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**(2012) 03 BOM CK 0281**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 9449 of 2011**

Shivaji

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

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**Date of Decision :** 06-03-2012

**Acts Referred:**

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 — Section 7  
Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2003 — Rule 7

**Citation :** (2012) 3 ALLMR 775 : (2012) 4 BomCR 754 : (2012) 4 MhLj 383

**Hon'ble Judges :** Sunil P. Deshmukh, J;B.R. Gavai, J

**Bench :** Division Bench

**Advocate :** S.B. Talekar holding for Mr. V.D. Hon, for the Appellant; K.M. Suryawanshi, AGP for Respondent No. 1 and 3, Shri A.R. Salve, Advocate for Respondent No. 2, Respondent No. 4 served, Shri P.V. Barde, Advocate for Respondent No. 5 (absent) and Shri V.J. Dixit, instructed by Shri A.M. Sabnis, Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

Gavai, J.—Heard Learned Counsel for the parties. Rule. Rule made returnable forthwith and taken up for final disposal with the consent of Learned Counsel for the parties.

2. The writ petition arises out of glaring facts.

3. The respondent no. 6 herein had initially obtained caste certificate issued by the Executive Magistrate, Udgir, on 7.6.1990 certifying that he belongs to Rajgond, which is recognized as scheduled tribe. The claim of the respondent no. 6 was considered by the scrutiny committee and the scrutiny committee vide order dated 2.4.1994 held the claim of the respondent no. 6 to be invalid. The caste certificate of the respondent no. 6 issued by the Executive Magistrate,

Udgir, dated 7.6.1990 was directed to be cancelled and confiscated. The respondent no. 6 again applied for grant of certificate certifying him to be belonging to Rajgond scheduled tribe on 13.9.2008. The Sub Divisional Magistrate, Udgir, granted the certificate to the petitioner on 5.11.2008. The respondent no. 6's claim was validated by the respondent no. 2 -committee on 12.4.2010. Subsequently, the respondent no. 6 contested the elections to the Municipal Council of the respondent no. 4 from the ward reserved for scheduled tribe. The respondent no. 6 was elected in the said elections. The present petitioner had also contested the said elections and lost against the respondent no. 6. It appears that after the respondent no. 6 had filed his nomination, the petitioner gathered the requisite information and found that the respondent no. 6's claim was already invalidated as way back as in 1994 and, therefore, approached this Court challenging the caste certificate issued by the respondent no. 3 in favour of the respondent no. 6 and the validity granted by the respondent no. 2. Initially, the petitioner had also prayed for various reliefs including restraining the respondent no. 6 from contesting the election. However, since the matter was listed for the first time after the elections were held, the petitioner pressed the relief only insofar as the prayer clause (B) is concerned.

4. Shri S.B. Talekar, Learned Counsel appearing on behalf of the petitioner, submits that the respondent no. 6's claim having already been declared invalid in the year 1994 itself, the respondent no. 6 could not have applied for grant of fresh certificate and the competent authority could not have granted the said certificate. He further submits that the respondent no. 2, in the light of the earlier invalidation of the respondent no. 6's claim, could not have validated the claim of the respondent no. 6. He submits that the entire record would show that the respondent no. 6 has suppressed the fact regarding invalidation of his claim at earlier point of time and, therefore, the petition deserves to be allowed. The Learned Counsel for the petitioner relies on the judgment of Division Bench of this Court in the case of *Date Tanaji Honaji V/s The Secretary, State of Maharashtra, Tribal Development Department & others* reported in 2010 (5) ALL MR, 258.

5. Shri V.J. Dixit, learned Senior Counsel, on the contrary submits that the respondent no. 6 had disclosed the fact regarding his earlier invalidation and, therefore, submits that the petition is not maintainable. The learned Senior Counsel further submits that even if on earlier occasion, a candidate is refused to be granted a caste certificate, he can apply afresh and such an application would be tenable. The learned Senior Counsel relies on the judgment of learned Single Judge of this Court in the case of *Mohmad Yusuf Ansari since deceased by his heirs Vs. G.M. Sharfuddin and Others*, . The learned Senior Counsel further submits that u/s 7 of 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 Rule 7 of the Rules framed thereunder, procedure is prescribed for cancellation of certificate, if it is alleged to be obtained

fraudulently. He, therefore, submits that at the most, the matter can be referred to the respondent no. 2 -committee for consideration afresh.

6. In the present case, it is undisputed that the respondent no. 6 was granted certificate that he belongs to Rajgond scheduled tribe as back as on 7.6.1990. The claim of the respondent no. 6 was considered by the scrutiny committee by considering the entire documents placed on record pertaining to the respondent no. 6, his father and other relatives. The respondent no. 6's uncle, who remained present for interview, was also interviewed by the committee so as to examine his knowledge regarding socio cultural traits. After considering the entire material on record, the committee has observed thus:

The uncle of the candidate has failed to satisfy the crucial affinity test which is relevant and germane one. On the other hand it is proved from the affidavit of Shri Anantrao Trimbakrao Dikshit (document listed at Sr.No.15) that the caste Raj Gond has been entered on the basis of own admission of the candidate's father in the service book. And from this entry it is positively belies the claim of his social status as Scheduled Tribe.

On the basis of the information furnished by the candidate's uncle and the anthropological and ethnology findings in that behalf, in our rightly held that an argument of social mobility and modernisation often allurgly put-forth to obviate the need to pass the affinity test is only a convenient plea to get over the crux of the question. Despite the cultural advancement, the genetical traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some extent may be modernised and progressed but they would not be oblivion to or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe.

It is clear from the above discussion that the candidate's father have covetously obtained the caste certificate to grab the concessions and benefits meant for the people belonging to Scheduled Tribe Community. IT is to be noted that whether a person is member of a Scheduled Tribe community is a question of fact and his own admission is not at all conclusive.

In view of the above discussion, the Scrutiny Committee concludes that the candidate has totally failed to establish his claim towards Raj Gond Scheduled Tribe community and hence following order is passed.

#### ORDER

After considering all the aforesaid aspects, documents and facts in exercise of the powers vested vide Government Resolution quoted in the preamble at Sr.Nos.1 to 3 above, the Scrutiny Committee has come to the conclusion that Shri Sunil Baburao Telang does not belong to Raj Gond Scheduled Tribe and as such his claim towards the same is held invalid. The caste certificate of his

belonging to Raj Gond Scheduled Tribe granted by Executive Magistrate, Udgir Dist. Latur vide No.1990/MISC/WS/REG/359 dated 7.6.1990 is hereby cancelled and confiscated.

It can, thus, clearly be seen that the committee has come to the conclusion that the respondent no. 6's father had covetously obtained the caste certificate to grab the concession and benefits meant for scheduled tribe community. It can be seen that the scrutiny committee, on the basis of the evidence placed before it including the evidence of the respondent no. 6's uncle, has come to a positive finding that the claim of the respondent no. 6 was invalid and has, therefore, directed cancellation and confiscation of the caste certificate issued in favour of the respondent no. 6 on 7.6.1990. The question that we are called upon to answer is "as to whether in the light of specific confiscation of the respondent no. 6's caste certificate and declaring his claim to be invalid by the scrutiny committee, whether the respondent no. 6 could have again applied for grant of caste certificate". It is undisputed that the respondent no. 6 has accepted the judgment of the scrutiny committee inasmuch as the same is not challenged before this Court, which is the only remedy available to the respondent no. 6.

7. We have perused the original file pertaining to the application made by the respondent no. 6 before the competent authority for grant of caste certificate so also the file of the respondent -scrutiny committee. Though in the application, the respondent no. 6 has replied to questionnaire 9A in the affirmative, the perusal of the entire file would reveal that there is no document to show that the respondent no. 6's earlier claim has been invalidated by the respondent no. 2 - committee in the year 1994. The perusal of the record of the scrutiny committee would also reveal that the respondent no. 6 had not brought to the notice of the scrutiny committee that his claim has been decided on merits in the year 1994.

8. Insofar as the judgment of the learned Single Judge, on which the learned senior counsel for the respondent no. 6 relies is concerned, the same is a judgment by the learned Single Judge and, therefore, would not bind this Court. In any event, the reliance placed on some of the observations by the learned Senior Counsel for the respondent no. 6 could be only said to be obiter dicta and not laying down any binding precedent to hold that the candidate, whose caste certificate is cancelled, can again apply for issuance of a fresh caste certificate. In the said case, the petitioners therein had claimed that they were granted caste certificates by the competent authority. The matter went before the scrutiny committee. The scrutiny committee on the basis of the material placed before it and on the basis of the report of the Vigilance Cell, found that the caste certificates issued in favour of the petitioners therein were not genuine and, therefore, directed cancellation of the caste certificates and invalidation of the claims of the petitioners therein. It is pertinent to note that in the said case, the claims of the petitioners therein, were not decided on merits as has been done in the present case. The petitioners therein had approached the Division Bench challenging the order of the scrutiny committee. An argument was advanced on

behalf of the petitioners therein that once the caste certificate was cancelled, the petitioners were remedy-less. Considering that argument, the learned Single Judge has observed that the petitioners therein can very well apply for issuance of fresh caste certificates, which can be considered on own merits by the competent authority. On the contrary, the learned Single Judge, in the very same judgment, upheld the order of the scrutiny committee declaring the caste certificates to be invalid and has also upheld the direction for prosecution against the petitioners therein. In that view of the matter, the said judgment of the learned Single Judge, in our considered view, would not be of any assistance to the case of the respondent no. 6.

9. The facts in the present case are identical with the facts in the case of *Date Tanaji Honaji V/s The Secretary, State of Maharashtra, Tribal Development Department & others* reported in 2010 (5) ALL MR, 258. In the said case also, the respondent no. 11 therein had obtained another certificate of belonging to scheduled tribe by suppressing the fact regarding invalidation of his claim at an earlier point of time. The Division Bench of this Court observed thus:

52. The Respondent No.11 also did not disclose in the application dated December 2, 2003 the fact of his claim being invalidated by the Scrutiny Committee, Pune. In fact, the Scrutiny Committee, Nashik should not have entertained the claim of Respondent No.11 having regard to the information furnished by him against clause 9(c) wherein the place of residence of Respondent No.11 as on September 6, 1950 was mentioned as Pune. Had the Scrutiny Committee, Nashik considered the information furnished by the Respondent No.11 in the application carefully, it would not have entertained the application of the Respondent No.11. Since the original file as also the order dated December 12, 2003 passed by the Scrutiny Committee, Nashik are missing, we are handicapped in considering these proceedings. However, considering the fact that the claim of the Respondent No.11 was properly considered by the Scrutiny Committee, Pune, we have no hesitation to hold that the entire proceedings before the Scrutiny Committee, Nashik are vitiated by fraud practiced by Respondent No.11. We have no hesitation in setting aside the certificate of validity dated January 1, 2004 issued by the Scrutiny Committee, Nashik.

The Division Bench allowed the petition in the following terms:

59. In the result, in view of the foregoing discussion, Writ Petition No.7740 of 2008 succeeds. Rule is made absolute in terms of prayer clause (b) (i) to the extent of cancellation and confiscation of the caste certificates dated June 24, 1985, July 14, 1987, May 19, 1990, November 15, 2003 as also the certificate of validity dated January 1, 2004. IT is declared that the Respondent No.11, Prithviraj Vasant Kamble does not belong to Mahadeo Koli, a Scheduled Tribe and is liable for prosecution in accordance with law. The Municipal Corporation of the City of Pimpri-Chinchwad is directed to take appropriate action within four weeks in respect of appointment as also the promotion of Prithviraj Vasant Kamble. It is

further necessary to direct the P.C.M.C. to consider the case of the petitioner for promotion to the resultant vacant post of Chief Sanitary Inspector in accordance with law. Rule is made absolute accordingly. In the circumstances of the case, there will be no order as to costs.

10. In the present case also, after the scrutiny of the file concerning grant of caste certificate in favour of the respondent no. 6 and of the respondent no. 2 scrutiny committee concerning grant of validity of the respondent no. 6's claim, it would reveal that the respondent no. 6 has placed on record all the other documents except the document pertaining to invalidation of his claim by the scrutiny committee in the year 1994. It appears that the Vigilance Cell in a casual manner, without even conducting the inquiry regarding the invalidation of the -11 respondent no. 6's earlier claim, has recommended the claim of the respondent no. 6. Not only that, but the respondent no. 6 has also suppressed the said material fact. The perusal of the oral statement made by the respondent no. 6 before the scrutiny committee would reveal that the respondent no. 6 has made a solemn statement that the claims of himself, his father, his grand father, real cousin, the other distant relatives, have never been invalidated and that the proceedings pertaining to the same are not pending before the High Court. The respondent no. 6 has categorically made a statement that if it is found that the information given by him is incorrect, he would be liable for confiscation of his caste certificate and also for further legal action. We find that the respondent no. 6 has deliberately and willfully suppressed the said fact while applying for grant of caste certificate in the year 2008 and while his claim was being considered by the scrutiny committee for validation. We have no hesitation to hold that the subsequent caste certificate and the validity certificate obtained by the respondent no. 6 have been obtained by playing fraud inasmuch as the respondent no. 6 has deliberately and willfully suppressed the fact regarding invalidation of his caste claim by the scrutiny committee in the year 1994.

11. We are also amazed at the functioning of the respondent -scrutiny committee. We have come across several orders passed by the respondent -scrutiny committee wherein the candidates have been denied validity certificates though the claims of next of their kins like father, brother, sister etc. have been validated on the ground that merely because the candidate's close relative has been held to be validly belonging to scheduled tribe, cannot be a ground for grant of validity in favour of such a candidate and that such a candidate is required to prove his case on his own merits. When the respondent -scrutiny committee adopts such a strict approach in other cases, it is difficult to understand as to how the respondent -scrutiny committee has granted validity in favour of the respondent no. 6, ignoring earlier invalidation of the claim of the respondent no. 6. As already discussed hereinabove, the Vigilance Cell has also conducted the inquiry in a casual manner. Had the Vigilance Cell enquired properly, it could have very well unearthed the fact regarding suppression of the earlier invalidation of the respondent no. 6's claim.

12. Insofar as other contentions raised on behalf of Shri V.J. Dixit, the learned Senior Counsel, we do not find it necessary to go into those contentions, inasmuch as we are of the considered view that once a candidate's claim has been invalidated by the scrutiny committee on merits and such invalidation is accepted by such a candidate, he would not be entitled to apply for issuance of fresh caste certificate. Undoubtedly, in the present case, though the respondent no. 6's claim has been invalidated by a reasoned order in 1994 and that the same has not been challenged by the respondent no. 6 and as such he was not entitled to apply for issuance of fresh caste certificate. In that view of the matter, order of the competent authority issuing the certificate and the second order of the respondent -scrutiny committee validating the claim of the respondent no. 6, both deserve to be quashed and set aside.

13. In the result, the writ petition is allowed in terms of prayer clause (B). Needless to state that since it is held that the respondent no. 6 does not belong to scheduled tribe, all the necessary consequences would follow. Since the respondent no. 6's election as a Municipal Councillor is against a seat reserved for scheduled tribe, the same is also quashed and set aside.

14. At this stage, the learned Senior Counsel for the respondent no. 6 prays for stay of the order for a period of six weeks from today.

15. Taking into consideration the blatant fraud played by the respondent no. 6 on the constitutional provisions of reservation for scheduled tribes, we do not find that the respondent no. 6 is entitled to any equitable relief at the hands of this Court. The prayer for stay is, therefore, rejected.