

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1431 OF 2013**

Shri Vijaysinha s/o Rupsing Suryawanshi)
Age-62 years, Occ: Retired Government Servant)
from Central Excise Department)
Presently residing at D-4, Ballal Yashodhan society)
Chintamani Nagar-2, Bibwe Wadi, Pune-37) **..Petitioner**

Vs.

1 The State of Maharashtra)
Department of Tribal Development)
Mantralaya Mumbai – 32)
Through its Secretary)

**(copy to be served on the Government Pleader,
High Court of Judicature at Bombay)**

2 The Scheduled Tribe Certificate Scrutiny)
Committee, Nashik Division,)
Gadkari Chowk, 2nd floor, Adiwasi Vikas Bhawan)
Nashik-422 002)

3 The Executive Magistrate)
Igatpuri, Dst Nashik)

4 The Superintendent (VIG))
Central Excise, Pune – 1, Committee)
41/A, ICE House, Sassoon Road, Opp Wadia College))
Pune-1) **..Respondents**

**WITH
CIVIL APPLICATION NO.1454 OF 2014
IN
WRIT PETITION NO.1431 OF 2013**

Shri Vijaysinha s/o Rupsing Suryawanshi)
Age-62 years, Occ: Retired Government Servant)
from Central Excise Department)

Presently residing at D-4, Ballal Yashodhan society)
Chintamani Nagar-2, Bibwe Wadi, Pune-37) ..Applicant
(Original Petitioner)

Vs.

1 The State of Maharashtra)
Department of Tribal Development)
Mantralaya Mumbai – 32)
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41/A, ICE House, Sassoon Road, Opp Wadia College)
Pune-1) ..Respondents

Mr. A. S. Golegaonkar for the Petitioner / Applicant
Mr. B. V. Samant AGP for the Respondent Nos.1 to 3 State
Mr. Y. R. Mishra a/w Mr. D. A. Dube, Mr. Upendra Lokegaonkar for
Respondent UOI

CORAM :R. M. SAVANT, &
NITIN W. SAMBRE, JJ
DATE : 30th OCTOBER, 2018

ORAL JUDGMENT (PER R. M. SAVANT J.)

1 The above Civil Application has been filed by the Petitioner for a
direction against the Respondent No.4 to release the retirement benefits and
pensionary benefits to the Applicant/Petitioner. The Applicant / Petitioner has

sought the relief of setting aside the Departmental Proceedings initiated against the Petitioner which is based on the decision of the Caste Scrutiny Committee invalidating the tribe claim of the Petitioner by order dated 13-12-2012, which is impugned in the present Petition. The above Writ Petition is pending hearing and final disposal. In view of the fact that the disposal of the above Civil Application would consume the same amount of time as the hearing of the above Writ Petition, we chose to take up the above Writ Petition itself for final hearing.

2 The above Writ Petition has been filed challenging the judgment and order dated 13-12-2012 passed by the Respondent No.2 Scheduled Tribe Caste Scrutiny Committee (for short STCS Committee). By the said order the tribe claim of the Petitioner as belonging to Thakur-Scheduled Tribe came to be rejected.

3 The Petitioner herein joined the Post and Telegraph Department as a Clerk in Jamnagar in the State of Gujarat some time in the year 1970. The Petitioner thereafter was selected and appointed as an Inspector of Central Excise and Customs after having passed the competitive examination for the same. The Petitioner joined the services on 27-6-1980 at Indore, Madhya Pradesh. The Petitioner thereafter was transferred to Pune and has

superannuated from service. Whilst he was in service at Pune the Petitioner prior to his superannuation was promoted as Superintendent in the Central Excise Commissionerate Pune. The Petitioner had obtained a caste certificate from the Executive Magistrate Igatpuri as belonging to Thakur-Scheduled Tribe. The Petitioner's caste certificate was referred for verification on 24-9-2010 to the STCS Committee. The Petitioner in support of his tribe claim of belong to Thakur-Scheduled Tribe relied upon a host of documents which inter alia included the school record of his father dating back to the year 1934, a registered Sale Deed of the year 1926 by which the grandfather of the Petitioner Bhursing Vedu Thakur had purchased agricultural land, as also the caste validity certificate issued to his real brother Arvindkumar Rupsingh Thakur on 27-1-2004 and the caste validity certificate issued to his real paternal cousin Vasant Bhimsingh Suryawanshi dated 19-4-2003.

4 It seems that the Petitioner has not been paid his retirement benefits to which he is entitled to in view of the fact that his tribe claim was pending before the STCS Committee. In the validation process of the Petitioner's caste certificate as belonging to Thakur-Scheduled Tribe, the vigilance cell enquiry was conducted which enquiry was relating to both school and home of the Petitioner. The vigilance cell submitted its report and did not comment adversely in respect of the entries in the school record of the Petitioner's father as well as in respect of the Sale Deed of the year 1926

relating to his grandfather Bhursing Vedu Thakur. In fact vigilance enquiry was in favour of the Petitioner. The STCS Committee considered the tribe claim of the Petitioner as belonging to Thakur-Scheduled Tribe by taking into consideration the material which had come on record, which were the documents on which the Petitioner relied, the vigilance cell enquiry report, and on such consideration the STCS Committee on the ground that the family of the Petitioner was residing in Pachora which was not one of the places mentioned in the schedule as an habitat of the Thakurs', rejected the tribe claim of the Petitioner. In so far as the validity certificates issued to the Petitioner's brother Arvindkumar Thakur and his cousin Vasant Suryawanshi are concerned, the STCS Committee placed reliance on the observations made in the Judgment of the Apex Court in the matter of Madhuri Patil Vs. State of Maharashtra to hold that in granting a certificate in favour of a member of a family if vital evidences have been ignored, it would be open to the committee to arrive at a different finding. This appears to be the foundation of the STCS Committee not to countenance the validity certificates issued to the Petitioner's brother Arvindkumar Thakur and his cousin Vasant Suryawanshi. As indicated above it is the said order dated 13-12-2012 passed by the STCS Committee which is taken exception to by way of the above Petition.

5 The Learned Counsel appearing for the Petitioner Mr. Golegaonkar would submit that there are no reasons worth the name in the impugned order

justifying the non-consideration of the caste validity certificates issued to the near relations of the Petitioner from the paternal side. It was the submission of Mr. Golegaonkar that the said validity certificates have been issued to the near relations of the Petitioner pursuant to the orders passed by the Division Benches of this Court. It was further the submission of Mr. Golegaonkar that the tribe claim of the Petitioner has been erroneously rejected, by applying the area restrictions theory to the case of the Petitioner.

6 Per contra the Learned AGP Mr. Samant would seek to justify the impugned order passed by the STCS Committee. However, in the teeth of the validity certificates issued to the near relations of the Petitioner from the paternal side, the Learned AGP could not defend the impugned order with any deal of conviction.

7 We have heard the Learned Counsel for the parties and have bestowed our anxious consideration to the rival contentions. The issue that arises whether the Petitioner has been able to substantiate his tribe claim as belonging to Thakur-Scheduled Tribe. We would have to address the said issue firstly from the angle of the documents produced by the Petitioner. It is trite that in matters of caste/ tribe claim the pre-constitution documents have greater probative value than the post constitution documents. In the instant case as indicated hereinabove, the Petitioner had produced the entry in the

school register in respect of his father of the year 1934 which indicates that in the caste column the entry is of “Thakur”. The Petitioner has also produced a registered Sale Deed entered into by his grandfather Bhursing Vedu Thakur which is of the year 1926 in which document also against the name of his grandfather the caste is mentioned as “Thakur”. As indicated above, in the report of the Vigilance Cell the aforesaid documents have not been adversely commented upon and in fact the Vigilance Cell report can be said to be in favour of the Petitioner on the said aspect. Though there are other documents on which the Petitioner has relied upon in support of his tribe claim, we have referred to the aforesaid documents as they are pre-constitution documents and their efficacy and probative value stands on a different footing than the documents of recent origin. What we find from the impugned order is that the said documents have not been given due weightage by the STCS Committee in the process of adjudicating upon the tribe claim of the Petitioner.

8 Now coming to the caste validity certificates which have been issued to the Petitioner’s real brother Arvindkumar Rupsing Thakur. The caste validity certificate has been issued to Arvindkumar Rupsing Thakur is pursuant to the judgment and order dated 5-12-2003 passed by a Division Bench of this Court in a group of Petitions amongst which was Writ Petition No.5865 of 1985 filed by Arvindkumar Thakur. In so far as the Petitioner’s real paternal cousin Vasant Bhimsing Suryawanshi is concerned, the caste validity certificate

has been granted to him by the Caste Scrutiny Committee on 19-4-2003 in view of the order passed by this Court in Writ Petition No.856 of 1998 which was a Petition filed by the said Vasant Suryawanshi. Hence the tribe claim of the aforesaid two paternal relatives of the Petitioner has received the seal of approval of this court. The said documents have been brushed aside by the STCS Committee by making reference to the observations appearing in Madhuri Patil's case without there being any foundation for the same in so far as the proceedings relating to the Petitioner are concerned. It is also required to be noted that the case of the Petitioner's brother and his cousin Vasant are post the judgment of Madhuri Patil's case and therefore the efficacy of the said caste validity certificates, cannot be questioned by applying the yardsticks which are sought to be applied by the STCS Committee. In the facts of the present case the course of action followed by the STCS Committee would have the effect of people in the same family belonging to different castes and tribes.

In so far as the application of the theory of area restrictions is concerned, the reliance placed by Shri Golegaonkar on the order passed by the Apex Court in Civil Appeal No.2336 of 2011 in Jaywant Dilip Pawar Vs. State of Maharashtra & Ors which is decided along with SLP Nos.2210 of 2010 and 2215 of 2015 with CA No.6346 of 2011, seems to be apposite. In the said cases also the area restrictions were sought to be applied to the case of the Appellants therein and the High Court had endorsed the view taken by the concerned Caste Scrutiny Committee rejecting the tribe claim of the Appellants

therein. The relevant extract of the order passed by the Apex Court dated 8-3-2017 is reproduced hereinunder for the sake of ready reference:

The short point raised by Learned counsel for the appellants in these appeals is that after “The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976” (Act No.108 of 1976) was published in the Gazette on 20.09.1976, the area restriction of Scheduled Tribes in the State of Maharashtra for the Thakur community has been deleted and all members of Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar community are treated to be Scheduled Tribes. The Scrutiny Committee has negated the claim of the appellants on the ground that the relatives of the appellants were not residents of the areas mentioned in the Presidential Order, 1956 and further they were not able to give any details of customs and traditions being observed by the said community.

In our considered opinion, that is wholly irrelevant. The appellants have only to establish that they belong to the community mentioned at Serial No.44 of Part IX of Second Schedule of Act 108 of 1976.

9 In the light of the forgoing discussion, we are of the view that the impugned order passed by the STCS Committee is required to be interfered with. The impugned order is accordingly quashed and set aside. The STCS Committee is directed to issue the caste validity certificate to the Petitioner as belonging to Thakur-Scheduled Tribe, as expeditiously as possible and not later than 30-11-2018.

10 Needless to state that if the retiral benefits have been denied to the Petitioner on the ground that his tribe claim has been invalidated, the same

would not survive as a ground to deny him the said benefit. The employer would accordingly take corrective action and pay the Petitioner his retiral benefits on the Petitioner producing the validity certificate within 8 weeks of such production. As a result of the instant judgment the Departmental Proceedings initiated against the Petitioner on the ground of having not produced the caste validity certificate would also stand set aside. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

11 In view of the disposal of the above Petition, the above Civil Application does not survive and to accordingly stand disposed of as such.

[NITIN W. SAMBRE, J]

[R.M.SAVANT, J]