

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2151 OF 2007

Hitendra Raghunath Mahale .. Petitioner

Vs.

State of Maharashtra and ors. .. Respondents

Mr.A.S.Golegaonkar a/w Mr.M.A.Golegaonkar i/b Mr.R.K.
Mendadkar, for the Petitioner.

Ms.Kavita N. Solunke, AGP for Respondents No. 1, 2 & 4.

**CORAM : B.R.GAVAI AND
M.S.KARNIK, JJ.**

DATE : 26th SEPTEMBER, 2017

ORDER (PER M.S.KARNIK, J.) :

1. Rule. Rule is made returnable forthwith. Heard by consent.

2. The petitioner by this Petition filed under Article 226 of the Constitution of India prays for quashing and setting aside the impugned order dated 17/02/2007 passed by respondent No.2 – Scheduled Tribe Caste Certificate Scrutiny Committee, Nashik Division, Nashik (for short 'Committee'). By the impugned order, the caste claim of the petitioner was invalidated.

3. The petitioner claims to belong to Thakur – Scheduled Tribe. The petitioner was granted caste certificate as belonging to Thakur – Scheduled Tribe by the Competent Authority on 26/07/2000. The petitioner contested the election from ward no. 3 reserved for Scheduled Tribe which was held on 20/11/2006 and he was elected as a Councilor of respondent No.3 – Dondaicha Varwade Nagarpalika. The petitioner applied to respondent No.2 – Committee for verification of his caste certificate through respondent No.4 – Collector. The petitioner relied upon the school leaving certificate of his father showing caste as Thakur and his date of birth as 16/08/1935. The petitioner also relied upon the school leaving certificate of his grandfather as belonging to Thakur, Scheduled Tribe. In the said school leaving certificate, date of birth of petitioner's grandfather is shown as 01/11/1908. The petitioner also relied upon the certificate of validity in respect of his first cousin brother Shri Nitin Liladhar Thakur.

4. The petitioner's caste claim was referred to Vigilance Cell for investigation. The Vigilance Cell investigated into the caste claim and submitted its report. Respondent No.2 – Committee after hearing the petitioner was pleased to invalidate the caste claim of the

petitioner as belonging to Thakur – Scheduled Tribe by the impugned order.

5. This Petition had earlier come up for admission on 05/12/2009. By an order dated 05/12/2009, the Petition came to be rejected. The basic premise on which the Petition was rejected was that the petitioner failed to show that the brother of the petitioner was granted validity certificate after applying the affinity test and therefore, in the opinion of this Court the petitioner would not be entitled to rely on that certificate. The order of this Court dated 05/12/2009 was carried in Appeal before the Apex Court. It would be pertinent to reproduce the order passed by the Apex Court dated 08/03/2017 which reads thus:

“ The short point raised by learned counsel for the appellants in these appeals is that after 'The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976' (Act No. 108 of 1976) was published in the Gazette on 20.09.1976, the area restriction of Schedules Tribes in the State of Maharashtra for the Thakur community has been deleted and all members of Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar community are treated to be Scheduled Tribes. The Scrutiny Committee has negated the claim of the appellants on the ground that the relatives of the appellants were not residents of the areas mentioned in the Presidential Order, 1956 and further they were not able to give any details of customs and traditions being observed by the said community.

In our considered opinion, that is wholly irrelevant. The appellants have only to establish that they belong to the community mentioned at Serial No.44 of Part IX of Second Schedule of Act No. 108 of 1976.

The High Court has dismissed the Writ Petitions preferred by the appellants only on the ground that the Scrutiny Committee had given detailed reasons and the Court will not go into the merits of the matter afresh.

In our considered opinion, the approach of the High Court was totally erroneous. It ought to have considered the Act No. 108 of 1976 and given its own reasoning.

We, therefore, set aside the impugned order passed by the High Court and remand the matter back to the High Court for expeditiously deciding the matter afresh in accordance with law.

The Civil Appeals as well as the Special Leave Petitions are disposed of in the above terms.”

6 The Apex Court has thus observed that these petitioners have to only establish that they belong to the community mentioned at serial No.44 of Part IX of Second Schedule of Act No. 108 of 1976 and in that light record reasons and decide the matter afresh in accordance with law.

7. We have heard learned Counsel for the petitioner and learned AGP appearing on behalf of the respondents No.1, 2 & 4. The petitioner has relied upon the school leaving certificates of his father and grandfather as also caste validity certificate issued in favour of his first cousin brother Shri Nitin Liladhar Thakur as belonging to Thakur – Scheduled Tribe. The Vigilance Cell of respondent No.2 has enquired into the issuance of the said certificate

in favour of Shri Nitin Liladhar Thakur. Nothing adverse has been recorded by the Vigilance Cell as regards the documents relied by the petitioner. Learned Counsel for the petitioner would submit that in view of law laid down by the Division Bench of this Court in the case of **Apoorva d/o. Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee and ors. 2010(6) Mh.L.J.401** wherein it is held that if caste claim of the candidate has been held to be belonging to Scheduled Tribe then other close blood relatives cannot be denied validity certificate. He further submits that it is not in dispute that caste validity certificate has in fact been issued in favour of petitioner's first cousin brother Shri Nitin Liladhar Thakur. According to him, it is not the case of the respondents that the said caste validity certificate has been obtained by fraud or misrepresentation nor any finding recorded to that effect. He therefore urged that the petitioner is entitled to issuance of caste validity certificate belonging to Thakur – Scheduled Tribe.

8. Learned AGP on the other hand supported the impugned order passed by the Scrutiny Committee. She would contend that upon consideration of the materials on record, the Scrutiny Committee was justified in discarding the caste validity certificate

issued in favour of first cousin brother of the petitioner Shri Nitin Liladhar Thakur in support of the petitioner's claim.

9. We have considered the submissions made by the learned Counsel for the parties. In the present case, there is no dispute that certificate of validity is already issued in favour of first cousin brother of the petitioner Shri Nitin Liladhar Thakur. We also find that the petitioner's grandfather's school leaving certificate which is a preconstitutional document records his caste as Thakur. Even the school leaving certificate of his father where his date of birth is shown as 16/08/1935, the caste is shown as Thakur. The Division Bench of this Court in case of **Apoorva d/o. Vinay Nichale** (*supra*) held that if the caste claim of the candidate has been held to be belonging to Scheduled Tribe then other close blood relatives cannot be denied the validity certificate. It is not the contention of the respondents that the caste validity certificate of the petitioner's first cousin brother Shri Nitin Liladhar Thakur is obtained by fraud or misrepresentation nor any finding recorded to that effect. In the light of the law laid down by this Court in the case of **Apoorva d/o. Vinay Nichale** (*supra*) and as the petitioner's first cousin brother Shri Nitin Liladhar Thakur is already granted caste validity certificate as

belonging to Thakur – Scheduled Tribe, in that view of the matter, the Petition is accordingly allowed.

10. Rule is made absolute by quashing and setting aside the order dated 17th February, 2007 passed by Respondent No.2. It is held and declared that the Petitioner belongs to “Thakur” Scheduled Tribe. The Respondent No.2 is directed to issue “Caste Validity Certificate” in favour of the Petitioner within a period of four weeks from today.

(M.S.KARNIK, J.)

(B.R.GAVAI, J.)