

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1158 OF 2018

Dilip S/o. Mahadev Mhaske .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr. S.C. Yeramwar for petitioner
Mr. Vikas Mali, AGP for State – respondent Nos. 1 to 3.

CORAM : B.R. GAVAI &
SMT. BHARATI H. DANGRE JJ

DATE : 16th April 2018

ORAL JUDGEMENT:- (Per Mrs. Dangre, J):-

Rule. Rule is made returnable forthwith. Heard by consent. The petitioner has challenged the impugned order passed by the Caste Scrutiny Committee rejecting the claim of the petitioner as belonging to Thakar Scheduled Tribe. The petitioner assails the said order on the foremost ground that the oldest document of the year 1916 has not been taken into consideration by the committee and it has proceeded to reject the claim of the petitioner by applying the test of affinity.

2] A perusal of the impugned order would reveal that to support the claim of the petitioner as belonging to Takar S.T., the petitioner has placed reliance on certain pre-constitutional documents. He had submitted certificate issued by the Head Master of Kudal High School and Junior College, Kudal certifying that in the school record of cousin cousin uncle of the petitioner by name Vitthal Masake, his caste is recorded in the year 1965-66 as Hindu Thakar and the date of birth is recorded as 5th May 1945. He also placed reliance on an affidavit filed before the Committee on 7th February 2011 stating therein that the tribe claim of his cousin cousin brother viz., Vallabh Masake has been validated by the same Committee on 31st May 2003, after following due procedure on vigilance enquiry. Along with the said affidavit, the petitioner had also tendered genealogical tree depicting his relationship with Vallabh Masake. Further, the admission extract issued by the Head Master Z.P. Central School, Pinguli, Taluka Kudal Dist. Sindhudurg in respect of petitioner's cousin grand father is placed on record where his caste is mentioned as Hindu Thakar and the date of admission was shown as 18th March 2016. Reliance was also placed by the petitioner on school leaving certificate in respect of cousin cousin uncle Murari Soma Masake where the caste was shown to be Hindu Thakar and date of birth is shown as 5th August 1943.

3] A perusal of the impugned order passed by the Committee would reveal that the Committee has referred to the information collected during the course of vigilance enquiry. The committee has placed reliance upon a copy of school admission general register in respect of petitioner's paternal relative issued by Higher Grade School, Kudal where the case is recorded as Hindu Magaslela. The Committee has specifically observed that a copy of vigilance report was submitted to the petitioner to submit his reply. However, he did not tender his reply.

4] In the petition, the petitioner has offered an explanation as to the issuance of such a document and recording of the caste as "Hindu Magaslela". It can be seen that earlier point of time "Thakar" community was recognised as Nomadic Tribe. However, in view of coming into force the Scheduled Tribe 1950 Order, it came to be included in the S.T. Category. The Government of Maharashtra had issued a communication on 30th August 1979 to the President Gokul Prkalp Prathisthan, Kudal directing that the caste Thakar is included in S.T. category and all Thakars from Ratnagiri district be treated as Thakar S.T. The said communication is placed on record by the petitioner. However, it is pertinent to note that the Director of

Education had issued a communication as long back as on 22nd May 1968 wherein it had directed that while taking entry in relation to caste and religion at the time of admission of the student, there is no need to mention the caste in the school admission register. It was also directed that, if any such type of entries are recorded, those should be removed and only religion and remark as to whether belongs to Backward Class or not should be written so that the students should take benefit of Education. In the light of the said circular dated 22nd May 1968 and a Circular issued on 28th October 1969, the entry in respect of Vitthal Soma Masake came to be corrected to read as “Hindu Magasvargiya”. The Committee has also relied upon the said entry which is a solitary one in ignorance of all the pre-constitutional documents reflecting the caste of the ancestors and the close blood relatives of the petitioner as “Hindu Thakar”. The Committee has also referred to the fact that the petitioner has also obtained a certificate as belonging to N.T. and he has concealed the information that he has obtained such a certificate.

However, in this connection, learned Counsel for the petitioner has specifically invited attention of this Court to the judgement of this Court in W.P.No.6048 of 2004 where the court has dealt with a G.R. whereby “Thakar” community was notified as N.T. But this Court by its judgement has specifically observed that the said caste was

wrongly recognised as N.T. and since in the light of change in policy of the State Government the caste Thakar was already placed at Entry No.44 of Scheduled Tribe Order, the said entry of being Nomadic Tribe was found to be erroneous. In the light of the aforesaid fact there was no fault on the part of petitioner in obtaining a certificate of belonging to N.T. since the State Government itself had recognised the caste Thakar as N.T. for a period of time.

6] In the light of the aforesaid, the view taken by the Committee cannot be sustained. More particularly, in view of the decision of Supreme Court in the case of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors., reported in **2012(1) S.C.C. 113**, the document produced showing the entry in school in the year 1916 and reflecting the caste as "Hindu Thakar" would have to be given due weightage being a pre-constitutional document and the affinity test cannot be the sole criteria to be applied while disregarding the said document. This is what the committee has exactly done and in such circumstances, the finding recorded by the Committee cannot be sustained in the eyes of law.

7] The impugned order of the Committee is therefore, quashed and set aside and the Committee is directed to issue validity

certificate in favour of the petitioner belonging to caste Thakar S.T.
within four weeks from today.

9] Rule is thus made absolute. Petition is disposed of.

(SMT.BHARATI H. DANGRE, J)

(B.R.GAVAI, J.)