

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9089 OF 2013

Shashikala d/o Vithal Gaikwad

...Petitioner

Versus

The State Of Maharashtra & Ors.

...Respondents

Mr. S.R. Barlinge, i/by Mr. Abhijeet Kandarkar, for the
Petitioner.

Mr. B.V. Samant, AGP, for the Respondents No. 1 to 3.

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

DATE : 20 June 2017

ORDER :

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

3. The Petitioner has approached this Court being aggrieved by the order dated 16 April 2010 thereby invalidating the claim of the Petitioner of belonging to Thakar Scheduled Tribe.

4. Heard Shri. Barlinge, the learned Counsel for the Petitioner and Shri. Samant, learned Government Pleader for the State.

5. Shri. Barlinge submits that the claim of Petitioner's real brother's two children has already been validated by the Scrutiny Committee. It is submitted that though the claim of third child of the said brother was invalidated by the Scrutiny Committee, which order was upheld by this Court, the Hon'ble Apex Court interfered with the same and has held the said claim to be valid in law. It is therefore, submitted that in view of the judgment of the Division Bench of this Court in ***Apoorva D/O Vinay Nichale Vs Divisional Caste Certificate Scrutiny Committee No.1, Nagpur & Others***¹, the present Petition

¹ 2010(1) Mh.L.J. 406

deserves to be allowed.

6. Learned AGP vehemently opposes the Petition. He submits that the Petition deserves to be dismissed on the ground of delay and latches. He submits that since the order impugned in the present Petition is passed in the year 2010 and the Petition is filed in the year 2013, the petition deserves to be dismissed on the ground of delay and latches.

7. Insofar as the ground of delay and latches is concerned, the Petitioner has given explanation. It is submitted that though the order of Committee is passed in the year 2010, the matter with regard to the claim of the Petitioner's real brother's daughter Anita was pending adjudication before the Apex Court and that reached finality only on 16 April 2013 and thereafter, immediately the Petitioner has approached this Court. We find that the explanation given by the Petitioner is reasonable and as such, the objection in that regard, raised by the learned AGP, deserves to be rejected.

8. On merits, we find that the Petitioner's claim needs to be allowed. The Petitioner has placed on record genealogy along with the Affidavit of the Petitioner's niece Rupali. The Petitioner and Petitioner's brother Atmaram are children of Vitthal. Atmaram's children Amar and Rupali were already granted validity certificate by the Committee. However, insofar as Anita is concerned, her claim was rejected by the Scrutiny Committee, which decision was upheld by the High Court. Anita challenged the same before the Hon'ble Apex Court. The Hon'ble Apex Court by judgment dated 16 April 2013 relying on the preconstitutional documents of Anita's forefathers, upheld the claim of Anita and held that she belongs to Thakar Scheduled Tribe. We are of the considered view that in view of the law laid down in the judgment delivered by the Division Bench of this Court in ***Apoorva D/O Vinay Nichale*** (supra), since the claim of the Petitioner's close blood relatives has been held to be valid and that too by the Hon'ble Apex Court, the Petitioner's claim deserves to be allowed. Though it may not be relevant, it may also be mentioned that the Petitioner's

husband's claim has also been found to be valid by Division Bench of this Court vide Judgment and order in Writ Petition No. 2016 of 2007 dated 10 September 2009.

9. The impugned order dated 16 April 2010 is therefore, quashed and set aside. It is held and declared that the Petitioner belongs to Thakar Scheduled Tribe. A validity certificate be issued within a period of four weeks from today.

10. Rule is made absolute in the aforesaid terms.

11. No order as to costs.

[RIYAZ I. CHAGLA, J.]

[B.R. GAVAI, J.]