

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2842 OF 2018

Nilesh s/o Laxman Thakar
@ Thakur .. Petitioner
Versus
The State of Maharashtra & ors .. Respondent

WITH
WRIT PETITION NO.2848 OF 2018

Ajit s/o Laxman Thakar .. Petitioner
Versus
The State of Maharashtra
through its Secretary & ors .. Respondents

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Mr.S.C.Yeromwar for the petitioner.
Mr.S.B.Kalel, AGP for the respondent State.

CORAM: B.R. GAVAI AND
SMT.BHARATI H. DANGRE, JJ

RESERVED : 28th MARCH 2018

PRONOUNCED : 17th APRIL 2018

JUDGMENT :-

1 The two Writ Petitions are filed by the petitioners who are real brothers, being aggrieved by the common order passed by the Dy.Director & Member Secretary, Scheduled Tribe Certificate Scrutiny Committee, Thane on 4th January 2018, thereby rejecting the claim of the petitioners belonging to Thakar Schedule Tribe.

The Committee decided the claim of both the petitioners together being real siblings, and in view of the fact that on earlier occasion, the Committee by common order dated 11th June 2006 had invalidated their claims.

2 Perusal of the petition would reveal that the petitioners are original resident of village Ashiye, Taluka Kankavli, Sindhudurg district and claim to be belonging to Thakar Schedule Tribe. The competent authority had issued a caste certificates in favour of the petitioners as belonging to Thakar Schedule Tribe and the claims had been made over to the respondent no.2 committee for its verification, on the petitioner in WP No. 2842/18 being appointed as “Shikshan Sevak” and in WP No.2848/18 being appointed as “Junior Clerk”, on the posts reserved for Schedule Tribe Category.

In support of the claim of the petitioner, reliance was placed on the following pre-constitutional documents.

(a) Document of petitioners' cousin grand father i.e. Gopal Rama Thakar which is the School Leaving Certificate issued by School Education/Zilla Parishad Sindhudurg recording the date of birth of Gopal Rama Thakar to be 15.7.1929 and the admission into the school as 10.8.1937.

(b) The birth extract of the petitioners' cousin grand aunt i.e. Avade Rama Thakar where date of birth is shown as 28.1.1932 and the caste is reflected as 'Thakar'.

(c) The extract of death register in respect of petitioners' cousin great grand father i.e. Laxman Bapu Thakar showing the date of death as 13.8.1934 and the caste as 'Thakar'.

(d) The extract of death register in respect of petitioners' great grand father i.e. Rama Bapu Thakar showing the date of death as 30.9.1940' and reflecting caste as 'Thakar'.

3 The petitioners placed heavy reliance on the said documents which are of pre-constitutional era, wherein the caste is specifically recorded as 'Thakar'. The petitioners also place reliance on the genealogical tree. All the said documents were placed before the Committee for its consideration. It is pertinent to note that this is a second round of litigation by the petitioners and on earlier occasion, their claims were invalidated by the Committee by common order dated 11th June 2004 and on remand of the matter, by an order passed by this Hon'ble Court, the Committee proceeded to examine the claim of the petitioner afresh.

Perusal of the impugned order would reveal that the petitioners have placed on record 38 documents reflecting their

caste as 'Hindu Thakar'. The petitioners were afforded personal hearing and they were represented before the Committee along with the Secretary of Sindhudurg Zilla Thakar Samaj Sanghathana, who furnished the relevant information about the affinity of the petitioner with Thakar Schedule Tribe.

4 The Committee proceeded to deal with the claim of the petitioners by tracing the history/background of the Thakar of Sindhudurg district (erstwhile Ratnagiri district) and the impugned order states that the Thakar community from Sindhudurg District was initially covered in the list of Nomadic Tribe till the year 2004 and this group of Thakars of Sindhudurg district were included in Schedule Tribe of Maharashtra in 2004. The Committee then refers to certain literature including the “Encyclopedic profile of Indian Tribes” mentioning the inhabitants of Thakers in Thane, Colaba, Nashik and Ahmednagar districts. The Committee refers to the Vigilance Cell Report where the document pertaining to applicants cousin grand father for the period of 1937 shows the caste as Hindu Thakar Maratha and based on this document, the Committee casts a doubt on the claim of the petitioners as belonging to Thakar Schedule Tribe. The Committee then proceeds to deal with the affinity aspect of

the claim of the petitioners and conclude that despite modernization/urbanization, the Committee is of the considered opinion that people from this Tribe have preserved their hardcore cultural traits that bind them to their cultural roots and identify them with a cohesive social fold. The Committee also observed that issue of affinity towards area and towards the tribe is of utmost importance and in the result, being unconvinced by the claim made by the petitioner, rejects the claim as belonging to Thakar Schedule Tribe.

5 The approach of the Committee is grossly erroneous. The Committee has noted that the place of residence of the applicants family is Taluka Kankavli, District Sindhudurg, and has expressed an opinion that Thakar community from Sindhudurg district do not fall within Entry No.44 of the Schedule Tribe order. The Committee has observed that the First Constitution (Schedule Tribe) order 1950 included only Thakur community in Schedule Tribe list and Thakar was not included. However, in the year 1956 when the Schedule Tribe order came to be amended, 'Thakur' or 'Thakar' only of 25 Tahsils of five Districts were included in the list of Schedule Tribes. The Committee then records that after removal of area restriction in the year 1976 by the SC and ST

order (Amendment) Act, 1976, the Entry no.44 read as 'Thakur', Thakar, Ka-Thakur, Ka-Thakar, Ma-Thakur and Ma-Thakar, and the list was made applicable to the whole State of Maharashtra. However, Thakar from Sindhudurg, according to the Committee were included in the list of Nomadic Tribes. Though it is true that for a short span of time i.e. from 21/11/1961, Thakars were included in the list of Nomadic Tribe, by Government Resolution dated 2nd June 2004, the Government has deleted the said entry from the list of Nomadic tribes, and now 'Thakar' finds place only in Entry No.44 of the Schedule Tribe order. The Committee has adopted an erroneous approach by observing that the applicants are not the ordinary residents of area which was a dwelling place of Thakars i.e. 25 Tehsils and 5 districts i.e. Ahmednagar, Colaba, Nashik, Colaba and Thane. Based on this, the Committee has observed that Thakars were also identified as other Other Backward Classes (OBC) and therefore, there exists another group of Thakars as OBC.

The Committee has completely ignored the fact that on removal of area restriction, by the Act of 1976, Thakars throughout the State of Maharashtra came to be included in Entry No.44 without any restriction as to the habitual place of residence

of a particular Tribe. Upon removal of area restriction by the amending Act of 1976, the persons belonging to a particular Schedule Tribe, though residing in different areas, then the earlier specified or migrated from the said area are also entitled to claim benefit of the said Tribe. The Full Bench of this Hon'ble Court in the case of *Shilpa Vishnu Thakur Vs. State of Maharashtra*¹ had specifically observed that the Committee is not prohibited from applying test of original place of residence as one of the factors to be considered in arriving at a decision of validation of the claim of a claimant, but it cannot be considered as a conclusive test to determine whether a person belongs to a particular tribe or group of tribes. The area restriction no longer being the sole criteria, the Committee has erred in rejecting the claim of the petitioners on the ground that they belong to Sindhudurg district which is not the normal place of residence of Thakar community.

6 Another ground on which the Committee has rejected the claim of the petitioners is the applicability of the affinity test. No doubt in case of *Madhuri Patil Vs. Commissioner, Tribal Development*,² the Hon'ble Apex Court has held that in order to determine whether a person belongs to a Tribe and is a genuine

1 (2009) 3 Mh.L.J

2 AIR 1995 SC 94

tribal and to segregate this Tribe from the pseudo tribe, the affinity test would be the important test to be applied. However in the case of *Anand V/s. Committee for Scrutiny and Verification of Tribes Claims*¹, the Apex Court has held that the genuineness of the caste claim has to be considered not only on a through examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. It is not a sole category where the person belongs to particular tribe. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim.

7 However, the Committee have completely discredited the oldest documents of the petitioners produced by the petitioner of the year 1932, 1934 and 1940. The Committee has chosen to rely upon one single document which it has procured during a vigilance inquiry and the document appears to be of cousin grand father of the petitioner which is of the year 1937 where the caste is recorded as 'Thakar Maratha'. The Committee has observed that the caste 'Thakar' is distinct from caste 'Maratha' and

1 2012(1) SCC 113

'Maratha' was a caste which was in existence at the relevant time when the document was scribed. However, it is a settled position of law that one isolated entry would not discredit the claim, and the Committee has only relied upon this document of 1937, whereas the petitioner has placed on record the document of 1932 and 1934 where the caste is clearly recorded as 'Thakar'. In such circumstances, the observations made by the Committee of protecting the interest of genuine Schedule Tribe and not permitting the persons belonging to other caste to enjoy the benefits meant for the said tribe, appears to be completely out of context. The petitioner has produced before the Committee the documents which are of pre-constitutional era, carrying great probative value and without assigning any reasoning, the Committee has refused to look into the documents and on the contrary, has relied on document of 1937 to reject the claim of the petitioners.

In light of the aforesaid discussion, the order passed by the Committee is totally unsustainable in light of the settled position of law as regards Thakar/Schedule Tribe and in any contingency, it is not permissible for the Committee to hold that the petitioner belongs to Thakar caste, but do not belong to Thakar Schedule Tribe. The order passed by the committee cannot

be sustained, in light of the aforesaid observations and is liable to be quashed and set aside.

It is held that declared that the petitioners belong to Thakar Scheduled Tribe. Respondent-Committee is directed to issue validity certificate to the Petitioners, certifying that the Petitioners belong to Thakar Scheduled Tribe within a period of four weeks from today.

8 Petitions are allowed and disposed of in the aforesaid terms.

(BHARATI H. DANGRE, J)

(B.R. GAVAI, J)