

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

4 WRIT PETITION NO. 5057 OF 2011

HEMANT SURESH BAGUL
VERSUS
THE SCHEDULED TRIBE CERTIFICATE SCRUTINY COMMITTEE,
NANDURBAR AND ORS.

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Advocate for Petitioner : Mr. M.S. Deshmukh h/f. Shahane Pradeep L.
AGP for Respondents/State : Mr. A.R. Kale
Advocate for Respondents : Mr. V.P. Golewar for R/1
Advocate for Respondents : Mr. K.C. Sant for R/2

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**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.
DATE : 24.07.2017**

P.C. :-

. This petition under Article 226 of the Constitution of India is a part of a group of petitions relating to Thakur Scheduled Tribe, the order dated 24.11.2010 of the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Division, Nandurbar is challenged.

2. The petitioner before us applied for verification of his tribe claim through the Principal of an Educational Institution to which he was admitted. The claim was forwarded because the petitioner was admitted against a reserved seat, particularly a seat meant for Scheduled Tribe. The tribe certificate dated 11.09.2003 was forwarded for verification and scrutiny of the underlying claim.

3. In rejecting the certificate of validity the committee has assigned more or less the same reasons, which we have found to be unsustainable in writ petition no. 4575 of 2012.

4. It is, then, stated that one of the grounds is somewhat distinct. In relation to that ground or reason the argument is that, though, the petitioner produced several documents to prove his claim, one crucial document pertains to his own father. The school leaving certificate of his father says that the petitioner does not belong to the Scheduled Tribe.

5. In preference to these documents, the petitioner relied upon the school leaving certificate of his grandfather, in that there is a specific entry against the caste column. That entry is that the grandfather belongs to Thakur tribe. That document is discarded by holding that, it may be that the Thakur Tribe mentioned is against the caste / tribe column but the entry does not tally with the constitutional provision. It should have been mentioned Thakur Scheduled Tribe.

6. We have carefully perused the impugned order and find that the applicant has produced as many as 25 documents including the certificate of validity issued by the committee at Nashik (Competent

Scrutiny Committee) to one Pankaj Arjunrao Thakur. It is stated that the said Pankaj is the close relative from the paternal side.

7. In discussing the documentary evidence and in the process of appraising and appreciating it, the committee has arrived at a strange reasoning. The committee holds that in the entry of caste 'Thakur' in the school record, it is not clearly mentioned that the applicant's grandfather belongs to Thakur Scheduled Tribe. The school record of the applicant's father (document at serial no. 7) shows that he belongs to Non B.C. category.

8. We do not see how we can reconcile these two observations firstly by applying the dictum in the case of **Madhuri Patil V/s. Additional Commissioner and Ors.** reported in **AIR 1995 SC 894**, the committee has consistently held that the pre-constitutional documents have greater probative value in preference to recent documents. It is the pre-constitutional document which would reveal with certainty and clarity the persons caste or tribe. There was no occasion to tamper with such entries or deliberately give incorrect information. Therefore, greater weightage should be given to them. As far as, post constitutional documents are concerned the committee feels that it should carefully and cautiously accept their evidentiary value. They should not be straight

way accepted for their contents and there should be a process undertaken so as to evaluate and compare the entries in the post constitutional documents with the pre-constitutional documents. If the reconciliation is possible and in relation to the same tribe or caste and particularly from the same region, then, the caste or tribe claim should be accepted and not as a matter of course. If this is the approach the committee feels is legally sustainable and assures that only legally admissible evidence is taken into consideration, then, it is impossible for us to deduce what was passing in the minds of the committee Members when it recorded the above two findings. We have carefully perused the documents in relation to petitioner's grandfather, there it is specifically written that it was issued in the year 1929 at the time of admission to school, the entry in the tribe / caste column is 'Thakur'. It could not have been Thakur Scheduled Tribe for the "schedule" itself was introduced as a concept after the Constitution of India came into force. It is, thereafter, that the President of India went about issuing the notifications in consultation with the Governors of the States or the Administrators of the Union Territories. In such circumstances, it is a clear non application of mind.

8. We have given our elaborate reasons for not being able to

sustain such an erroneous and ex-facie illegal conclusion. For the reasons in our judgment rendered in the accompanying writ petition, even this writ petition succeeds. The learned A.G.P. could not point out any other feature and peculiar to this case, which would distinguish it from writ petition no. 4575/2012. Here as well, the issue of area restriction was discussed which also we do not think should have come in the way of the petitioner in obtaining the relief. Once the area restrictions have been removed as explained in the Supreme Court order which we have extensively referred in our judgment in the accompanying matters and it is held that this test should not be applied, then, even this conclusion must be set aside.

9. The writ petition succeeds and on the same terms. Civil application pending, if any, also stands disposed of.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]

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