

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**WRIT PETITION NO. 7988 OF 2015
WITH CA/10030/2017 IN WP/7988/2015**

YOGITA SUBHASH THAKUR
VERSUS
THE STATE OF MAHARASHTRA AND OTHES

Mr. R.K. Mendadkar, Advocate with Mr. Pratap Jadhavar, Advocate for
the petitioner and for applicant in CA
Mr. P.S. Patil, A.G.P. for the respondent/State

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.
DATE : 01-08-2017**

ORAL ORDER :

1. By this Petition under Article 226 of the Constitution of India, the petitioner is challenging the order of the Scrutiny Committee invalidating the caste claim
2. Order dated 07/07/2015 invalidates certificate issued to the petitioner, as belonging to 'Thakur Scheduled Tribe'.
3. The petitioner claims that her grandfather was admitted in primary school and in one of the oldest and pre-constitutional

documents dating back to 03/05/1941, the entry in the caste column of the primary school record shows that he is 'Thakur'. Then, there is one cousin grandfather, who also was admitted to the primary school. At the time of admission, the caste / tribe was recorded as 'Thakur'. Even this document is dated 21/06/1929.

4. The argument of Mr. Mendadkar, learned counsel for the petitioner is that on all other points and conclusion, the Committee's order runs counter to the view taken by this Court on 24/07/2017 in Writ Petition No. 4575 of 2012. It is only on one count that the Committee says that the petitioner's father's primary school record contains the entry in the caste column as 'Maratha'. Therefore, the probative value of the pre-constitutional documents is diluted to a great extent. It is reduced to such an extent that in comparison to the petitioner's own father, it was not possible that the entry in his caste column would be 'Maratha' when her grandfather admitted him in the primary school, entry at the time of admission of the primary school was erroneous. Mr. Mendadkar heavily relies upon the contents of the Civil Application, which has been filed and a copy duly served on the other side.

5. In the Civil Application dated 26/07/2017 moved in this Petition, the petitioner relies upon the correction that was effected in the father's school admission record. The entry 'Maratha' as against the caste is deleted. It is in these circumstances, and when it stands corrected as 'Thakur Scheduled Tribe', that we should accept the arguments of the petitioner and quash and set aside the order of the Scrutiny Committee. More so, when the Committee's conclusion on other points and issues is contrary to the law laid down in the Division Bench judgment (*supra*), as also the Hon'ble Supreme Court.

6. As against this, Mr. Patil, learned A.G.P would submit that a deliberate and intentional act and which has brought the truth to light, should not be then allowed to be explained nor the petitioner should be allowed to get over the consequences thereof. It is apparent that the father of the petitioner was admitted to the primary school and in the year 1965. On 22/11/1965, the school record of the petitioner's father was prepared. Admittedly, that was not corrected or if at all it was corrected, that correction was never brought to the notice of the Scrutiny Committee. In any event, such correction made later, would demonstrate lack of bonafides and that would support the

conclusion of the Scrutiny Committee that the benefit is snatched away from genuine tribals by perpetrating a fraud. There is a fraud in any event than a misrepresentation of the claim. Hence, consequences under Section 7(1) of 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 (for short **“Maharashtra Act No. XXIII of 2001”**) would follow.

7. In the submission of Mr. Patil, jurisdiction of this Court is both discretionary and equitable. A litigant, who approaches this Court must come with clean hands. In the circumstances, this Petition be dismissed.

8. It is not necessary to set out the admitted facts. Admitted facts are because the petitioner desired to avail of concession and benefits meant for the Scheduled Tribe, she obtained Caste Certificate. On the strength of the same, she was appointed in the Sales Tax Department of the Government of Maharashtra in the open category with effect from 20/01/2009 on the post of Sales Tax Inspector.

9. Thereafter, the petitioner desired to obtain employment as Accounts Officer. She appeared for the examination of the Maharashtra Public Service Commission and though having cleared it, her name appearing in the select list, she was not appointed for the simple reason that the certificate of validity could not be obtained.

10. That is how the petitioner appeared before the Scrutiny Committee during the verification of the claim. That certificate was made over pursuant to the appointment against a reserved seat and by order of appointment dated 08/04/2015. The petitioner has narrated as to how she was relieved by the Sales Tax Department and subsequently appointed on a reserved seat. It is then petitioner's claim was to be verified by the Committee and petitioner was allowed to produce evidence. She was allowed to produce documentary evidence. Once her claim was forwarded for scrutiny by the Vigilance Cell, on the Vigilance Cell report being received, once again the petitioner was informed that in law, such a report and the conclusion therein is not binding on the Committee. Therefore the Committee should receive atleast an explanation from the petitioner on the contents of this Vigilance Cell report. That was also forwarded.

11. The petitioner annexed to the proposals, a list of documents. There were as many as 51 documents which have been relied upon.

12. For us and for the present issue, the only three documents which are relevant are the school leaving certificate and school admission extract of the petitioner's father – Subhash Ramdas Thakur. In both documents, namely, 6 and 7, the entry in the caste column is Hindu Maratha, then, there is an affidavit which is affirmed by the petitioner's father on 31/01/2006. There was also family tree.

13. The document at serial no. 13, which carries the entry in the caste column as 'Hindu Thakur' pertain to Ramdas Anaji Thakur, grandfather. This school admission extract is dated 03/05/1941. Then, there is another document regarding cousin grandfather – Dagaji Thakur. School admission extract shows his caste as 'Thakur'. The document is dated 21/06/1929.

14. Leaving out Dagaji, what remains to be considered is that Ramdas Anaji Thakur was petitioner's grandfather. He admitted the petitioner's father Subhash Ramdas Mahale. The primary school

record and at the time of his admission in the school admission register, his caste was recorded as 'Hindu Maratha'.

15. The Committee has on perusal of these materials, found that the grandfather's caste certificate then cannot be accepted. Even if the petitioner's father was admitted in the school in the year 1965 and the grandfather was in Military Service, we do not see why it took 11 years to make an attempt of having the record corrected. Secondly, even if it is assumed that the grandfather of the petitioner admitted the petitioner's father to the primary school, nothing prevented petitioner's grandfather from approaching the school and seeking such a correction. Today, as an afterthought, the petitioner places reliance on the affidavits of the father/grandfather and the corrections carried out pursuant thereto.

16. Once there are corrections carried out or alterations made, Mr. Mendadkar would submit that the document, then has a high probative value. We are unable to agree. One may approach the school later-on and the school which is governed by Bombay Primary Education Act, 1947. Even if it is aided or otherwise, are governed by Maharashtra Employees of Private Schools (Conditions of Service) Act,

1977. They prepare the documents and they make the entries therein. At the time of admission of the petitioner's father in 1965, the grandfather would definitely have insisted on entering the petitioner's father's tribe name in the column reserved in that behalf. He does nothing of that kind but yet the school register entry is 'Hindu Maratha'. He does not approach the school at the earliest point of time and request it to make a correction of this nature. This, therefore, gels with the Committee's conclusion that there are some local members in the community, who took away the majority of the benefits and concessions meant for reserved category students and employees.

17. It is true that this petitioner's grandfather's school admission register carries this entry 'Thakur' as against the caste / tribe, however, what we have gone by is not the test that Mr. Mendadkar presses before us, namely, acceptance of recent document and post independence and discarding of pre-independence documents but we have gone by the overall conduct of the petitioner and the way the proceedings were conducted by her before the Committee. It is evident that the petitioner was taking advantage of the benefits and concessions provided to the members of the

Scheduled Tribe. It is in these circumstances, she produced number of documents. Naturally, when she produced the documents at Serial no. 6, 7 and 8, she would have been careful and cautious in tendering these documents and requesting the Committee to read them in evidence. She tendered these documents although in her own father's case, the school admission register carries an entry 'Hindu Maratha'. Once this was the position and the petitioner tendered such documents, then, the contents thereof have been appraised and appreciated in the backdrop of the Maharashtra Act No. XXIII of 2001 and other circumstances brought on record.

18. It is in these circumstances, that even we are in agreement with the Committee that once the caste is acquired by birth, then, it cannot be that the petitioner is 'Thakur' and the caste of her father is 'Hindu Maratha'. Though, the petitioner's father's may have a caste certificate and revised one, we do not see as to how it would carry the petitioner's case further. The claim of petitioner brought before the Committee is extremely doubtful and not genuine. Whole attempt was to claim the benefit of 'Thakur' Scheduled Tribe though not possessing the clinching evidence. The difference so also the contradiction in the extract of the school admission register as far as the petitioner's father

and petitioner's grandfather was enough therefore to deny the petitioner's claim.

19. When such is the process, of appreciation and appraisal of the materials, undertaken by the Committee, then, it is neither perverse nor the Committee's decision is vitiated by any error of law apparent on the face of record.

20. Since the petitioner is invoking the discretionary and equitable jurisdiction of this Court under Article 226 of the Constitution of India, we do not think that we should assist her given the nature of the jurisdiction.

21. The Writ Petition therefore fails and it is dismissed. There would be no order as to costs.

22. Consequently, pending Civil Application also stands disposed of.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/