

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

WRIT PETITION NO. 4285 OF 2014

AISHWARYA UMESH RATHOD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.A.S.Bayas, Advocate for the petitioner

Mr.S.G.Karlekar, AGP for the respondent Nos.1 to 3/State

**CORAM : S.V. GANGAPURWALA &
S.M. GAVHANE, JJ.**

DATED : 07.12.2017

P.C. :-

. The petitioner had applied for issuance of tribe certificate of Thakur-Scheduled Tribe. The application filed by the petitioner is rejected. The petitioner filed appeal before the Committee. The Committee dismissed the appeal. Aggrieved thereby present petition.

2. Mr.Bayas, learned Advocate submits that the petitioner since her birth resided with her mother. The father and mother of the petitioner are separated. She was brought up by her mother. The mother belongs to Thakur Scheduled Tribe. The mother of the petitioner is issued with the validity certificate of Thakur Scheduled Tribe. The father and mother of the petitioner are

divorced in the year 2005. They were living separate since the year 1996. As of now the petitioner is not aware about the residence of the father. The entire documents on record would show that the petitioner resides with her mother. The Committee has dismissed the appeal only on the ground that record of the father has not been produced. Learned Advocate submits that when the petitioner is residing with the mother and validity certificate is already issued to the mother of the petitioner of Thakur Scheduled Tribe the record of the father may not be relevant. Learned Advocate relies on the judgment of the Apex Court in the case of Rameshbhai Dabhai Naika Vs State of Gujrat reported in (2012) 3 SCC Page 400.

3. Mr.Karlekar, learned AGP submits that the presumption is that child gets the caste of his/her father. There was no impediment for the petitioner to produce the record of the father's caste. The Committee has rightly considered the said aspect.

4. We have considered the submissions.

5. It is trite that at the time of issuance of caste or the tribe certificate, the Court has to be

prima-facie satisfied.

6. In the present matter, it is averred that the father and mother of the petitioner are residing separate since birth of the petitioner and since 1996 dispute was going on between father and mother of the petitioner and eventually in the year 2005 they got divorced. The petitioner since her birth is residing with her mother.

7. Normally, the child takes caste of his/her father but it is not an inflexible rule. In case the father and mother are residing separate and the child is residing with the mother then the various aspects are required to be considered as is held by the Apex Court in the Rameshbhai (Supra). The Apex Court in the said case has observed that the caste of offspring is essential question of fact. It cannot be determined in complete disregard to attending facts of the case. There may be presumption that a child takes caste of the father. Such presumption is neither conclusive nor irrebutable by the child of such marriage to lead evidence to show that she was brought up by the mother who belongs to the scheduled tribe or was treated as member of the community to which the mother belongs.

8. The case of Rameshbhai (Supra) was between parents belonging to one tribal and another non-tribal.

9. In the present case there is no record of the father of the petitioner with regard to his caste. Whereas the validity certificate is issued in favour of the mother of the petitioner as Thakur-Schedled Tribe.

10. In a case of Rameshbhai (Supra) the Apex Court has observed that even if the marriage is between one tribal and non-tribal then the consideration would be how child has been brought up. In the present case, if we assume that father belongs to a different caste and the petitioner resides since her birth and brought up by the mother who admittedly belongs to Scheduled Tribe as she possesses the validity certificate of Thakur Scheduled Tribe.

11. If it is assumed that both parties belong to same caste then the case of the petitioner would be on a better footing for issuance of tribe certificate.

12. Considering the prima-facie record that petitioner since her birth was residing with mother and the mother has been issued with the validity certificate

of Thakur Scheduled Tribe, we do not feel at this stage there is any impediment to issue tribe certificate to the petitioner of Thakur Scheduled Tribe. The said certificate would have to undergo acid test during scrutiny at the time of validation proceeding and at that time detailed enquiry can be conducted.

13. In the light of above the impugned order stands quashed and set aside. The respondent No.3 shall issue tribe certificate to the petitioner of Thakur Scheduled Tribe expeditiously preferably within 2 months. The writ petition stands allowed and disposed of. No costs.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]