

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 54 OF 2016

Bharat Gulabsingh Thakur

...Petitioner

Versus

**State of Maharashtra through its Secretary,
Tribal Development Department & Anr.**

...Respondents

Mr. Vikram Chavan, and Ms. Shital Thakur @ Chavan, for the
Petitioner.

Mr. V.N. Sagare, AGP, for Respondents No. 1 & 2 State.

**CORAM : ANOOP V. MOHTA &
A.A. SAYED, JJ.**

**CLOSED FOR JUDGMENT ON : May 04, 2016
PRONOUNCED ON : May 06, 2016**

JUDGMENT (Per Anoop V. Mohta, J.) :

Rule. Returnable forthwith. Heard finally by consent of parties.

1. The Petitioner has challenged the order passed by the Caste Scrutiny Committee dated 7th October 2010, thereby invalidated caste certificate dated 17th December 1997 and thereby denied the caste claim belonging to Thakur - Scheduled Tribe, though relatives of the Petitioner of paternal side based upon the provisions, in pursuance to the order passed by this Court, were granted the

caste validity certificate as prayed.

2. The Petition is filed on 30th April 2014. The Respondents resisted the same by Reply dated 16th March 2016. The matter listed for final disposal. In view of the submissions made by the learned Counsel appearing for the Petitioner that this bench in number of judgments have granted the order based upon the paternal side relatives certificate in same and similar judgments. Two of the judgments are also part of the record.

3. After going through the averments and the documents so placed on record by the Petitioner, Reply Affidavit filed by the Respondents and the reason so given by the Caste Scrutiny Committee. We have found that there are no allegations of any fraud and/or misrepresentation against the Petitioner. There are no allegations that the earlier caste validity certificates granted to the relatives of the Petitioner, based upon then legal position was bad in law because of any misrepresentation and/or fraud. There is nothing on record to show that the Respondents at any point of time initiated any proceedings to cancel the caste certificate granted to the paternal side relatives of the Petitioner. All those validity certificates have been acted upon by the concerned. Merely because a different view is

possible cannot be a reason to deny the claim of Petitioner based upon the other validity certificate of his paternal side relatives issued by the Competent Caste Scrutiny Committee at the relevant time.

4. It is relevant to note the paragraph 4 of the Affidavit filed by Respondent No. 2, which reads thus :-

“I say that in the year 2001, the Scheduled Tribe Caste Scrutiny Committee, Nashik issued caste validity certificate to the relatives of the Petitioner namely Ashish Prakash Bhamre and Mrudula Prakash Bhamre on the basis of the legal position prevailing at that time and pursuant to the order passed by this Hon'ble Court in Writ Petition No. 2746 of 1998, 5454 of 1998 and 856 and 1998. I say that when the orders were passed in the said Writ Petitions, 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, has not come into force.

I further say that apart from Scheduled Tribe, a surname "Thakur" is also listed amongst Nomadic Tribe and forward caste. At the time of hearing before the Respondent No. 2 Committee, the Petitioner could not establish affinity towards 'Thakur' Scheduled Tribe and the said fact has also been mentioned in the statement made before the Vigilance Cell. In this regard I rely on para 8 of the impugned order dated 7.10.2010 passed by the Respondent No. 2 Committee.

5. 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, is in force since 18-10-2001. Rules are also framed thereunder. The Competent Authority is required to follow the same. The importance is also given to the affinity test and the report of the Vigilance Cell. There was no challenge raised at any point of time to the Petitioner's relatives caste certificate as the same was issued by the Competent Authority in pursuance to the order passed by this Court and as there is no case of any fraud and/or misrepresentation. Merely because another view is

possible that itself in our view cannot be reason to deny the caste claim of the Petitioner.

6. This Court in Writ Petition No. 7343 of 2013 in case of Madhuri Nitin Jadhav (supra) in paragraphs 35 and 36 based upon the Supreme Court judgment and the other judgment of this Court (Anoop V. Mohta & A.A. Sayed, JJ) has observed as under :-

“35. In the instant case, the Caste Screening Committee had clearly found the father, paternal uncle, brother and paternal cousins of the appellant to belong to the Thakur Scheduled Tribe. The subsequent decision of the Screening committee solely on the basis of an Affinity Test, in our view, does not stand scrutiny.

36. We have also in Sanjay Pralhad Pardeshi Vs. State of Maharashtra, Writ Petition No. 6800 of 2013, by order dated 18 February 2014, by referring to the earlier judgments of this Court, granted the relief by observing as under:

“4. In view of no contra material on record, the certificate, in our view, just cannot be overlooked

basically when there is no finding of fraud and/or misrepresentation. It is difficult to accept the reason so provided by overlooking the above position, while rejecting the claim of the Petitioner and also in view of the Judgment of Division Bench of this Court (Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee & Ors.)¹. The Division Bench of this Court, (Anoop V. Mohta and Z.A. Haq, JJ) has also taken a view in Vaishali Chatarsingh Ingale (Thakur) Vs. Committee for Scrutiny and Verification of Tribe Claims, Amravati & Ors.² and noted in paragraph No.5 as under:

5.....

“Where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view of the same facts would not entitle the committee dealing with the subsequent caste claim to reject

1 2010(6) Mh.L.J. 401

2 2013(6) Mh.L.J.251

it.....”

The Same view is also taken by another Bench of this Court in Mayur S/o. Shamrao Nannaware Vs. Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli.³ ”

7. This Court recently in similar matter has observed as under :-

“The above submissions/contentions in no way persuade us to overlook the admitted position on record as regards the grant of caste validity certificates to the Petitioner's son, nephew and niece by following due procedure of law at the relevant time. The Petitioner is entitled for the certificate based upon same circumstances and situation as applied earlier also. The Respondent did not refer to earlier decisions of the Caste Scrutiny Committees in some of Petitioner's relatives. There is nothing on record and/or pointed out that the Government has taken any steps and/or instructed to take steps to revoke and/or cancel those caste certificates

3 2014(1) Mh.L.J.437

issued to the Petitioner's son, nephew and niece. Mere allegation of suppression of fact by the Scrutiny Committee are not sufficient. The above averments, even if made, are required to be proved in accordance with law. The situation is, in the present case that the Petitioner's son, nephew and niece are treated in the Society being belong to Thakar-Schedule Tribe, whereas the Petitioner-father/uncle, who had no occasion to move for such caste validity certificate by the impugned order, being treated as not belonging to Thakar-Schedule Tribe. This is, in our view, unacceptable position.

The Respondents, if are so serious about the stated misrepresentation, ought to have taken steps at the earliest. Respondent No.2-Caste Scrutiny Committee cannot sit over the decisions as the Appellate Authority, and/or even against the observations of this High Court, by overlooking the validated caste certificates of the Petitioner's son, nephew and niece. The whole procedure is unjust and impermissible and contrary to law.”

8. Therefore, taking overall view of the matter and for the reasons so recorded, the Petition is required to be allowed. Hence, the following order is passed:-

- (i) Rule made absolute, in terms of prayer clause (b), which read thus :-

*“(b) That this Hon'ble Court be pleased to issue Writ of Certiorari and/or any order or direction in the nature of Certiorari quashing and setting aside the impugned order dated 7th October 2010 passed by the Respondent No. 2, Committee, **Exhibit “F”** with further direction to the said Committee to issue Caste Validity Certificates in respect of the cast certificate dated 17.12.1997 issued by the respondent no. 3, the competent authority of jurisdiction, in favour of the petitioner.”*

- (ii) There shall be no order as to costs.

[A.A. SAYED, J.]

[ANOOP V. MOHTA, J.]