

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7215 OF 2016

Atul Bhaskar Thakar. .. Petitioner

Vs

State of Maharashtra and Others. .. Respondents

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Shri R.K. Mendadkar along with Shri Tanaji V. Jadhav for the Petitioner.
Ms.N.M. Mehra, AGP for the Respondents.

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CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ

DATED : 24TH JULY 2017

ORAL JUDGMENT : (PER A.S.OKA, J)

1. Submissions of the learned counsel appearing for the parties were heard on the earlier date.

2. Rule. The learned AGP waives service for the Respondents. Forthwith taken up for final disposal.

3. The Petitioner was granted Caste Certificate dated 24th July 2007 by the Sub-Divisional Officer, Madha Division, Kurduwadi, District-Solapur recording that the Petitioner belongs to the caste “Thakar” which is a Scheduled Tribe. By the impugned order, the Caste

Scrutiny Committee has invalidated the caste certificate issued to the Petitioner.

4. The learned counsel appearing for the Petitioner invited our attention to Paragraph 4 of the impugned order as well as the caste validity certificates relied upon by the Petitioner of Shri Harishchandra Dattatraya Thakar, Shri Anil Kaka Thakar, Ms.Artika Ramdas Thakar and Shri Amol Ramdas Thakar. He submitted that the caste validity certificate was issued to the said Harishchandra Thakar by a speaking order after holding an inquiry through Vigilance Cell. He submitted that the caste validity certificates were issued to the said Anil, Amol and Artika on the basis of the caste validity certificate issued to Shri Harishchandra Thakar. He urged that the relationship between the Petitioner and the said four persons was established as set out in the affidavit which is on Page 76 of the Petition. He urged that in view of the law laid down by this Court as well as by the Apex Court, the caste validity certificate issued to the said Harishchandra Thakar ought to have been taken into consideration and it could not have been brushed aside on the ground that the affinity test was not conducted.

5. The learned AGP appearing for the Respondents supported the impugned order by pointing out that for rejecting the material in the form of the caste validity certificate of Harishchandra, reasons have

been recorded by the Caste Scrutiny Committee in Paragraph 12 of the impugned order. He, therefore, submitted that no interference is called for.

6. We have considered the submissions. We have perused the additional affidavit placed on record. Along with an additional affidavit dated 12th July 2017, the Petitioner has placed on record a copy of the Vigilance Cell inquiry made in the case of Harishchandra which was submitted to the Caste Scrutiny Committee through the Deputy Superintendent of Police, who was incharge of the Vigilance Cell. Our attention is also invited to the order dated 14th May 2002 passed by the Caste Scrutiny Committee. The Caste Scrutiny Committee has passed a reasoned order granting caste validity certificate to Harishchandra after examining the Vigilance Cell Report. Various documents have been considered in the said order. We have perused the Vigilance Cell Report and in particular Clause 4 under heading “C” and the statement of the said Harishchandra. In the light of what is observed in the report of the Vigilance Cell and the statement of Harishchandra, it cannot be said that the cultural affinity is not considered. As far as the other three caste validity certificates issued to Anil, Artika and Amol are concerned, the same are on the basis of the caste validity certificate granted to Shri Harishchandra.

7. We have carefully perused Paragraph 12 of the impugned order. In the impugned order, there is an observation that the cultural affinity is required to be considered. The Committee has also recorded that he has no jurisdiction to review earlier order passed in case of Harishchandra. There is an observation made that in the present case, as a special case, the High Court should have granted permission to reconsider the case of Harishchandra. In Paragraph 13, the Caste Scrutiny Committee has referred to various decisions of this Court and the Apex Court. In fact, in the said paragraph, the Caste Scrutiny Committee has quoted a relevant part of the decision of this Court in the case of *Kum. Manjiri Manikrao Kolikar vs. State of Maharashtra and Others*¹. Relevant portion of the said decision reproduced by the Caste Scrutiny Committee reads thus:-

“...Merely because the tribe claim of a relative has been validated, it would not automatically follow that the tribe claim of the candidate should also be validated. As pointed out us about such orders would have great persuasive value but the Committee is entitled to see if all the material was placed before the Committee at the time of consideration of the tribe claim of the relative. If the Committee finds that certain material had not been considered by the Committee and the said material shows caste contrary to the caste which has been held to be valid. In our considered opinion the Committee would be entitled to take different view in the matter and it would not be binding on the Scrutiny Committee to validate the certificate...”

1 W.P.No.3571 of 2005

8. In the present case, the Caste Scrutiny Committee does not seem to have adverted to the findings recorded in the order dated 14th March 2002 passed in favour of Harishchandra. The Caste Scrutiny Committee has not come to the conclusion that there is no proper inquiry held in case of Harishchandra. The Caste Scrutiny Committee has not held that the certain material available before it was not considered by the Caste Scrutiny Committee in the case of Harishchandra. The Caste Scrutiny Committee has not even considered the Vigilance Cell Report submitted in the said case. The Caste Scrutiny Committee could not have brushed aside the caste validity certificate granted to Harishchandra after holding a due inquiry. The Caste Scrutiny Committee could not have brushed aside the material in the form of caste validity certificates granted to the said Harishchandra and three others and the effect of the same ought to have been taken into consideration provided the relationship between the Petitioner and Harishchandra and three others, as claimed by the Petitioner, is established. There is no finding recorded by the Caste Scrutiny Committee on the relationship between the Petitioner and the said Harishchandra, Anil, Artika and Amol. If relationship is established, the Caste Scrutiny Committee will have to look upon the caste validity certificate granted to Harishchandra as a document having great persuasive value.

9. There is no option but to send back the matter to the Caste Scrutiny Committee for a fresh inquiry on the aforesaid aspects.

10. Before we part with the judgment, it is very necessary for us to note the findings recorded by the Caste Scrutiny Committee in Paragraph 14. For that purpose, it is necessary to make a reference to certain factual aspects. By the order dated 7th May 2010, the Caste Scrutiny Committee had invalidated the caste validity certificate of the Petitioner. By the order dated 27th August 2010, Writ Petition filed by the Petitioner being Writ Petition No.5374 of 2010 was dismissed by a Division Bench of this Court. In the year 2014, the Petitioner applied for review of the said judgment and order. By the order dated 7th April 2014, the Division Bench of this Court allowed the Review Petition and by setting aside the order dated 7th May 2010 of the Caste Scrutiny Committee, an order of remand was passed on the basis of which the impugned order in this Petition has been passed. It appears that the order of remand was passed on the basis of a decision of the division Bench of this Court in the case of *Madhuri Nitin Jadhav and others v. State of Maharashtra and others*². Exhibit D to the Petition shows that a Special Leave Petition filed by the Government of Maharashtra against the said decision in the case of *Madhuri Nitin Jadhav and others* was dismissed by the Apex Court. Now coming to the Paragraph

14 of the impugned judgment, the Caste Scrutiny Committee has observed that the Review Petition was filed by way of an afterthought by the present Petitioner. The Caste Scrutiny Committee has criticized the action of the Petitioner of filing a Review Petition belatedly after four years. The Caste Scrutiny Committee has further observed that the Applicants who are non-tribals are making misuse of technical aspects and legal rights and they are encroaching upon the persons who are truly tribals. In our view, the observations made in Paragraph 14 are totally uncalled for. Though the Review Petition filed by the Petitioner was allowed by a speaking order and though the order passed on the Review Petition has attained finality, the Caste Scrutiny Committee has gone to the extent of observing that the Review Petition was filed by the Petitioner by way of an afterthought. We must record our strong disapproval to the said observations recorded in Paragraph 14 of the impugned order.

11. Accordingly, the Petition must succeed and we pass the following order:

ORDER :

- (a) The impugned order dated 30th January 2016 is hereby quashed and set aside and the matter of verification of the caste certificate dated 24th July 2007 is remanded to the second Respondent;

- (b) After remand, the Caste Scrutiny Committee will make an inquiry for ascertaining whether the Petitioner has proved his relationship with Harishchandra Dattatray Thakar and three others. For that purpose, if necessary, the Caste Scrutiny Committee can always order vigilance cell inquiry;
- (c) If the Caste Scrutiny Committee comes to a conclusion that the Petitioner has established his relationship with Harishchandra as alleged by him, the caste validity certificate granted to the said Harishchandra will have a great persuasive value and, therefore, the same will have to be taken into consideration along with the caste validity certificates granted to three others on the basis of the caste validity certificate granted to the said Harishchandra;
- (d) We direct the Petitioner to appear before the second Respondent on 28th August 2017 at 11.00 a.m. for fixing the schedule of hearing. The Caste Scrutiny Committee shall endeavour to pass a final order as

expeditiously as possible and in any event, before the end of the year 2017;

- (e) All contentions on merits are kept open;
- (f) The Petition is disposed of on above terms.

(VIBHA KANKANWADI, J)

(A.S. OKA, J)