

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5444 OF 2016

Smt. Alkadevi Gulabrao Thakur]
@ Kum. Alkadevi Diwansing Thakur]
Aged ---- years, residing at]
RX2, Maruti Angan Society]
Milap Nagar, MIDC, Dombivli (E)]
Tal. Kalyan, District Thane]..... Petitioner.

Versus

1] State of Maharashtra]
Through its Secretary,]
Tribal Development Department,]
Mantralaya, Mumbai – 400 032]
2] Scheduled Tribe Certificate]
Scrutiny Committee, Nandurbar]
through its Member Secretary,]
having its office at Nandurbar,]
Dist. Nandurbar.]
3] Zilla Parishad, Thane through]
Its Chief Executive Officer]
District Thane]..... Respondents.

Mr. R K Mendadkar for the Petitioner.

Mr. A B Vagyan, GP, a/w Mrs. Rupali M Shinde, AGP for the
Respondent/State.

Mr. S P Thorat for the Respondent No.3

CORAM : R. M. SAVANT &
K. K. SONAWANE, JJ.

DATE : 11th SEPTEMBER 2018

ORAL JUDGMENT [PER R M SAVANT, J.]

1 Rule, having regard to the nature of the directions to be issued
made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 25/04/2016 passed by the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar by which order the tribe claimed by the Petitioner as belonging to “Thakur Scheduled Tribe” came to be rejected.

3 It is not necessary to burden this order with unnecessary details having regard to the directions we propose to issue.

 The Petitioner herein came to be appointed in the year 1986 in the post meant for the reserved category i.e. scheduled tribe and was working in the Integrated Child Development Scheme of the Respondent No.3 – Zilla Parishad. The Petitioner in the year 2000 was promoted to the post of Development Project Officer. The Petitioner has superannuated on 31/08/2018. The Petitioner was issued a tribe certificate by the Competent Authority on 09/02/1982 as belonging to “Thakur Scheduled Tribe”. The said certificate issued to the Petitioner was, as per the practice, sent to the concerned Scheduled Tribe Certificate Scrutiny Committee for validation. The Petitioner in support of her claim relied upon a host of documents which have been listed in the impugned order from Item No.1 to Item No.52. The said documents inter alia were the birth extracts of the Petitioner's relations from paternal side, genealogy of the Petitioner's family as also the tribe certificates belonging to the Petitioner's relations. Amongst the said certificates at Item

No.5 is the certificate relating in Village Form No.14 of one Diwansing Chatarsing Thakur purportedly being the certificate of the father of the Petitioner wherein the entry is shown as “Thakur”, the certificate at Item No.6 being the caste certificate belonging to one Diwansing Jamsing Thakur i.e. the father of the Petitioner which is dated 29/07/2018. In terms of the procedure, since on scrutiny of the documents the Committee was not satisfied with the tribe claim of the Petitioner based on the said documents, the matter was referred to the Vigilance Cell for Home/School Inquiry. In the said inquiry the Vigilance Cell laid its hand on four documents which have been listed on page Nos.45 and 46 of the Writ Paper Book and internal pages 16 and 17 of the order passed by the Scheduled Tribe Certificate Scrutiny Committee. The said documents are the School Extracts in respect of the father and uncle of the Petitioner. The name of the uncle of the Petitioner is Padamsing Jamsing Thakur and the name of the father of the Petitioner is Diwan Jamsing Thakur. In the said documents are also the documents relating to the maternal side of the Petitioner. Thereafter the Vigilance Cell has referred to the School Extracts purportedly to be from the tribe or community to which the Petitioner belongs. The said extracts as can be seen from the order passed by the Scheduled Tribe Certificate Scrutiny Committee are obtained from Nandurbar District, Dhule District, Jalgaon District and various Talukas in the said Districts. The entries were ranging from Bhat Thakur to Bhat and Hindu Thakur. All the aforesaid material though in possession of the Vigilance Cell was not put to the

Petitioner prior to the Scheduled Tribe Certificate Scrutiny Committee adjudicating upon the tribe claim of the Petitioner. Hence the Petitioner did not have an opportunity to deal with the said material and give her explanation in respect of the said documents before the Scheduled Tribe Certificate Scrutiny Committee. It was therefore the submission of the learned counsel for the Petitioner Shri R. K. Mendadkar that without giving an opportunity to the Petitioner vis-a-vis the aforesaid material the Scheduled Tribe Certificate Scrutiny Committee has relied upon the said material and invalidated the scheduled tribe certificate issued to the Petitioner. The learned counsel appearing for the Petitioner sought to place reliance on various judgments of the Apex Court as well as this Court in support of the said contention.

4 The learned Government Pleader Shri A B Vaganyi fairly conceded that in respect of the documents listed at Item Nos. 5 and 6, no finding has been recorded by the Scheduled Tribe Certificate Scrutiny Committee in the impugned order as regards why the said documents could not be taken into consideration. The learned Government Pleader also fairly pointed out that the entries in the school record of which the possession was taken by the Vigilance Cell as also the entries in the school record of the persons purportedly belonging to the Petitioner's tribe or community in Districts Nandurbar, Dhule and Jalgaon have also not been put to the Petitioner so as to seek the

Petitioner's explanation in respect of the said material. However, the learned Government Pleader would seek to justify the impugned order on the basis that the tribe certificate of the Petitioner's near relations has been invalidated which invalidation has been upheld by the Division Bench of this court sitting at Aurangabad. The learned Government Pleader also sought to justify the impugned order on the ground that the Petitioner has failed affinity test which is a sine qua non for sustaining the caste or tribe claim. What stares us in the face in the instant case is the fact that the documents which we have adverted to here in above were not put to the Petitioner as also the documents at Item Nos.5 and 6 have not been considered by the Scheduled Tribe Certificate Scrutiny Committee and no finding has been recorded by the Scheduled Tribe Certificate Scrutiny Committee as regards the efficacy of the said documents. In our view, therefore, the impugned order having been passed without giving such an opportunity to the Petitioner is in breach of the principles of natural justice. We have to bear in mind that the proceedings before the Scheduled Tribe Certificate Scrutiny Committee have a serious impact on the social status of a person. In that view of the matter the impugned order dated 25/04/2016 passed by the Scheduled Tribe Certificate Scrutiny Committee would have to be set aside and is accordingly set aside and the following directions are issued :-

- 1] The tribe claim of the Petitioner as belonging to "Thakur

Scheduled Tribe” is relegated back to the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar for a de-novo consideration.

- 2] The Scheduled Tribe Certificate Scrutiny Committee would proceed on the basis of the material which is already on record.
- 3] In the light of the instant judgment, the Scheduled Tribe Certificate Scrutiny Committee would be well advised to issue show cause notice to the Petitioner in respect of the documents which we have referred to in the instant order or any other document of which the notice has not been given.
- 4] The Scheduled Tribe Certificate Scrutiny Committee would consider the documents at Item Nos. 5 and 6 and the documents which are listed in the impugned order.
- 5] If the orders passed by the Scheduled Tribe Certificate Scrutiny Committee invalidating the tribe claim of the near relations of the Petitioner from the paternal side are produced before the Scheduled Tribe Certificate Scrutiny Committee may also put the said orders to the notice of the Petitioner and thereafter consider

the said documents and record a finding in the order that would be passed on remand.

- 6] The parties to appear before the Scheduled Tribe Certificate Scrutiny Committee on 25/09/2018. Thereafter the tribe claim of the Petitioner to be adjudicated latest by 31/12/2018.
- 7] Since the Petitioner has superannuated, the authorities may proceed to fix the provisional pension of the Petitioner and the pendency of the proceedings before the Scheduled Tribe Certificate Scrutiny Committee would not be an impediment for the same. However, the payment of pension and retiral benefits to the Petitioner would be contingent upon the decision that would be rendered by the Scheduled Tribe Certificate Scrutiny Committee. The contentions of the parties in that regard are kept open.
- 8] The above Writ Petition is accordingly allowed. Rule is accordingly made absolute to the aforesaid extent with parties to bear their respective costs of the Petition.

Laxmikant
Gopal
Chandan

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Gopal Chandan
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[K. K. SONAWANE, J]

[R.M.SAVANT, J]

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