

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14145 OF 2016

Balkrishna Bhagwan Thakar ... Petitioner
Vs.
State of Maharashtra & Ors. ... Respondents

.....

Mr. R.K. Mendadkar for the Petitioner.
Ms. Sushma Bhende, AGP for Respondent Nos.1 to 3.

.....

**CORAM : S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE : FEBRUARY 02, 2017.

P.C. :

1. In this Writ Petition under Article 226 of the Constitution of India, the petitioner Balkrishna Bhagwan Thakar challenges the order passed by the 2nd respondent Committee invalidating his Tribe Certificate.

2. The petitioner states that a common order was passed on 7th August 2015 by the 2nd respondent Committee, invalidating the Caste Certificate of the petitioner and his father 'Bhagwan Vitthal Thakar'. The petitioner and his father had instituted Writ Petition No. 10498 of 2015 in this Court which is pending admission. Since there was an urgency, the petitioner obtained certain ad-interim directions to his employer. However, that Petition was not pressed further and that is why the present Petition by the son is maintainable.

3. Then, reliance is placed upon the oral direction of this Court to file a separate Petition and segregate the present petitioner's case from that of his father.

4. It is common ground that the petitioner claimed to be belonging to 'Thakar Scheduled Tribe'. The petitioner was granted Caste Certificate on 2nd February 1992 by the competent authority.

5. On the basis of that Caste Certificate, the Commissioner of Police, CBD Belapur, Navi Mumbai, appointed the petitioner as a Police Sepoy.

6. The Caste Certificate of the petitioner was already forwarded through his Junior College in the year 2004 to the 2nd respondent Committee. However, the 2nd respondent Committee clubbed the petitioner's case alongwith that of his father and for common verification and scrutiny.

7. Then, reliance is placed upon the report of the Vigilance Cell attached to the 2nd respondent Committee and which claims to have reported that the school records of blood relatives of the petitioner and brought on record would indicate that the entries therein, particularly, in the Caste column are that these relatives belong to the 'Hindu Maratha' community. That is how the report of the Vigilance Cell came to be forwarded and though the Committee completed the formality of issuing notice to the

petitioner calling for his comments and remarks, what is pertinently urged before us is that even after a specific direction of this Court in the earlier Writ Petition, the Committee did not consider some very relevant and germane documents. Those documents are referred in the reply filed by the petitioner before the Committee. Details of those documents are set out at page 7 paragraph 9 of the Petition.

8. Mr. Mendadkar, learned counsel appearing for the petitioner, would submit that in judicial review, this Court can certainly look into the facts and arrive at a conclusion as to whether the relevant and germane documents have been taken into consideration, together with their contents and if those are omitted from consideration, then, the Committee's order stands vitiated in law. Mr. Mendadkar would submit that this is not a case where he is calling upon this Court to re-appreciate or re-appraise the factual materials or render any finding about the adequacy or sufficiency of materials. He would submit that continuously, the petitioner pursued his case that some very old documents and pre-constitutional in relation to these nine persons (blood relatives of the petitioner), have great evidentiary value and the caste recorded therein is 'Thakar'. These are entries in the Birth and Death Register of the concerned Village. These entries would take precedence over any entries in the school register and inserted subsequently. Therefore, out of lack of education and general ignorance, if some discrepancies occur, then weightage is to be given to the entries made in the Birth and Death Register.

Therefore, the entries therein should prevail over the other documents.

9. Since this argument was canvassed before us on the earlier occasion and even today, pursuant to our earlier directions, Ms. Bhende, learned AGP appearing for respondent nos. 1 and 2, has produced the original records. In the presence of the counsel and with their assistance, we have perused the said record.

10. The impugned order proceeds on the footing that the Committee was aware of the claim of the petitioner. The petitioner Balkrishna Bhagwan Thakar is the son of Bhagwan Vitthal Thakar. Both were seeking to validate their Tribe Certificates. Since it was the Committee's view that caste is generally and ordinarily inherited from the father, it would be desirable to club the claims of both, the father and the son, and consider them together. That is how the Committee proceeded and finally passed an order of invalidation of Caste Certificate of both. On 16th September 2013, a Writ Petition being Writ Petition No.11644 of 2013 was filed in this Court and on 28th February 2014, that was disposed of and with the directions as are incorporated in the operative order.

11. Thus, the Scrutiny Committee was to reconsider every aspect by giving opportunity to all the parties. Once the Committee proceeded on these lines, on 27th March 2014, it allowed the petitioner to produce those extracts from the Birth and Death Register and in relation to the nine persons, whose names are

enlisted at page 7 of this Writ Petition. On 12th May 2015, both, the father and the son, were called for a personal hearing but they did not attend the same.

12. Thereafter, the hearing was adjourned to 7th August 2015. On that date, they remained present. They were made aware that both claims are being taken up together. They did not object to this course. They were told to give information with regard to 8 germane and relevant points. A relative of the petitioner i.e. his step aunt was present. Since questions were posed, the answers thereto have been noted in the impugned order in paragraph 2.

13. It is not as if the Committee proceeded to rely, and blindly, on the report of the Vigilance Cell. It specifically put to the petitioner the case that as far as the cousin brothers are concerned, in the case of their school records, as also their home inquiry, it was revealed that they mentioned their caste as 'Hindu Maratha' and gave all the information about the rituals, occupation, prevailing customs and practices, Gods and Goddesses, festivals etc. consistent with the 'Maratha' community. The petitioners produced the documents, namely, the extracts from the Birth and Death Register and which are specifically referred to in the Committee's order in paragraph 3. Then, the Committee proceeded to analyze all these documents and bearing in mind their contents. Since the contents were differing and there was a discrepancy noted in the same, the Committee duly and properly considered the argument of the petitioner that the entries in the Birth and

Death Register would prevail over those in the school register. For a school is attended by anybody after his birth, hence, that should be given more weightage, was the argument.

14. However, the Scrutiny Committee, in its order dated 07.08.2015, in paragraph 5, has observed that one cannot ignore that in case of the grandfather of the present petitioner, the school register produced on record carries the entry in the Caste column as 'Hindu Maratha'. The grandfather was admitted in the school on 16th February 1936. The original document is produced for our perusal by Ms. Bhende. We have carefully perused it particularly because the petitioner is in public employment. The Committee found that it had no occasion to ascertain as to whether all the nine persons, whose entries as 'Hindu Thakar' are relied upon by the petitioner, attended any school or otherwise. However, if these are close relations, namely, the grand father of the petitioner and the father of Bhagwan Vitthal Thakar, then, the above fact cannot be ignored or brushed aside. Bearing that in mind, it has then proceeded to apply the relevant tests. The Committee found that there is a contradiction in the documents produced and relied upon. It is true that in the Birth and Death Register, the entry against the Caste column is 'Hindu Thakar'. However, equally, there are documents and in which there are entries pertaining to persons and from that very Village and District, which are 'Hindu Maratha'. Therefore, what weightage is to be given to each of these and to what extent is then considered and consistent with the anthropological data. The Committee found that when in the case

of the petitioner's grandfather, the entry in his school record does not tally or is consistent with 'Hindu Thakar Schedule Tribe', there being no dispute about the same, that cannot be brushed aside. The claim is, therefore, doubtful and dubious. In such circumstances, we are not in agreement with Mr. Mendadkar that this is a case of omission of relevant and germane piece of evidence. This is a case of appreciation and appraisal of the documentary evidence on record. What weightage is to be given and to which document and closest to the family, is the process undertaken and pleaded in the instant case. In the facts and circumstances of this case, we do not find that the Committee proceeded in contravention of any principles of natural justice or fairness and equity. It gave full opportunity to the petitioner and equally, to his father, and proceeded to pass the impugned order. We do not think that any useful purpose will be served by a third round now, and which is desired only to improve upon the case before the Committee. When ample and sufficient opportunity was given to the petitioner, then, whether the material produced was adequate or not is not something which should bother us in our writ jurisdiction. We do not think that the Committee contravened any principles of law. Its order is not vitiated by any error of law apparent on the face of record or perversity requiring interference in our writ jurisdiction. The Writ Petition is, therefore, dismissed.

15. At this stage, Mr. Mendadkar submits that there is an order passed on 22nd December 2016 protecting the services of the petitioner. The services are still not terminated. Therefore, this ad-

interim order be continued for a period of four weeks to enable the petitioner to consider his position and, if advised, challenge this order in a higher Court. This request is opposed by the respondents.

16. Having noted that the ad-interim order is in force from 22nd December 2016, interest of justice would be served if that is continued for a further period of four weeks as prayed for, but without prejudice to the rights and contentions of both parties. Order accordingly.

(B. P. COLABAWALLA, J.)

(S. C. DHARMADHIKARI, J.)