

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4788 OF 2015

Ketankumar S/o. Udaysing Suryawanshi .. Petitioner
Versus
Scheduled Tribe Certificate Scrutiny
Committee, Konkan Division, & Anr. .. Respondents

Mr. R.K.Mendadkar with P.N.Shaw and Komal Gaikwad for petitioner
Mr. A.I.Patel, Addl.G.P. for respondent State.

CORAM : B.R. GAVAI &
B.P.COLABAWALLA, JJ

DATE : 20th February 2018

P.C.:

1. Rule. Rule made returnable forthwith. Heard by consent of parties.

2] The petitioner has approached this court being aggrieved by the order of respondent Caste Scrutiny Committee dated 27th April 2015 thereby rejecting the claim of the petitioner of belonging of Thakur scheduled tribe.

3] The petitioner though has placed on record, the pre-constitutional documents pertaining to the petitioner's forefathers, all showing that the petitioner's forefathers belong to Thakur tribe and also the caste validity certificate issued in favour of petitioner's father dated 8th February 2002, his claim for validity of her caste has been rejected.

4] The claim is basically rejected on three grounds viz., (I) insofar as pre-constitution documents are concerned, though the same mention caste to be Thakur, it is not mentioned as Thakur Scheduled Tribe (ii) insofar as validity granted in favour of petitioner's father is concerned, the same was granted on the basis of the judgement of this Court and not after considering the merits of the case; (iii) that the petitioner has failed affinity test;

5] We find that the approach of respondent Caste scrutiny committee is totally untenable in law.

6] Insofar as first reason is concerned, Scheduled Caste and Scheduled Tribe Presidential order has been notified for the first time in 1950 and, therefore, there was no question of the pre-constitutional documents mentioning Scheduled Tribe. A perusal of the record would also reveal that, the school leaving certificate of uncle of petitioner Rajesingh Chandrasingh Thakur mentions his caste as Thakur at the time of admission on 16th August 1938. Similarly school leaving certificate of another uncle Sahebrao Chandrasingh Thakur at the time of admission on 8th March 1949 also shows caste to be Thakur.

7] Not only that but petitioner's father Udaysingh Chandrasingh Thakur has also been granted validity on 18th February 2002. It is not the case of the respondents that they have taken any steps for withdrawing validity granted in favour of petitioner's father.

8] The Division Bench of this Court in the case of Apoorva D/o. Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee N No.1 and Ors., reported in **2010(6) Mh.L.J. 401** has observed that if validity is granted in favour of close relative of candidate then such candidate cannot be denied validity certificate unless the validity certificate of the close relative is obtained by fraud.

9] In so far as third ground is concerned, the Apex 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** has held that greater value has to be given to the pre-constitutional documents. ***Merely because when the pre-constitution documents show that the petitioner's forefathers belonged to Thakur Tribe the claim could not have been rejected only on the ground of specification as to Schedule Tribe is not written.***

10] In the result, the petition deserves to be allowed. The impugned order dated 27th April 2015 is quashed and set aside. It is held and declared that the petitioner belongs to Thakur Scheduled Tribe. The respondent Committee shall issue a caste validity certificate within a period of two weeks to the petitioner. In view of quashing of impugned order, all consequences in law to follow.

11] Petition is disposed of accordingly. No costs.

(B.P.COLABAWALLA, J)

(B.R.GAVAI, J.)