

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

**WRIT PETITION NO. 452 OF 2006
AND
CIVIL APPLICATION No. 1053 OF 2017
IN
WRIT PETITION NO. 452 OF 2006**

Dattatray Vilas Thakur

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

Mr. R.K. Mendadkar, for the Petitioner.

Mr. V.N. Sagare, AGP, for the Respondents No. 1 to 3.

Mr. Pradeep M. Patil, for Respondent No. 7-BMC.

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**

DATE : 27 June 2017

JUDGMENT : (Per B.R. GAVAI, J)

1. Rule is made returnable forthwith.

2. Heard by consent.

3. The Petitioner challenges the order passed by the scrutiny committee dated 22 December 2005, thereby invalidating the claim of the Petitioner of belonging to Thakar Scheduled Tribe. It is the second round of litigation. On earlier occasion the Petitioner's claim of belonging to Thakar Scheduled Tribe came to be rejected by the order of the scrutiny committee dated 9 June 2003. Being aggrieved by the same, the Petitioner had approached this Court by way of the Writ Petition No. 7847 of 2004. Said Petition was allowed by order dated 11 October 2004 and case of the Petitioner came to be remanded to the scrutiny committee for consideration afresh. By the impugned order the scrutiny committee confirmed its earlier view and again rejected the claim. Being aggrieved thereby, the present case.

4. Heard Shri. Mendadkar, the learned Counsel for the Petitioner and Shri. Sagare, learned AGP for the State.

5. The learned AGP states that on perusal of documents placed on record itself it is clear that some of the documents pertaining to the Petitioner's caste filed along with the application showed the Petitioner's caste to be of Nomadic Tribe and some showed to be Scheduled Tribe. It is therefore, submitted that in view of the conflicting certificates, the scrutiny committee has rightly held that the Petitioner has failed to prove that the Petitioner belonging to the Scheduled Tribe.

6. We have perused the order of scrutiny committee. Perusal of order of scrutiny committee reveals that the scrutiny committee has invalidated claim of the Petitioner on two grounds; one, the Petitioner has failed the affinity test and two, some of the documents of the Petitioner and his father showed the caste to be Thakar Nomadic Tribe/Backward Classes.

7. We find that the issue is no more was integral.

8. Insofar as the first issue is concerned, their Lordships

of the Apex Court in case of *Anand Katole Vs. Scheduled Tribe Caste Certificate Scrutiny Committee*¹ have held that while considering the claim of candidate, the predominance will have to be given the pre-constitutional documents. It has been held by the Hon'ble Apex Court that by efflux of time, it is probable that the candidate may not be aware about the old customs, usage and traditions and may not pass the affinity test. However, their Lordship held that each case will have to be decided on the facts and circumstances of each case.

9. In the present case also, it is to be seen that the preconstitutional documents of the Petitioner's grandfather of the year 1937 shows his grandfather's caste to be Thakar. The vigilance cell of the scrutiny committee has inspected the school and found the said document to be genuine. We find that except the casual reference to the said document, the scrutiny committee has not observed as to why the said document cannot be believed. We further find that the scrutiny committee has also not given any reasons as to why it is discarding the report

¹ 2011(6) Mh.L.J. 919

of the vigilance cell, though it supports the case of the Petitioner.

10. In that view of the matter, we find that the reasoning given by the scrutiny committee on this count is not sustainable.

11. Insofar as the second issue is concerned, the Division Bench of this Court in a bunch of Petitions being Writ Petition No. 6048 of 2004 along with companion Petitions, vide its order dated 14 September 2004 has found that the State Government itself went on changing the stands. For some time Thakar in Ratnagiri and Sindhudurg District were treated as Scheduled Tribe and for some time as Nomadic Tribe. However, the Division Bench held that in view of the Judgment of the Apex Court in case of *Palghat Jilla Thandan Samudhaya Samrakshna Samithi Vs. State Of Kerala*², once the entry of a particular tribe was found in the presidential order, further enquiry was not permissible in law. In the present case, we find

² 1994 SCC (1) 359

that since the Petitioner's grandfather's preconstitutional documents of the year 1937 finds the Petitioner's grandfather's tribe to be of Thakar and further vigilance cell finds the said document to be germane, the scrutiny committee has erred in discarding the said document and rejecting the claim of the Petitioner.

12. The impugned order is therefore, quashed and set aside.

13. Rule is made absolute by holding that the Petitioner belongs to Thakar Scheduled Tribe.

14. Respondent No. 2-scrutiny committee is directed to issue a validity certificate in favour of the Petitioner within a period of four weeks from today.

15. Needless to state that all consequential actions shall follow.

16. In view of disposal of the present Writ Petition,
all pending Civil Applications are also disposed of.

[RIYAZ I. CHAGLA J.]

[B.R. GAVAI, J.]