

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3869 OF 2015

Pritesh Subhash Thakur ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

Mr.Ramchandra K. Mendadkar for the Petitioner.

Mr.S.B. Kalel, AGP for Respondent Nos.1 to 3-State.

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

DATE : 18th APRIL 2018

JUDGMENT (PER SMT.BHARATI H. DANGRE, J.)

1. Rule. Rule made returnable forthwith.
2. Heard by consent.
3. The petitioner has approached this Court praying for quashing and setting aside the impugned order dated 11.03.2015 passed by the respondent No.2-committee thereby rejecting the claim of the petitioner as belonging to the Thakur, Scheduled Tribe. The petitioner has sought for declaration that he belongs to Thakur, Scheduled Tribe and as such he is entitled for grant of validity certificate from the respondent No.2-committee.

4. It is the case of the petitioner that he belongs to Thakur, Scheduled Tribe and he obtained a certificate as belonging to “Thakur”, Scheduled Tribe on 08.09.2006. His claim was forwarded to the Scrutiny Committee for verification and he had tendered voluminous evidence including the documents belonging to pre-constitutional period as well as the validity certificate issued in favour of his cousin and his cousin uncle issued by scrutiny committee. The petitioner also submitted the evidence to establish his affinity towards Thakur, Scheduled Tribe. The committee however did find any material in favour with the claim of the petitioner and rejected his claim as belonging to Thakur, Scheduled Tribe.

5. Being aggrieved, the petitioner approached this Court, and this Court by order dated 26.02.2014 remanded the matter for reconsideration to the Caste Scrutiny Committee in light of the Judgment of this Court delivered in the case of ***Madhuri Nitin Jadhav V/s. State of Maharashtra & Ors.***¹ decided on 26.02.2014. The matter was remanded with direction to the committee to examine the three important issues, namely, (a) the Constitutional Area Restriction removal (b) affinity test, and (c) validity certificates

1 2014 (3) Mh.L.J. 900

of relatives.

6. The petitioner again resubmitted his claim before the committee which resulted into passing of the impugned order and the committee rejected the claim of the petitioner as belonging to Thakur, Scheduled Tribe.

7. The learned counsel Mr.Mendadkar appearing for the petitioner would submit that once again the committee has fell into a great error in not considering pre-constitutional documents produced by the petitioner including the document in favour of his grandfather by name Ratan Gana Thakur. He would submit that the said document, which is a school leaving certificate, in favour of his grandfather reflecting the date of birth of the grandfather as 08.05.1923 reflects the caste as 'Hindu Thakur'. He would further rely upon the extract of the birth/death register of Mouje-Thalner, Taluka-Shirpur, District-Dhule belonging to Shri.Gana Vithobha who is the great grandfather of the petitioner where the caste is recorded as "Thakur" and the date of death is recorded as 19.04.1941. The petitioner would submit that the caste scrutiny committee has failed to consider the aforesaid documents, which have great probative value. Mr.Mendadkar would also submit that the petitioner has

placed before the committee the validity certificates issued in favour of his first cousins, namely, Shri.Narendra Vedu Chavan, Umesh Vedu Chavan and Rajesh Vedu Chavan and his cousin uncle Kiran Dattu Chavan issued by different Scrutiny Committee after holding a detailed and exhaustive inquiry in terms of the directions issued by the Hon'ble Apex Court. According to Shri.Mendadkar the petitioner had demonstrated his relationship with the said certificate holders and based on the judgment in case of *Apoorva d/o. Vinay Nichale V/s. Divisional Caste Certificate Scrutiny Committee & Ors.*² The learned counsel for the petitioner would submit that once the full fledged inquiry is held in favour of the blood relation, there is no justifiable ground for the committee to reject the claim of the petitioner. The learned counsel for the petitioner would also placed reliance upon Vigilance Cell report of the Scrutiny Committee at Nadurbar which focuses on the genuineness of the school records as well as home inquiry made by it at Village Thalner.

8. Perusal of the impugned order would reveal that the Scrutiny Committee in its normal stride has referred to a catena of judgments of the Hon'ble Apex Court as well as High Courts and has reproduced paragraphs and paragraphs of the said judgments. On

2 2010(6) Mh.L.J. 401

scrutiny of the documents produced on record, the committee has noted that the documents reflect caste 'Hindu Thakur' and the school record of the petitioner's father mentions a caste as 'Thakur' with a specific noting (Magas Vargiya Bhatke). On these basis, the committee records that the said documents cannot be considered as conclusive while determining the 'tribe' claim of the applicant specifically and mere entry "Thakur" would not result in automatic validation of the tribe claim. The committee has rejected the documents of the applicants father by recording that the caste column mentions "Magas Vargiya Bhatke". On the submission of the validity certificate from the paternal side, the committee proceeds to observed that every case has to be dealt with on its own merits and on consideration of the documentary evidence and the affinity test. On these grounds the committee refused to look into validity certificates granted by the committee in favour of the blood relatives of the petitioner.

Needless to say that the committee completely ignored the judgment of this Court in case of *Apoorva Vinay Nichale V/s. Divisional Caste Certificate Scrutiny Committee & Ors*, (Supra). The committee then proceeds to deal with the affinity issue and by reproducing extracts from various books like the Gazetteer of India, Maharashtra State, Thane District, which sets out, traits,

characteristics peculiar to Thakur, Scheduled Tribe and then by reproducing extracts from various judgments, arrive at a conclusion that the petitioner failed to satisfy the affinity test. As far as the issue of area restriction is concerned the committee refers to the judgment in the case of ***Yogita Anil Sonawane V/s. State of Maharashtra & Ors.***³ and makes an observation that the issue of “constitutional area restriction removal” is now *sub judice* and a consideration by the larger Bench and not attained finality. In the light of the three issues as framed in *Madhuri Nitin Jadhav's* (Supra) case, the committee arrived at a conclusion that the petitioner has failed to satisfy the crucial affinity test and rejects the claim of the petitioner as belonging to Thakur, Scheduled Tribe.

9. By this time, it is a settled position of law that as far as tribes are concerned, no doubt affinity test is to be considered as an important indication for determining the claim of a person belonging to a tribe. However, in ***Anand V/s. Committee for Scrutiny and Verification of Tribes Claims and others***⁴ it is held clearly that the genuineness of the caste claim has to be considered not only on a thorough examination of the documents submitted in

3 Writ Petition No.6103 of 2010 Hon'ble High Court Bench at Aurangabad

4 2012(1) SCC 113

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. However, their lordships have laid down the following principles.

“(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test

could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.”

10. Thus, the affinity test is not the sole test to determine whether a person belongs to particular caste or tribe and it will only act as a corroboration. In such circumstances, the committee will have to fall back on the documents which have been placed on record. In a case where there are pre-constitutional documents, it is imperative on the part of the committee to attach due weightage to the said documents, since at the time of issuance of these documents, the forefathers of the claimant did not contemplate that

their caste/tribe would be included in the scheduled list and which would benefit their future generation. In this backdrop, the committee is duty bound to take into consideration such documents which have great probative value and specifically when the affinity test cannot be considered as the sole determining factor to determine a tribe claim. If valid and genuine documents have been placed on record, there is no reason to doubt the said documents only on the ground that the petitioner do not satisfy the affinity test. The committee expresses doubts about the two documents which have been placed on record by the petitioner which are undisputedly oldest documents in possession of the petitioner clearly reflecting the caste of grandfather and great grandfather to be “Thakur”.

11. It is no doubt true that the caste “Thakur” finds place in Category No.44 of the Scheduled Tribe Order 1950 and it is not for the committee to derive the conclusion that though the petitioner belongs to caste Thakur he do not belong to “Thakur”, Scheduled Tribe. The committee is duty bond to read the entry as and it is not permissible to dissect the said entry and observe that there is Thakur caste which is in existence and which is distinct from Thakur, Scheduled Tribe. As far as the noting made in some of the

documents produced by the petitioner reflecting (Magas Vargiya Bhatke), it is observed that at some point of time “Thakur” was enlisted as Nomadic Tribe. However, subsequently the said entry came to be deleted and the only entry which stands today where caste Thakur is recognized at entry No.44 of the Scheduled Tribe Order 1950.

12. The committee is also not justified in rejecting the claim of the petitioner based on the validity certificates in respect of the blood relatives of the petitioner and in ignoring the judgments of this Court in case of *Apoorva d/o. Vinay Nichale (Supra)*, in which the Division Bench of this Court has categorically held that if the blood relation of the candidate has been granted validity certificate earlier, then such a candidate can be granted validity certificate without calling for Vigilance Cell unless and until the certificate granted to the blood relative is found to be tainted by fraud or is granted without jurisdiction and then the committee may refuse to grant the said certificate. The petitioner has placed on record the validity certificate issued in favour of his cousins where the scrutiny committee conducted the vigilance inquiry. However, the committee did not feel it necessary to attach any weightage to the certificates of the validity granted by its counterparts after following due process

and simply brushed aside the said certificates on a specious ground that each claim has to be established individually. The entire approach of the community is therefore erroneous. The committee has acted in ignorance of the law laid down by the Hon'ble Apex Court as well as this Hon'ble Court and has rejected the claim of the petitioner on totally unsustainable ground.

The impugned order is therefore quashed and set aside. The petition is allowed. Rule is made absolute accordingly.

13. In the light of the aforesaid observations, it is held and declared that the petitioner belongs to Thakur, Scheduled Tribe. The respondent-committee directed to issue validity certificate to the petitioner within a period of three weeks from today.

(SMT.BHARATI H. DANGRE, J.)

(B.R. GAVAI, J.)