

Alka and Others Vs. Joint Director and Vice Chairman, Scheduled Tribe Caste Certificate Scrutiny Committee and Others

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Court : Mumbai

Decided On : Mar-13-2015

Judge : B.P. Dharmadhikari & a.P. Bhangale

Appeal No. : Writ Petition Nos. 1802 of 2014, 1503 of 2011, 2839 of 2013, 5178 of 2013, 5766 of 2013, 6868 of 2013, 3476 of 2013 & 5892 of 2013

Appellant : Alka and Others

Respondent : Joint Director and Vice Chairman, Scheduled Tribe Caste Certificate Scrutiny Committee and Others

Advocate for Pet/Ap. : Shri. R.S. Parsodkar

Judgement :

B.P. Dharmadhikari, J.

In all these petitions filed under Article 226 of the Constitution of India, challenge is to order of the Scrutiny Committee functioning under 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 Certificates Act, (Act No. 23 of 2001), invalidating the caste/tribe claim of respective petitioner. The petitioners seek protection in

employment, in terms of Full Bench judgment of this Court in the matter of **Arun Vishwanath Sonone .vrs. State of Maharashtra and others (2015 (1) Mh.L.J. 457)**. The said claim for protection is objected by the State Government, as also by their respective employers on the ground that their caste/tribe does not figure in the Government Resolution dated 15.06.1995 or later policy decision dated 30.06.2004, and hence benefit cannot be extended to them.

2. As the issue involved is same, as requested by the parties, we have heard the matters together. Some matters have been added afterward, after hearing the respective counsel therein. Thus, looking to the nature of the controversy involved, we have heard all the matters finally by issuing **Rule**, and making it returnable forthwith by consent of the parties.

3. Shri S.P. Bhandarkar, learned Counsel appearing for petitioner in Writ Petition No.2839/2013 had expressed desire to argue the matter first. Other counsel for petitioners did not oppose his request. Accordingly we have heard the learned counsel.

4. In Writ Petition No. 2839/2013, the Caste Scrutiny Committee is not party and said petitioner has assailed a communication dated 05.04.2013, issued by the Zilla Parishad, Buldhana calling upon him to produce validity certificate issued by the Scrutiny Committee. Petitioner claims to belong to '**Thakur**, Scheduled Tribe'. He is born on 14.05.1971. He got caste certificate on 04.01.1989 showing that he belongs to Thakur, Scheduled Tribe and he got selected for employment on 03.06.1995. His caste claim was invalidated on 13.02.1998 and his Writ petition has been rejected in limine in 1999 itself. He however, continued in service and after receipt of show cause notice dated 05.04.2013, he has chosen to approach this Court. This Court has protected his employment on 24.05.2013. In Writ Petition No. 5766/2013, the petitioner initially assailed order of the Scrutiny Committee invalidating his caste claim as belonging to 'Thakur Scheduled Tribe' passed on 04.09.2013. However, after 19.06.2013, petition has been pressed only for grant of protection in employment. She is born on 12.01.1972 and obtained caste certificate on 26.08.1982. She has been appointed on 01.12.1998, as a person belonging to Thakur Scheduled Tribe. After order of scrutiny committee

dated 04.09.2013, she has been terminated by her employer, a private Education Society on 30.09.2013. Petitioner Ku. Sunita seeks reinstatement by setting aside the said order. Petitioner Smt. Usha Gaur in Writ Petition No. 5178/2013, questions order of Scrutiny Committee dated 06.09.2013 invalidating her caste claim as '**Thakur**Scheduled Tribe'. She is born on 05.04.1970 and got caste certificate on 30.04.1991. She entered employment of private employer i.e. respondent nos. 3 and 4 School on 27.04.1998. Her certificate was sent for verification on 25.04.2005, and caste claim has been invalidated on 06.09.2013. This Court has on 26.09.2013, protected her employment.

Petitioner in Writ Petition No. 1503/2011 Moreshwar Shinde, questions order of Scrutiny Committee dated 24.04.2009 invalidating his caste claim as '**Thakur** Scheduled Tribe'. He is born some time in 1972 and he got caste certificate on 26.04.1989. On that basis he joined employment with respondent no.2 State of Maharashtra on 17.11.1994. His caste certificate was forwarded for verification on 10.06.2003, and has been invalidated on 24.04.2009. On 28.08.2011, this Court while issuing notice in the matter and directed parties to maintain status quo. Therefore, the petitioner continues in service.

Petitioner Milind Bambal in Writ Petition No. 6868/2013 questions order of Scrutiny Committee dated 04.09.2013, invalidating caste claim as belonging to '**Dhanwar**' Scheduled Tribe. Said petitioner is born on 06.06.1969 and got caste certificate on 29.07.1985. He joined employment on 24.01.1995. His caste claim came to be referred on 23.03.2009, and has been invalidated on 04.09.2013. This Court has while issuing notice in the matter on 24.12.2013, granted status quo and accordingly, Milind continues in employment.

Petitioner Ku. Alka Mahure in Writ Petition No. 1802/2014, questions order of Scrutiny Committee dated 18.02.2014 invalidating her tribe claim as belonging to '**Dhangad**' Scheduled Tribe. She is born in 1974 and got caste certificate on 18.06.1993. She got employment as 'Dhangad, Scheduled Tribe' candidate on 12.05.1993 with a private School i.e. respondent nos. 2 and 3. After completion of probation, she has been confirmed on 24.06.1995. Her caste claim was referred for the first time to the Scrutiny Committee on 24.06.2013. This Court while issuing

notice in the matter on 08.04.2004, granted status quo, and therefore, she continues in service.

Petitioner Ajay Suryavanshi in Writ Petition No.3476/2013 is born some time in the year 1979, and has obtained caste certificate as belonging to **Thakur** Scheduled Tribe on 22.06.1998. He got employment on 30.09.2000. Caste claim of petitioner was referred to the Scrutiny Committee on 20.03.2003 and the same has been invalidated on 12.06.2013.

In Writ Petition No. 5892/2013, petitioner Smt. Mangla Pawar is born some time in the year 1961 and she got caste certificate showing her belonging to **Thakur** Scheduled Tribe on 29.06.1981. She procured employment on 08.02.1985 and her claim was forwarded for verification and scrutiny on 30.09.2013 to the Scrutiny Committee, i.e. almost after a period of 28 years, and the same has been invalidated on 09.10.2003.

5. Limited controversy to be considered in all these matters is whether judgment of Full Bench of this Court in case of **Arun Vishwanath Sonone .vrs. State of Maharashtra and others (supra)**, protects the employment of present petitioners ?

6. Shri Bhandarkar, learned Counsel has taken us through the Full Bench judgment in case of **Arun Sonone (supra)** , to point out the terms of reference to Full Bench and how the Full Bench has proceeded to appreciate the points having bearing on said reference. He argued that though most of the decisions of High Courts or of Hon'ble Supreme Court have dealt with Halba Scheduled Tribe, principles laid down therein hold good equally for other castes/tribes including, Thakur. He further submits that the judgment of Full Bench is only clarificatory in nature and does not lay down any new law. He submits that the category carved out as 'Special Backward Category' (SBC) by the State Government can be seen in Government Resolution dated 15.06.1995, however, the Hon'ble Apex Court in judgment reported at **2012 (1) SCC 549 (Dattu Thakur .vrs. State of Maharashtra and others)**, has extended protection even to a person who failed to establish his tribe claim as belonging to Thakur Scheduled Tribe. He points out that persons who failed to establish tribe claim got full protection in terms of the

Full Bench judgment in case of **ArunSonone (supra)**. Precedent of Hon'ble Apex Court in case of **R. Unnikrishnan and another .vrs. V.K. Mahanudevan and others (2014) 4 SCC 434**, as considered by the said Full Bench in paragraph no.60 of its judgment, is also pressed into service by him. He contends that unless and until it is shown that the person has obtained caste certificate by practicing falsehood or by using fraudulent means, the protection needs to be extended. Subsequent Government Resolution dated 30.06.2004 is pressed into service to show that it covers all non-tribals. Appreciation of judgment of Hon'ble Apex Court in case of **DattuThakur .vrs. State of Maharashtra (supra)**, is also relied upon by him. Judgment of Hon'ble Supreme Court in case of **Exe.E.EHV.C.Div.No.1 MSETCL Nagpur .vrs. Jyotsana Bondelal Shriwas and others** (Special Leave to Appeal (Civil) No. 12905/2013 dated 04.03.2014, is also relied upon by him to urge that their protection has been extended to a candidate who could not substantiate his claim as belonging to Thakur Scheduled Tribe. He submits that protection to Thakur persons is, therefore, a law under Article 141 of the Constitution of India.

7. Shri S.R. Narnaware, learned Counsel has mostly adopted the arguments of Advocate Shri S.P. Bhandarkar. According to him, Full Bench judgment in case of **ArunSonone .vrs. State of Maharashtra (supra)**, 4 categories have been carved. out Those who got employment prior to 15.06.1995, and have been treated as SBC candidates, is the first category. Second category is of 'non-tribals' covered under Government Resolution dated 30.06.2004; Third category is till delivery of judgment by the Hon'ble Apex Court in case of **State of Maharashtra .vrs. Milind Katware**, i.e. till 28.11.2000; Fourth Category is of those appointed between 28.11.2000 till 18.10.2001 i.e. till coming into force of Act No.23 of 2001 with no condition to produce validity in their appointment order. He further submits that after 18.10.2001, no employment can be procured without producing validity. As petitioners before this Court have all been recruited before judgment of the Hon'ble Apex Court in case of State of Maharashtra .vrs. Milind Katware, they are entitled to be protected in the light of Full Bench judgment in case of **ArunSonone .vrs. State of Maharashtra (supra)**. ShriNarnaware, learned Counsel points out that petitioner Moreshwar in Writ Petition No. 1503/2011, has also obtained a certificate on 22.10.2010, which shows that he belongs to Thakur, Scheduled

Tribe. Hence, fact that earlier certificate was given by an incompetent Authority is, not very material. He submits that the Scrutiny Committee has in first paragraph while recording reasons, found that caste certificate produced by Moreshwar, has not been issued by the office of the Executive Magistrate, Akola. He submits that therefore, caste certificate is found to be fake one only technically. As petitioner has now procured caste certificate from competent authority, it needs to be sent back to the scrutiny committee for its verification. He is relying upon a judgment dated 29.11.2012 in Writ Petition No.3214/2012 (**Ku. Laxmi Sagar Bhurkunde .vrs. Divisional Caste Certificate Scrutiny Committee and others**), for said purpose.

8. In Writ Petition No. 1802/2014, Shri Narnaware, learned Counsel submits that petitioner Ku. Alka needs to be protected in the light of law as laid down in **2010 (4) AIR Bom High Court reports 48 (Chief Executive Officer, Z.P. .vrs. State of Maharashtra and others)**, where the Hon'ble Apex Court has found that a candidate like her, who belongs to Special Backward Class (SBC), and whose claim is accepted by the State Government as such, needs to be continued in employment.

9. In Writ Petition No. 6868/2013, Shri Narnaware, learned Counsel adopts the same line of argument.

10. Shri R.S. Parsodkar, learned Counsel for the petitioner Ku. Sunita in Writ Petition No. 5766/2011, maintains same line of argument.

11. Shri R.M. Chandurkar, learned Counsel in Writ Petition No 5178/2013 after giving relevant developments, submits that there is no finding of any fraud or falsehood recorded against the petitioner in the matter.

12. Shri Rohit Deo, learned A.S.G.I., submits that protection in employment is a concept evolved by judiciary and it is available only in three cases. Those who belongs to S.B.C, need to be protected as per Government Resolution dated 15.06.1995, others who are covered by judgment of Constitution Bench in case of **State of Maharashtra vs. Milind Katware, (AIR 2001 SC 393 = (2001) 1 SCC 4)**, also need protection. Those who are not covered by the said Constitution Bench

judgment or Government Resolution dated 15.06.1995, can be granted protection only if they satisfy the test laid down in case of **R. Unnikrishnan and another .vrs. V.K. Mahanudevan and others (supra)**. He places strong reliance on paragraph no.52 of the judgment of Full Bench. He further relies upon several other paragraphs and pointed out that in paragraph no.55, the Full Bench has restricted consideration to S.B.C. Persons. Lack of malafides as requirement of extending similar treatment looked into in paragraph nos. 60 and 61 is, also pointed out by him. He submits that all judgments proceed on consanguinity and even Full Bench in case of **ArunSonone (supra)**, does not hold that the direction to protect in case of **DattuThakur (supra)** given by the Hon'ble Apex Court was not under Article 142 of the Constitution of India. On the contrary, he invites attention to the findings recorded in paragraph no.52 by Full Bench that protection granted by the Hon'ble Apex Court was under Article 142, recorded by the Division Bench, has not been upset. By pressing into service paragraph no.66, he contends that the Full Bench did not widen the area or field in which protection becomes available . Test applied in paragraph no.73 by the Full bench i.e., whether claim was fraudulent and whether there was any confusion or uncertainty, are also highlighted by him.

13. Shri G.G. Mishra, learned Counsel appearing for Zilla Parishad submits that Thakur is not recognized as Special Backward Category. He further contends that the word non-tribal in Government Resolution dated 30.06.2004, needs to be understood narrowly in the background of the castes shown as SBC contained in Government Resolution dated 15.06.1995. Open category candidates or higher caste Thakurs who procure ST or similar certificate and employment, are not eligible for protection.

14. Shri Bhandarkar, learned Counsel in reply arguments in Writ Petition No. 2839/2013, submits that after adjudication of his caste claim by the Scrutiny Committee, where claim is invalidated the person is rendered casteless. Shri Narnaware, learned Counsel invites attention to paragraph no. 65[a] of Full Bench in case of **ArunSonone [supra]**, to state that it is not restricted only to SBC. According to him, everybody who got caste certificate as belonging to some backward or Scheduled tribe or Scheduled Caste category, needs to be

understood as a backward class candidate while implementing the above mentioned Full Bench judgment.

15. Shri Deshpande, learned Counsel appearing for the Scrutiny Committee in Writ Petition No.5766/2013 has submitted that it is basically for the employer to oppose the claim of protection. He invites attention to orders of the Hon'ble Apex Court in Special leave Petition No.14193/2011 dated 02.06.2011 and judgment of Division Bench of this Court in case of **DineshRamesh Thakur .vrs. State of Maharashtra (2012 (4) Mh.L.J. 396)**, particularly paragraph no.37. He has also pointed out how removal of area restriction was earlier considered by the Division Bench of this Court in case of **DattuThakur .vrs. State of Maharashtra and others (2010 (2) Mh.L.J. 494)**.

16. In Writ Petition No. 5178/2013, he invites attention to old documents dated 31.03.1952, where in school admission register caste of one Manbahelsingh s/o Jeharsingh has been recorded as 'Kshtriya'. He submits that thus older documents relating to Laxmansingh, dated 24.03.1919 where caste has been recorded as Thakur is, not decisive.

17. In Writ Petition No. 6868/2013, Shri Deshpande submits that petitioner could not produce any documents to show that he belongs to 'Dhanwar' Scheduled tribe. All old documents record caste as 'Dhangar' and there is no scope for any confusion. He further states that when petitioner was called upon to appear before the Scrutiny Committee, he chose not to appear and also did not submit any explanation for his refusal to cooperate. Finding of fraud reached by the Scrutiny Committee in paragraph no. 7[b], is also pressed into service by him.

18. Shri Mehadia, learned Counsel appearing for employer Western Coalfields Ltd., invited our attention to condition no. 4 in the appointment order dated 24.01.1995 warning the petitioner Milind that his appointment was provisional and in case of invalidation of caste claim , he would be terminated without any notice, and that too, without prejudice to right of employer to take further suitable action.

19. Opposing Writ Petition No. 1503/2011, Shri Deshpande, learned counsel points out that certificate obtained by the petitioner Moreshwar is not issued by the

competent Authority and, therefore, a fabricated one.

20. We will first deal with the question Whether caste certificate dated 26.04.1989 submitted for verification by petitioner Moreshwar in Writ Petition No.1503/2011, can be said to be fabricated or fake one? It is not in dispute that the said certificate dated 26.04.1989 does not figure in records of Executive Magistrate, Akola. Division Bench of this Court in Writ Petition No.3214/2012, on 29.11.2012 found that merely because caste certificate is issued by an Authority not possessing power to do so, caste claim cannot be said to be invalid. Petitioner Moreshwar has on 22.10.2010 obtained a certificate from a competent Authority namely Sub Divisional Officer, Akola which shows that he belongs to Thakur Scheduled Tribe. Only question is, whether said certificate needs to be sent back to the scrutiny committee for reconsideration. We find that in the impugned order dated 24.04.2009 in paragraph no.8 the Scrutiny Committee has also examined his caste claim on merit. It has called for the vigilance report and also applied affinity test. Thus, merely because on 22.10.2010 the petitioner Moreshwar has obtained another caste certificate, this exercise on merits by the Scrutiny Committee is not rendered nugatory. The Scrutiny Committee has not recorded a finding that while obtaining caste certificate, Moreshwar has practiced any fraud or falsehood.

21. Petitioner Akla in Writ Petition No.1802/2014, has withdrawn her claim as belonging to Dhangad Scheduled Tribe before the Scrutiny Committee itself, by filing affidavit. She accepted that she belongs to Dhangar, Nomadic Tribes and her parents erroneously recorded her caste as Dhangad. She accepted the caste of her father as her caste. The scrutiny committee in vigilance found that caste of applicant's father was recorded as Dhangar, real sister of petitioner Ku. Mangala has been given validity on 25.01.2013 as belonging to Dhangar, Nomadic Tribes. Her brother Charandas is also given validity in 2005. Her other brother Dilip has also been given same validity. In this matter the Scrutiny Committee has not recorded a finding that petitioner while obtaining caste certificate has played any fraud or falsehood.

22. In Writ Petition No. 6868/2013, the Scrutiny Committee has in paragraph no.7[b] noted that the petitioner Milind obtained caste certificate with malafide

intention. However, this mala fide intention is gathered because of school and revenue records of petitioner, his father, his grand father and great grand father, where caste was recorded as 'Dhangar'. It could not see any documents pertaining to Milind himself, where caste has not been recorded as Dhanwar. Caste certificate has been obtained when Milind was only 16 years old, and therefore, by his parents, as such we are not in a position to hold that petitioner Milind has practiced any falsehood while obtaining it.

23. In remaining matters also we have given the dates when caste certificates were obtained. The scrutiny committee has not recorded any finding of fraud or falsehood, practiced by any of these petitioners.

24. In almost in all the matters, caste certificates have been obtained when petitioners were minor, by their guardian or parents. School records of petitioner are not found to be tampered with or interpolated by the scrutiny committee. Caste claims are invalidated because of discovery of old documents which reveal the caste inconsistent with caste claim of petitioner. However, the scrutiny committee has not brought on record any previous knowledge thereof to any petitioner while obtaining caste certificate or while entering the employment.

25. Full Bench judgment of this Court in case of **Arun Sonone (supra)**, practically covers entire field. Earlier Government Resolution dated 15.06.1995, is reproduced therein in paragraph no.57. Caste/Tribe **Thakur, Dhangar or Dhangad or Dhanwar**, does not figure therein. Later government resolution dated 30.06.2004 contains reference to this Government Resolution dated 15.06.1995. Its relevant para is as under:

(a) The non-tribals who have received recruitment promotion in the government/semi-government services on the reserved seats for the Scheduled tribes prior to 15.06.1995, should not be removed from service or should not be demoted. They should be shown in the constituent to which they belong. Henceforth, the reservation benefits entitled to that particular constituent will be due to them and the vacated posts in this manner should be filled from the tribal category. The word 'non-tribals' used therein, therefore, needs to be construed as covering those who find and also those who do not find mention in government

resolution dated 15.06.1995. Thus, those whose castes figure in government resolution dated 15.06.1995 already got protection because of it. In later government resolution dated 30.06.2004, the State Government could have conveniently used the word SBC , if it wanted to confer benefit only upon SBCs mentioned in GR dated 15.6.1995. However, it chose to employ a word with wider sweep ie non-tribal. Non-tribal therefore does not point out only SBCs but it refers to all those who are not tribals but were given a caste certificate as belonging to a tribe or a backward class. There fore, it also covers others who do not figure in government resolution dated 15.06.1995. We need not to dwell more on this aspect as Hon'ble Full Bench has in paragraph no.65 observed that after decision in case of **MadhuriPatil and another vrs. Additional Commissioner, Tribal Development (AIR 1995 SC 94)**, delivered by the Hon'ble Supreme Court on 02.09.1994, by issuing government resolution dated 15.06.1995 and 30.06.2004, all the appointments and promotions made upto 15.06.1995, against a post reserved for backward class category candidate have been protected, and cannot be canceled. In paragraph no.66 relevant observations of Full Bench show similar conclusions. In paragraph no.66[b], grant of protection is found contingent upon finding of the scrutiny committee on caste claim. Thus protection cannot be extended, if caste certificate is found to be false or fraudulent by the Committee. If protection is granted, further advantage of said caste certificate in terms of promotion or otherwise cannot be taken after 28.11.2000 and if such benefit is taken after 28.11.2000, the competent Authority can withdraw it.

26. Hon'ble Supreme Court in SLP 12905 of 2013 **Exe.E.EHV.C.Div.No.1 MSETCL Nagpur .vrs. Jyotsana Bondelal Shriwas and others** decided on 4.3.2014 extended protection to candidate whose caste claim as Thakur Schedule Tribe was invalidated , granted protection. It found that in **R. Vishwanath Pillai vs. State of Kerela and ors, (2004) 2 SCC 105**, the parents of candidate belonged to Nair Community where as the said petitioner had given his caste as Vettuvvari. In case **JyotsanaBondelal Shriwas (supra)** , petitioner as also her father and sisters had caste certificates showing them as members of Thakur Community. It also find that in **Bank of India vs. Avinash D. Mandivikar and Others. 2005 (7) SCC 690** , the documents were manipulated to make a false claim. In present matters also, the Thakur documents are consistent and there is no finding of any

tampering or interpolation in relation thereto.

27. After perusal of Full Bench judgment mentioned supra, we find that merely because caste claim is invalidated, it cannot be said that the person has obtained caste certificate by playing fraud or by practicing falsehood. Dhangad or Dhanwar are both Scheduled Tribes while Dhangar is a Nomadic Tribe recognized as such in State of Maharashtra. Thus the said schedule tribes or nomadic tribe also enjoy social reservation. Though the upper caste Thakur exists, when old documents of any Thakur whether backward or forward, mention caste as Thakur, the affinity test is being used as the only solution. Relevance of the affinity test in such matters and its use to invalidate to caste claim has also been debated in several matters before this Court. Protection envisaged by the Full Bench is to the candidates like petitioners who applied for and got caste certificate as per law without resorting to any wrong or unfair means. Though their caste certificates need to be canceled, they cannot be punished in the facts and circumstances further by denying protection in employment in terms of Full Bench judgment mentioned supra. Those whose caste claims either as Thakur or Dhangad or Dhanwar schedule tribe are invalidated, may be extended such concession of protection in employment, if it is seen that they have not participated in any falsehood or fraud, while obtaining that caste certificate.

28. As none of the petitioners before us is found to have acted with malice or indulged in any fraud or falsehood while obtaining caste certificate, we find them entitled to protection in employment in terms of the Full Bench judgment in case of **ArunSonone (supra)**.

29. Subject to petitioners filing an undertaking with the Registry of this Court and with their employer, within a period of 6 weeks from today, that neither he/she, nor his/her progeny shall claim any benefit and status as scheduled tribe candidate, the employment of petitioners shall be protected in terms of the Full Bench judgment mentioned above. 30. Subject to the undertaking as above, show cause notice dated 05.04.2013, issued to petitioner Sanjay in Writ Petition No. 2839/2013 is accordingly quashed and set aside.

31. Subject to the undertaking as above, termination order dated 30.09.2013 issued by the respondent no.2 to petitioner Ku. Sunita Bisen in Writ Petition No. 5766/2013 is hereby quashed and set aside. She is reinstated back in service without any back wages but with continuity and consequential benefits.

32. In view of above discussion, Writ Petitions are partly allowed. Rule is made absolute in aforesaid terms with no order as to costs.

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