

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

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4115 OF 2013

1. Balaji Baliram Mupade,]
Age : 56 years, Occupation : Service,]
Resident of Near Ambika Mangal]
Karyalay, Sunder Nagar, Nanded,]
Taluka and District Nanded.]
2. Savita d/o Balaji Mupade, Age...years,]
Occupation : Household, resident of]
Mangal Sawangi, Taluka Kandhar,]
District Nanded.] ..Petitioners.

Versus

1. The State of Maharashtra]
Through its secretary, Tribal]
Development Department,]
Mantralay, Mumbai.]
2. Scheduled Tribe Certificate Scrutiny]
Committee, Aurangabad, through]
its member secretary.]
3. Divisional Forest Officer, Nanded,]
District Nanded.] ..Respondents.

Mr. Sagar B. Phatale, Advocate for the Petitioners.
Mr. S. P. Sonpawale, AGP for the Respondent-State.

Coram : PRASANNA B. VARALE &
R. G. AVACAHT, JJ.
Date : **January 21, 2020.**

Judgment (Per Prasanna B. Varale, J.) :

1. Being aggrieved by the order of Respondent No.2- the Scheduled Tribe Scrutiny Committee (hereinafter referred to as “the scrutiny committee” for the sake of brevity) dated 26th April 2020, whereby the scrutiny committee has recalled its earlier order granting validity certificate in favour of the Petitioners, and resultantly invalidating the tribe claim of the Petitioners and also directed the authorities to take action against the Petitioners including the lodgment of offences against Petitioner No.1.

2. Learned counsel for the Petitioners Mr. Phatale, vehemently submitted that the order passed by the scrutiny committee is unsustainable for more than one ground. The principal submission of the learned counsel for the Petitioner is that the scrutiny committee failed to follow the principle of natural justice, i.e., without giving opportunity of hearing to the Petitioners, the impugned order is passed. The learned counsel for the Petitioner then submitted that the scrutiny committee while passing impugned order has exceeded its power and when in fact there is no power vested with the scrutiny committee to

recall its order granting validity certificate, the scrutiny committee misdirected itself and passed the impugned order.

3. Few facts giving rise to the petition can be summarised as follows :

Petitioner No.1 entered the services of State Forest Department and in the year 1992 was appointed as forest guard. The competent authority, I.e., the Special Land Acquisition Officer, Nanded issued tribe certificates dated 17th June 2002 and 26th May 2003 in favour of the Petitioners certifying that they belong to "Mannerwarlu" schedule tribe. The Petitioners approached the scrutiny committee for validation of their tribe claims and on 19th November 2008 and 20th July 2007, claims of the respective Petitioners were validated.

4. It is submitted by the learned counsel appearing on behalf of the Petitioners that by following the due procedure, the scrutiny committee issued the validity certificates in favour of the Petitioners and Petitioner No.1 is serving in the forest department as forest guard since the year 1982 till date. It is stated in the petition that Petitioner No.2 is not taking any benefit of reserved

category. Thus, it can be safely stated that Petitioner No.1 sought appointment in the Forest Department on the basis of his social status, granted to him by way of validity certificate in his favour.

5. One Jyoti Sheshrao Mupade had also approached the scrutiny committee for grant of validity certificate. The scrutiny committee could not find any favour in the claim of Jyoti Mupade. Resultantly, the tribe claim of said Jyoti Mupade was invalidated by the order dated 20th May 2001. Being aggrieved by the invalidation of tribe claim, said Jyoti Mupade filed a writ petition, being Writ Petition No. 1954 of 2009, in this Court. By way of amendment sought for, Jyoti Mupade placed on record validities granted in favour of her relatives. Countering the claim of Jyoti Mupade, the scrutiny committee filed a civil application and it was submitted that the relatives of Jyoti Mupade in whose favour the validity certificates were granted, had suppressed the fact of invalidation of claim of Jyoti Mupade. The scrutiny committee in the civil application expressed its desire to re-open the tribe claims of the relatives of Jyoti Mupade and accordingly sought permission of the Court. By the order dated 22nd August

2012, the division bench of this Court dismissed the said writ petition (W.P.No. 1954 of 2009) filed by Jyoti Mupade and kept the issue of issuance of notices to those relatives of Jyoti against whom the committee had sought permission for re-opening of the validity claims. At this place, it will not be out of place to refer to the observations of the division bench of this Court in the order dated 22nd August 2012, which read thus :

“7. In this matter, it is alleged that the validation certificates have been obtained by the near relations of petitioners by misrepresenting the committee or by withholding material facts from the committee. It is alleged in the application by the Scrutiny committee, that the certificates have been obtained by practicing fraud upon the committee. Since the allegation of fraud has been made by the scrutiny committee, in the application, it would be open for the committee to issue notices setting out grounds for taking up such of those matters for reconsideration. The scrutiny committee shall issue proper notices setting out the grounds and reasons which necessitate reconsideration of validation claims and after receiving replies from the concerned validity holders, the committee may reconsider the claims within parameters of law laid down by this Court in various judgments.”

6. Being aggrieved by the order passed by this Court, said Jyoti Mupade approached the Hon'ble Apex Court by filing petition for special leave to appeal (C) No.9594 of 2013 and vide order dated 22nd February 2013, notices were issued by the Apex Court to the parties. The scrutiny committee passed the order dated 22nd August 2012 and issued notices to Petitioner No.1

dated 2nd April 2013 calling upon Petitioner No. 1 to appear before the Committee on 23rd April 2013. The said notice was received by Petitioner No.1 on 1st May 2013 through his department. It is submitted before this Court that Petitioner No.2 had not received any show cause notice from the office of Respondent No.1-scrutiny committee. Petitioner No.1 appeared before the scrutiny committee on 8th May 2013 and prayed for grant of time. It is further submitted that to the surprise of Petitioner no.1, it was informed to Petitioner No.1 by Respondent No.1-scrutiny committee that scrutiny committee had already taken a decision in the matter of Petitioner Nos.1 and 2 and had already informed the same to the Petitioners by postal communications.

7. Mr. Phatale, the learned counsel for the Petitioners vehemently submitted that Respondent No.2-scrutiny committee passed the order against the Petitioners without giving an opportunity of hearing to them and the scrutiny committee had issued notices to Petitioner No.1 on 2nd April 2013 to appear before the Court on 23rd April 2013 and the said notice was received by the Petitioner on 1st May 2013 through his

department; and as such Petitioner No.1 had prayed for some time to respond to the notices of the scrutiny committee. When Respondent No.1 approached Respondent No.1-scrutiny committee, it was informed to him that already the decision was taken. Thus, learned counsel Mr. Phatale reiterated the grounds of failure to comply with the principle of natural justice.

8. Mr. Phatale, the learned counsel for the Petitioners submitted that in the order of the division bench, it was specifically observed that the scrutiny committee would issue notices in case the scrutiny committee is desirous of re-opening the validity claims.

9. It is also submitted by Mr. Phatale, the learned counsel for the Petitioner that the Petitioners were neither parties in Writ Petition No. 1954 of 2009 nor there was any reference in the order of the division bench and it was necessary for the scrutiny committee to grant opportunity of hearing to the Petitioners. Thus, Mr. Phatale re-iterated the ground of failure to follow the principle of natural justice in his oral submissions.

10. *Per contra*, learned AGP submitted that the Petitioners have suppressed the material facts while submitting their claims for validation before the scrutiny committee. It was submitted that by the learned AGP that the Petitioners were granted sufficient opportunity of hearing by issuance of notices, but the Petitioners failed to respond to those notices. It is also submitted by the learned AGP that, apart from Jyoti Mupade, whose claim was invalidated, claim of the son of Petitioner No.1 and real brother of Petitioner No.2, i.e., Devidas Balaji Mupade was invalidated by the scrutiny committee prior to initially granting the validity certificate in favour of these petitioners and both these petitioners have suppressed this material fact from the Committee. It is also submitted by the learned AGP that the Petitioners cannot take shield of the principle of natural justice in the backdrop of the fact that the Petitioners who were aware that the claim of Devidas Balaji Mupade was rejected by the scrutiny committee, suppressed this fact.

. It is then submitted by the learned AGP that at the time of approaching the Scrutiny Committee for seeking validation of the claim, the claimant is required to submit a pre-formated application before the committee along with an

affidavit; it is expected of the claimant to submit the real, relevant and necessary information to the committee for validation of the claim. Learned AGP submitted before us that while submitting the claim, the very material information that the tribe claim of nearest relatives of the Petitioners, namely, Devidas Balaji Mupade and Jyoti Sheshrao Mupade, were invalidated, is suppressed from the committee. Learned AGP further submits that the Petitioners have indulged into the act of suppressing the material facts and this act is nothing less than the act of playing fraud. Learned AGP further submit that the Petitioners have suppressed the fact which was within their knowledge only to obtain the validity certificate in their favour.

11. Learned AGP also made available before this Court the original files of the scrutiny committee in respect of the claims of Petitioner No.1 Balaji mupade as well as Petitioner No.2 - Savita Balaji Mupade and also the original file of Jyoti Sheshrao Mupade.

12. On hearing of the learned counsel appearing for the respective parties, we are unable to find any favour with the

the Petitioners. It is not in dispute that Jyoti Sheshrao Mupade who had approached the scrutiny committee for issuance of the validity certificate to certify that she belongs to Mannerwarlu scheduled tribe. The claim of Jyoti Mupade was rejected by the scrutiny committee on two grounds; firstly, there was some interpolation in the record as and by way of an addition of words in the school record. It was observed by the scrutiny committee that father of Jyoti Mupade entered into service with documents referring to his caste as **“Munnewar”** and subsequently, the words **“lu”** were added in the record in different ink. It was submitted before the division bench that Jyoti Mupade in challenge to the order of the scrutiny committee filed writ Petition No.1954 of 2009 and submitted that the scrutiny committee issued validity certificates in favour of her close relatives.

13. As stated above, the scrutiny committee submitted an application, i.e., Civil Application No. 2259 of 2012 and sought permission for re-opening the validity claims for review on the ground that relatives of Jyoti Mupade have submitted false documents to the scrutiny committee. It is also not in dispute

that being aggrieved by the order of this Court, said Jyoti Mupade had approached the Hon'ble Apex Court by filing a petition for special leave to appeal and during the pendency of said SLP, the scrutiny committee has issued notices to the Petitioner.

14. The notice to Petitioner No.1 was issued through his employer whereas notice to Petitioner No.2 was issued by way of a postal correspondence. The perusal of the order of scrutiny committee dated 26th April 2013 shows that along with these two petitioners, the other relatives of said Jyoti Mupade, namely, Sahebrao Laxmanrao Mupade, Rameshwar Laxman Mupade and Kerba Ganesh Mupade have obtained validity certificates and while submitting their claims for validation, there was suppression of material facts. Insofar as the Petitioners are concerned, the scrutiny committee in its order made a reference to the suppression of facts by these two petitioners in clauses (c) and (d) of the order.

15. Though Mr. Phatale, learned counsel for the Petitioners vehemently submitted that the scrutiny committee rejected the tribe claim of the Petitioners on the ground of

invalidation of caste claim of Jyoti Sheshrao Mupade, the order also makes reference to the suppression of facts of invalidation of caste claim of Deviddas Balaji Mupade. Devidas Balaji Mupade is the real brother of Petitioner No.2-Savita Mupade and also the son of Petitioner No.1-Balaji Mupade. It is very interesting to note that the claim of Devidas Balaji Mupade was invalidated by the scrutiny committee by the order dated 24th July 2002. On the backdrop of relations between Devidas Balaji Mupade and Petitioner No.1-Balaji as well as Devidas and Petitioner No.2-Savita, it can be safely presumed that both these petitioners were well aware of the fact about the invalidation of the caste claim of Devidas.

16. On the backdrop of these facts, it is interesting to note that Petitioner No.1-Balaji Mupade submitted his claim for validation on 16th April 2008 with his own affidavit as well as the affidavit of Petitioner No.2-Savita. The perusal of pro-forma application shows that there is specific clause seeking responses from the claimant. As per clause No.17(A), the claimant has to make a statement before the committee as to whether any member in the family of claimant was subjected to the scrutiny

under the validation claim; and if yes, the necessary details of such persons, namely, his name, his relation with the claimant and details of his scrutiny are sought for. It is very interesting to note that in reply to clause 17(A), the Petitioner no.1-Balaji makes reference to Petitioner No.2-Savita. In response to clause no.17(B), a reference is made to the validity certificate issued in favour of Petitioner No.2-Savita.

17. Learned AGP was justified in making submission before the Court that clause 17(A) refers to the scrutiny of claims of the members of family of claimant, who have been subjected to the scrutiny. Thus, it is expected of a claimant to submit information even about the invalidation of the claims, if any, of the member in his/her family. At the cost of repetition, we may state that, much prior to submitting the claim by Petitioner No.1 in the year 2008 before the respondent no.2-Scrutiny committee, the claim of his own son - Devidas was invalidated. It is also not in dispute that the record further shows that when Devidas had sought scrutiny of his tribe claim, he was taking education. As such it can safely be presumed that the claim of son of Devidas was looked after by his father, i.e., Petitioner No.1-Balaji. It will

be again interesting to note that on perusal of the original file, it is revealed that Petitioner No.1-Balaji had submitted genealogy before the scrutiny committee. The perusal of said genealogy or family tree shows that Petitioner No.1-Balaji makes a reference to his daughter-Savita in the family tree as a validity holder and it is again very interesting to note that Petitioner No.1-Balaji maintains silence in respect of his son Devidas in the family tree. Now this silence of Petitioner No.1-Balaji is nothing but suppression of material fact.

18. On perusal of original file of Petitioner No.2-Savita, it is revealed that while submitting her claim before the respondent no.2-scrutiny committee, Petitioner No.2-Savita too maintains silence in respect of the information to be submitted in clauses 17(A) and 17(B). The claim of Petitioner No.2-Savita was submitted on 17th July 2006. Petitioner No. 2-Savita refers in her proforma application submitted to the scrutiny committee to Sahebrao Laxman Mupade, Gajanajn Shesherao Mupade and Vikas Suresh Mupade, as the validity holders.

19. It is also interesting to note that though Savita in

support of her claim has filed affidavits of one Vikas Mupade, who is validity holder, maintains silence about Jyoti Mupade. It is also interesting to note that while submitting Form-E application, clause 16 refers to the information of other family members of the claimant who have taken education, such as father, uncle, brother, sister, etc., As stated above, brother of Savita, Devidas while prosecuting his education had approached the scrutiny committee for issuance of validity certificate and his claim was rejected and inspite of this fact, Petitioner No.2 Savita provided Nil information against clause Nos.17(A) and 17(B) in the pro-forma application. It is very interesting to note that Devidas had approached this Court by filing a writ petition, being Writ Petition No. 4616 of 2002, challenging the order of scrutiny committee rejecting his tribe claim. Thus, there is more than ample material to show that claim submitted by Devidas, i.e., son of Petitioner No.1-Balaji and real brother of Petitioner No.2-Savita was rejected by the scrutiny committee and this fact was well within the knowledge of both these petitioners.

20. Insofar as Jyoti Mupade is concerned, an application was submitted to the scrutiny committee on 24th April 1998. The

scrutiny committee passed an order on 31st May 2001, rejecting her claim; and being aggrieved by that order, Jyoti Mupade filed a writ petition in this Court, being Writ Petition No. 1954 of 2009.

21. The claimant who is desirous of validation of his tribe claim, approaches the competent scrutiny committee as per the procedure laid down in accordance with the law, i.e., relevant Act and Rules. While submitting his claim before the competent scrutiny committee, it is pre-requisite that the claimant must submit the complete and real / genuine information or material to the scrutiny committee. Meaning thereby, the claimant is to submit material supporting his claim and also material adverse, if any, to his claim. Not only this, in the present matter, the Petitioners have gone to the extent of maintaining silence in respect of the existence of the near relative / family member, i.e., Devidas, the son of Petitioner No.1 and brother of Petitioner No. 2 in the genealogical tree or family tree.

22. Apart from non disclosure of fact of invalidation of the claim of cousin sister Jyoti Mupade, the suppression of rejection of tribe claim of Devidas who is nearest relative of both

the petitioners is to act adversely against these petitioners.

23. It is also revealed that the show cause notices were already issued to the Petitioner calling upon them to submit their say and to remain present before the scrutiny committee and in spite of receipt of notices, the Petitioners failed to appear before the scrutiny committee.

24. It may not be out of place to refer to the principle oftenly quoted that he who approaches the Court of law, must approach the Court with clean hands. In the present matter, the Petitioners are guilty of suppression of material facts, which were within their knowledge and in stead of approaching the competent scrutiny committee by disclosing the entire material, the Petitioners have placed only material which was supporting to the claims of Petitioners and this act of the Petitioners is certainly not a bonafide act and it can safely be stated that the Petitioners have not approached the scrutiny committee with genuine intention to seek validation of their tribe claims, but with an intention to obtain the certificates by suppressing the material facts. The Petitioners, thus, having guilty of suppression of facts,

now cannot turn back and submit before this Court that the scrutiny committee failed to follow the principle of natural justice or the scrutiny committee exceeded its jurisdiction. Therefore, we are unable to accept the submissions of Mr. Phatale, learned counsel for the Petitioners in challenge to the order impugned in the present petition.

25. Considering all these facts, we are of the opinion that the petition is devoid of any merit as such deserves to be dismissed, and the same is accordingly dismissed.

[R.G.AVACHAT, J.]

[PRASANNA B. VARALE, J.]