

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5171 OF 2015

Yugandhara Vasant Gangavane

Aged : years, Residing at

At Post. Pinguli-Gudhipur,

Tal. Kudal, Dist. Sindhudurg

....Petitioner

V/s.

1. State of Maharashtra

Through its Secretary,

Tribal Development Department

Mantralaya, Mumbai-400 032

2. Scheduled Tribe Certificate

Scrutiny Committee,

Konkan Division, Thane

Having Office at Vartak Nagar

Ward Office, Opp. Kores Co.,

Vedant Complex, Vartak

Nagar, Thane (W).

3. Directorate of Technical

Education, Maharashtra State,

3, Mahapalika Marg, Mumbai-1.

4. Dr. Babasaheb Ambedkar

Technology University, through

Its Registrar, Lonere, Dist. Raigad

....Respondents

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Mr. R.K. Mendadkar, a/w. Mr. Tanaji Jadhav, Advocate for the petitioner.

Mr. C.P. Yadav, Advocate for respondent no.1 to 3.

Mr. A.B. Desai i/by. Mr. A.K. Jalisatgi, Advocate for respondent no.4.

**CORAM :- B.R.GAVAI &
 SANDEEP K. SHINDE, JJ.
DATE :- 10TH NOVEMBER, 2017.**

JUDGMENT (PER :- SANDEEP K. SHINDE, J) :

1. Rule. Rule, returnable forthwith.
2. Heard Learned Counsel for the petitioner and
Learned AGP for the State.
3. The petition takes exception to the order dated 23rd
March, 2015 passed by respondent no.2, Committee
invalidating the Caste Certificate of the petitioner as belonging
to Thakar Scheduled Tribe for second time
4. The petitioner was granted Caste Certificate by the
Competent Authority of jurisdiction as belonging to Thakar
Scheduled Tribe on 7th October, 2006. The Committee was
moved for verification through her College. Pending validation
proceedings, she was admitted to first year of

Telecommunication Degree Course. On 11th February, 2013, respondent no.2 Committee invalidated the Caste Certificate of the petitioner.

5. The petitioner filed Writ Petition No. 2118 of 2003 and vide order dated 2nd April, 2014 the Division Bench of this Court quashed and set aside the order dated 11th February, 2013 and directed the Committee to decide the claim of the petitioner afresh in accordance with law.

6. That as such, in the second round of litigation, respondent no.2 invalidated her claim vide order dated 11th May, 2015 and hence this petition.

7. It appears that the documentary evidence pressed into service in support of her claim has been discarded by the Committee in toto and further held that the petitioner had also failed in the affinity test.

8. Mr. Mendadkar, the learned Counsel appearing for the petitioner has brought to our notice, the findings of the Committee in para-9 of the impugned order. While dealing with the two documents, both relating to school records; one that of Laxman Dattatray Gangawane, her cousin Uncle and

another of Suresh Narayan Gangawane, another cousin Uncle. Mr. Mendadkar, submits that, the school documents of Laxman Dattatray Gangawane, shows that Laxman was admitted in the School on 1st April, 1950 and his caste as recorded was "Hindu Thakar" Mr. Mendadkar, therefore would submit that this document is prior to 6th September, 1950 a date on which the Constitution (Scheduled Tribe) Order, 1950 was issued and as such would have more probative value.

9. We have perused the school record/extract of Laxman Dattatray Gangawane. He is cousin Uncle, of the petitioner as could be seen from the family tree. This document was verified by the Vigilance Committee, who found it correct as per school record. This document shows entries made prior to 6th September, 1950 a date on which the Thakar community was enlisted as a "Scheduled Tribe" vide entry no.44 insofar as the State of Maharashtra is concerned. Having regard to this fact, in our view, the Committee ought to have dealt with this document as it furnishes high degree of probative value to the declaration of status of caste of the

petitioner. It appears that the Committee discarded this said document, only on the ground that it does not describe "Hindu Thakar" caste as "Scheduled Tribe". The reason for discarding this document is, wholly untenable for the simple reason that, when the petitioner's cousin Uncle, Laxman was admitted in the School, Thakar was not declared as a Scheduled Tribe and therefore it was inconceivable to hold that merely because caste of the Uncle has not been described or recorded as "Scheduled Tribe", the document would lose its significance and its evidentiary value. That since entry in the school record of Laxman qua his caste was made prior to 6th September, 1950 it would carry high degree of probative value. It is not in dispute that, Laxman is the cousin uncle of the petitioner. We thus hold the Committee, respondent no.2 fell in error, in discarding this document.

10. Mr. Mendadkar, Learned Counsel has also relied on the extract of school record of Suresh Narayan Gangawane, who is another cousin Uncle of the petitioner. His school record was verified by the Vigilance Committee, who found that entries in the extract and the school record tallies. The

Committee has discarded this document on the ground that the caste, "Thakar" has been struck off and word "Magas" has been written.

11. We have perused the school record/extract, of Suresh Narayan Gangawane. It shows that, he was admitted in the school on 26th September, 1959. It appears, word "Thakar" was struck off by and word "Maagas" has been added. Neither, the petitioner nor the respondents explained, why such corrections were made.

12. We have considered this document to ascertain as to whether it could be looked into while deciding the claim of the petitioner. The genealogy of the petitioner has not been disputed by the respondent, Committee. It appears from the genealogy that Laxman and Suresh are the cousin brothers whose common ancestor is Vithal Laxman Gangawane. Once we found that caste of Laxman has been recorded as Hindu-Thakar on 1st April, 1950 i.e. before the Constitution (Scheduled Tribes) Order, 1950 there is no gain-saying to discard the school record of Suresh Narayan Gangawane only on the ground that the word "Thakar" has been struck off and

word "Magas" has been written.

13. In the case of **Anand V/s. Committee for Scrutiny and Verification of Tribe Claims and Others**, reported in 2011 (6) Maharashtra Law Journal 919, wherein it was held that the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject the claim. It was held that, while dealing with the caste claim in respect of the documentary evidence greater reliance may be placed on pre-independence documents because it carries a higher degree of probative value, to the declaration of status of caste as compared to post independence documents.

14. In the case in hand, the Committee has erroneously refused to consider the school record of cousin Uncle, Laxman Dattatray Gangawane, which indeed has a more probative value. This piece of evidence was discarded because caste of Laxman i.e. Scheduled Tribe was not stated in the said extract. The reason was erroneous, for the simple reason that, as on the date of admission of Laxman in the School, "Thakar" was not notified as "Tribe".

. Be that as it may, that since the oldest document has not been considered, we are of the view that the Committee has committed an error in appreciating the documentary evidence on record and further committed an error by declining the claim of caste validation.

15. In that view of the matter, we are of the considered view that the petitioner has proved her claim that she belongs to Caste "Thakar" which is a Scheduled Tribe. That as such, we set aside the order of the Scrutiny Committee dated 23rd March, 2015 and validate the Certificate of the petitioner which shows her caste as "Thakar" which is registered as "Scheduled Tribe" in the Constitution (Scheduled Tribes) Order, 1950. Hence, the following order :-

I) The petition is allowed. The impugned order dated 23rd March 2015 is quashed and set aside.

II) It is held and declared that the Petitioner belongs to "Thakar" Scheduled Tribe.

III) The Respondent No.2 - Scheduled Tribe Certificate Scrutiny Committee is directed to issue Caste Validity Certificate to the Petitioner

within a period of two weeks from today.

IV) Needless to state that all consequences shall follow.

16. Rule is made absolute in the aforesaid terms.

(SANDEEP K. SHINDE, J)

(B.R. GAVAI, J)