

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7658 OF 2014

Ramesh Onkar Thakur

.. Petitioner

VS.

The State of Maharashtra and others

.. Respondents

Mr. Mahesh S. Deshmukh, Advocate i/b. Mr. S.P. Salgar, Advocate and
Mr. K.T. Shirurkar, Advocate for the petitioner
Mrs. A.V. Gondhalekar, A.G.P. for the respondent/State
Respondent no.4 served - absent

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

DATE : 17-07-2017

ORAL ORDER :

1. Petitioner – Ramesh Onkar Thakur applied to the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Region, Nandurbar. But prior thereto, since the jurisdiction vested in the Nasik Committee, petitioner applied for verification of his tribe claim to the said Committee. He claimed that he belongs to “Thakur Scheduled Tribe”. The certificate was forwarded through the Medical Superintendent, Rural Hospital, Mokhada, District Thane. The caste

certificate dated 01-12-1979 was issued by the Tahsildar and Executive Magistrate, Sindkheda, District Dhule.

2. During the course of arguments, the petitioner – Ramesh Onkar Thakur relied upon the certificate of validity issued to his son – Prasad. He claimed that Prasad was his son and that is proved by the family tree and genealogy, so also affidavit of the petitioner.

3. The Committee, however, was of the opinion that both Prasad and his father – petitioner before us, have suppressed material facts from the Committee and have obtained the certificate of validity. Therefore, there is a fraud perpetrated on the Committee, which is required to be investigated and that is how the Committee cancelled the caste certificate dated 01-12-1979 issued to the petitioner. The consequence is that even the son - Prasad will now face the necessary action, including criminal prosecution.

4. On the earlier occasion, it was argued by Mr. Deshmukh, learned Counsel appearing for the petitioner, that the Committee's finding on point No. 7, is clearly vitiated in law. It was submitted that for a fraud, to be held as proved and established, all the relevant

particulars ought to be referred. So long as the particulars are not placed and of the alleged fraud, no finding can be rendered. The particulars, though placed, have to be then thoroughly probed and inquired into. Fraud will have to be established and proved by cogent and reliable material.

5. In the instant case, the Committee recorded its conclusion of fraud only by holding that Prasad - son of the petitioner / applicant obtained the caste certificate, as belonging to "Thakur Scheduled Tribe" from Executive Magistrate, Wada, District Thane on 15-05-1992. At that time, he showed his ordinary place of residence as Wada, Taluka and District Thane. However, now when an affidavit is filed on 04.03.2004 to support the father's claim, son - Prasad has mentioned his ordinary place of residence as Warud, Taluka Sindkheda, District Dhule. Due to this clear suppression of fact, the validity certificate obtained by Prasad from the Scrutiny Committee at Pune, therefore, is required to be probed and in any event, it must be brushed aside. Petitioner must establish and prove his claim independent of this certificate of validity of his son.

6. Mr. Deshmukh, learned Counsel therefore, had sought leave to file an additional affidavit, indicating as to how son - Prasad rightly approached the Executive Magistrate, Wada, District Thane. In furtherance of the leave granted by this Court, an affidavit is filed by the petitioner – father of Prasad, which in clear terms says that he has now retired from service. He is residing at Warud, Taluka Sindkheda, District Dhule. In paragraph nos. 3, 4 and 5 in this further affidavit, the deponent has stated as under :-

“3. I say that, the petitioner was working as Compounder at Rural Hospital, Wada, District Thane from 02.09.1985 to 20.12.1991. thereafter, petitioner transferred to Vithal Sainna General Hospital, Thane on 20.12.1991 and petitioner work there till 19.04.1999 but the head quarter of the petitioner was at Wada and the family of the petitioner was residing at Wada in Government quarter, from which it is clear that the petitioner was residing at Wada in Government quarter and his son was also residing along with his family i.e. with present petitioner. **Hereto Annexed and marked Exhibit-A** is the copy of application dated 05.07.2017, letter dated 05.07.2017 and service book of the petitioner issued by Civil Surgeon of V.S. General Hospital, Thane.

4. I say that, at the same time petitioner's son was also residing with him and taking education in 12th Standard, for higher study in D. Pharmacy petitioner son had required caste certificate of Thakur Scheduled Tribe to avail the benefits of reservation. Therefore, an application was filed for caste certificate of Thakur Scheduled Tribe in the office of Executive Magistrate Wada Dist. Thane. At the time of obtaining caste certificate, petitioner had submitted Tribe certificate issued by Tahasildar & Executive Magistrate Sindkheda Dist. Dhule dated 01/12/1979. As per the then guidelines for issuance of the certificate dated 13.03.1985 and 23.04.1987 **Hereto Annexed and marked Exhibit-B** are the Government Resolution dated 13.03.1985 and 23.04.1987, as per said guidelines to receive Tribe certificate if the person migrated from one district to another district or from the jurisdiction one competent authority to another, within the State on production of the Scheduled Tribe Certificate of his father or grandfather by the concerned Competent Authority of that District.

5. I say that, therefore petitioner rather his son has not suppressed the fact that the petitioner as well as son is originally resident of village Warud, Tq. Shindakheda District Dhule. Therefore, the

finding of the respondent no.2 Caste Scrutiny Committee about the playing fraud on the Caste Scrutiny Committee at Pune is perverse.”

7. There are annexures to this affidavit and extracts of service book are annexed. They, according to Shri Deshmukh, learned Counsel indicate and prove as to how the petitioner's son – Prasad could have approached the Taluka Executive Magistrate at Wada, District - Thane and that he was the competent Authority.

8. Mr. Deshmukh, learned Counsel submits that there is no suppression because the petitioner as well as his son – Prasad originally resided at village Warud, Taluka Sindkheda, District Dhule. It is only on account of transfer of the present petitioner - father, that son - Prasad approached the Executive Magistrate, Wada, District - Thane.

9. It is on this material, that we inquired from the learned A.G.P. on the earlier occasion, as to how the conclusion at page No. 37 and 38 of the paper book on point No.7, can be sustained. She submits that the finding is sustainable because, throughout it was not revealed that Warud, Taluka Sindkheda, District Dhule was the original

and permanent place of residence allegedly. It was revealed during the course of arguments that, son-Prasad, who was residing with the petitioner allegedly at Wada, District Thane, obtained the certificate from the Competent Authority. Since he was from Thane District, the certificate of validity to son – Prasad was issued by the Pune Committee. That was without ascertaining the details about the place of residence. It is in these circumstances, whether son-Prasad at all resided at Warud, Taluka Sindkheda, District Dhule and whether he misguided the Committee, are the matters which had been rightly investigated and that is how, Prasad's certificate of validity was discarded.

10. After hearing both sides, we are of the view that the Committee should have been cautious and careful. It has termed the alleged act of the petitioner's son-Prasad, as a fraud. The consequences are that though the son is certified to be “Thakur Scheduled Tribe”, the father is not. Now, the son is also on the verge of losing this status.

11. Once there is a conclusion of fraud and which is recorded, then, the Committee should have perused all the relevant materials.

The Committee should have been careful in rendering the finding of a fraud unless there was definite, cogent and reliable material in the form of suppression. The affidavit now filed reveals that the petitioner before us was indeed posted at Wada, District Thane. If he is relying upon his service book, then, entries therein should have been verified by the Committee.

12. It is open for the Committee even now, to verify the correctness and genuineness of these entries, by making a cross reference to the Competent Authority. It is clear from perusal of this affidavit that the extract of the service book reveals that the posting of the petitioner was at Wada, District Thane, from which place, he later on was transferred to Mental Hospital, Thane.

13. It is in these circumstances, that we are of the opinion that the Committee must have a re-look and should re-visit its finding. It is necessary that the Committee applies its mind afresh before it discards the certificate of validity issued to son-Prasad. If the Committee's finding is sustained, a peculiar situation would emerge and in the same family. The caste is derived from the father. Father is not held to be belonging to "Thakur Scheduled Tribe", however, the son-Prasad

holds a certificate of validity from the Scrutiny Committee, Pune. He holds a Tribe Certificate issued by the Competent Authority at Wada, District Thane. He has derived certain advantages on the basis of this certificate of validity. Now he will lose his status, if we sustain the order of the Committee. That order is rendered hastily and without application of mind.

14. It is not the job of this Court, to direct Authorities to file affidavits and produce the record, so as to assess the finding of the Committee. The Committee could have done the same and should have rather called for the records. Thus, what we have done, is the job and task, which the Committee ought to have performed. In the circumstances, the Committee's order is unsustainable in law. It has recorded a finding of fraud casually and light heartedly.

15. We, therefore, quash and set aside the order of the Committee. We direct the Committee to scrutinize the claim of the petitioner afresh on merits and in accordance with law as expeditiously as possible and within a period of four (4) months from today.

16. It would be open for the petitioner to rely upon all the details, including the further affidavit filed in this Court and its annexures.

17. The Writ Petition is allowed in the above terms.

18. Original records be returned to Mrs. A.V. Gondhalekar, learned A.G.P.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/