 of 2013.

10. In our view, it was not open for the petitioner to re-agitate the said ground and thereby seek a further remand of the matter to the Scrutiny Committee. This appears to be a clear case of *Suggestio falsi* and *Suppressio veri*.

11. Shri Mendadkar, the learned counsel for the petitioner made an earnest endeavour to salvage the position by making a submission that though he had appeared in Writ Petition No.2175 of 2008, Review Petition No. 40 of 2009 (in Writ Petition No. 2175 of 2008) and Writ Petition No. 5623 of 2010, yet a different counsel appeared when the order was passed in Review Petition No. 124 of 2013 (in Writ Petition No. 5623 of 2010). We are not impressed by this desperate submission of Shri Mendadkar. We may not doubt the fairness of Shri Mendadkar, as an officer of the Court. But our experience dissuades us from believing that the appearance of Shri Mendadkar in Review Petition No. 124 of 2013 would have made a difference.

12. The law in this regard is well nigh settled. The Courts do not countenance a litigant, who, with a desire to obtain a favourable judicial disposition, misrepresents and misleads the Court by practicing deception not only by making false and incorrect statements to his knowledge but also without true and full disclosure of the facts. It is trite that the litigants, who approach the Court with unclean hands forfeit the right of being heard on merits of their case.

13. A profitable reference, in this regard, can be made to a judgment of the Supreme Court in *Dalip Singh Vs. State of Uttar Pradesh & Ors.* (2010) 2 SCC 114 wherein, the Supreme Court traced the historical perspective of pursuit of justice and the gradual erosion of value system in litigation, in the opening paragraphs of the judgment. They read as under :-

"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post -independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

(emphasis supplied)

14. The Supreme Court, thereafter, adverted to a number of pronouncements and concluded that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

15. The aforesaid pronouncement has been followed by the Supreme Court in the judgments in the cases of *Amar Singh Vs. Union of India & Ors.* (2011) 7 SCC 69 and *Kishore Samrite Vs. State of U.P. & Ors.* (2013) 2 SCC 398.

16. In the case at hand, the facts we have adverted to above, in the backdrop of the various proceedings before this Court, lead to no other inference than that of the petitioner having re-agitated the same issue of validity of the tribe claim of her sister, in support of her claim, which already stood concluded by the order of this Court in Writ Petition No. 2175 of 2008, at best, and intentionally suppressed the said fact while seeking review in Review Petition No. 124 of 2013, at worst. The courts of law cannot afford to encourage such attempts which strike at the foundation of justice and pollute its pristine stream. The petitioner is, thus, not entitled to be heard on the merits.

17. Even otherwise, in our view, the petitioner's claim on the merits has been conclusively determined twice, by this Court by orders in Writ Petition No. 2175 of 2008 and Writ Petition No.5623 of 2010. There is no additional circumstance/material, apart from validity certificate in favour of sister, which warranted a fresh consideration.

The impugned order specifically records that the petitioner made a categorical statement that she did not desire to produce and rely upon any additional material, post second remand. It is impermissible to reopen the issue by resorting to trickery. Secondly, the Scrutiny Committee has also issued Show Cause notices to the real sister of the petitioner namely, Kumari Smita Satyawar Bhadekar and a relative, namely, Kumari Swati Chandrakant @ Baban Bhadekar as to why the matters of grant of validity certificate to them be not reopened and the validity certificates be revoked for having been obtained by suppressing facts.

18. For the aforesaid reasons, the writ petition deserves to be dismissed.

19. Hence, the writ petition stands dismissed with costs. Ad-interim order, if any, stands vacated.

In view of the dismissal of the petition, the civil application, if any, does not survive and accordingly stands disposed of.

Rule discharged.

The connected Writ Petition Nos.438 of 2016, 2142 of 2019 and 4142 of 2018 be de-tagged and listed before the Court for admission after six weeks.