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

WRIT PETITION NO. 6383 OF 2018

Somnath Digamber Gaikwad.

... Petitioner.

V/s.

State of Maharashtra & Ors.

... Respondents.

Mr. R.K. Mendadkar for the Petitioner.

Mr. V.S. Gokhale, 'B' Panel Counsel for the State – Respondents 1 & 2.

Ms. Oorja Dhond for Respondent 3 – MCGM.

***CORAM : R.M. Borde and
Prithviraj K. Chavan, JJ.***

DATE : 13th August, 2018.

P.C. :-

Heard.

2. The Petitioner claims to be belonging to Thakar Scheduled Tribe and has been employed as a security guard with the Municipal Corporation of Greater Mumbai as against the post reserved for Scheduled Category. The Tribe Certificate issued to the

Petitioner by the Competent Authority was referred to Respondent No. 2 – Committee for verification. The Scrutiny Committee, on consideration of the report of the Vigilance Cell as well as the documentary evidence produced by the Petitioner before the Committee and after extending the opportunity of hearing to the Petitioner recorded the finding that the Petitioner does not satisfy the affinity test and after due verification of the claim of the Petitioner and on consideration of the documentary evidence as well as the report of the Vigilance Cell, the Committee proceeded to direct invalidation of the Tribe Certificate issued to the Petitioner and the same has been cancelled and confiscated.

3. In order to substantiate his claim the Petitioner had placed reliance on the documentary evidence in the form of School Leaving Certificate issued to two uncle of the Petitioner by name Narayan Raghunath Thakar and Adinath Raghunath Thakar wherein entry in respect of their caste has been recorded as Thakar (Hindu). In the School Leaving Certificate the date of entry in the School have been recorded as 04.09.1929 and 09.09.2019 respectively. The Petitioner also places reliance on the School Leaving Certificate issued to his grandfather by name Raghunath Ananda Thakar wherein entry in respect of caste have been recorded as Thakar and the date of admission in the school is 10.03.1891. The Petitioner also places reliance on the School Leaving Certificate of his

father by name Digambar Raghunath Gaikwad and in the certificate the entry in respect of his caste has been recorded as Hindu Thakar and the date of admission to the School is recorded as 18.04.1934. The Petitioner contends that the above referred documentary evidence is sufficient to conclude that the Petitioner belongs to Thakar Scheduled Tribe. It has not been found that the documentary evidence are either fabricated or the entries therein are manipulated. So far as the school entries of the blood relations of the Petitioner is concerned, the caste is recorded in the documents as either Thakar or Hindu Thakar. The Vigilance Cell has conducted an enquiry and recorded statements of the members of the society. The Vigilance Cell comprises of an expert in the tribal matters who is conversant with the traits and characteristics of the tribe. The Vigilance Cell has reported that the Petitioner does not appear to be belonging to Thakar Scheduled Tribe. The original place of residence of the ancestors of the Petitioner is Chikhalthan, Taluka Karmala, District – Solapur. The Petitioner appears to have affinity with Bhat Thakar Community which is not included in Scheduled Tribe category. The statement of the Petitioner and his relations is not in conformity with the ethnological traits and characteristics of the Thakar Tribe. The Petitioner himself in his deposition before the Committee on 18.01.2017 has stated that he belongs to 'Bhat Thakar' Community and his ancestors were balutedars. The Committee thus has concluded that the Petitioner belongs to 'Bhat

Thakar' Community as has been admitted by him which is not included in Scheduled Tribe category. The Petitioner does not answer the affinity test and as such his claim cannot be considered favourably. Apart from this aspect the Scrutiny Committee has also noticed that the ancestors of the Petitioners were not admittedly belonging to the restricted areas where tribal community is normally found. It is also one of the factors to be taken into account while considering the affinity of a person with the concerned tribe. The Committee as such proceeded to reject the claim.

4. We have perused the order passed by the Caste Scrutiny Committee and we do not find any infirmity in the order. The documentary evidence produced by the Petitioner admittedly records the entries in respect of the caste in the school record as Thakar Hindu or Thakar. In the matter of ***Murlidhar Ramkrishna Gathe v/s. State of Maharashtra*** reported in ***2007(3) Bom.C.R. 176***. The Division Bench has observed “ this Court has judicially recognized that the word or surname “Thakur” is shared by both forward and backward communities. The burden of proving that the person belongs to a S.T./S.C./O.B.C lies heavily on the person seeking the certificate. The role of the Vigilance Committee is to conduct an enquiry to ascertain and verify the material produced by the candidate including as to traits and characteristics of tribe. If the material and information of traits, characteristics, customs, deities and other information did not relate to Thakur S.T., further

verification of that material normally would be uncalled for. The law, as declared in *Madhuri Patil* would require verification of the information given. If that information was associated with the Thakur S.T., then to rule out that the information given was based on bookish knowledge, the vigilance enquiry is required to be conducted to establish that the evidence produced is genuine. Once the committee with whom are associated experts, conversant with the anthropological and ethnological traits and other characteristics of the community, rule out the association of the Petitioner to that community, the burden is on the Petitioner to establish otherwise.”

5. In the instant matter the Petitioner has failed to establish his affinity with the S.T. community. The Petitioner has admitted in his own statement before the Committee that he belongs to Bhat Thakar community which is not associated or part with the Scheduled Tribes. The report of vigilance enquiry also does not support the claim of the Petitioner.

6. In an instructive article on the subject entitled “Pseudo-Tribalization: An Anthropological Perspective” is written by Dr. Robin D. Tribhuwan, an Anthropologist associated with the Tribal Research & Training Institute at Pune. Reference to similarities of nomenclatures between tribal and non-tribal communities. So far as the Thakar is concerned, entry no.3 in the chart records :

<u>Tribal Community</u>	<u>Non Tribal Community</u>
“Thakur/Thakar Ka-Thakur/ Ka-Thakar/ Ma-Thakur/ Ma Thakur	Thakur (including Bhat, Brahmabhat, Thakur, Kshatriya Thakur, Rajput Thakur, Sindhi Thakur, Maratha Thakur, Pardeshi Thakur)”

7. The Petitioner himself claims that he belongs to Bhat Thakar which is a non-tribal community. Apart from this, it must be noticed that the Petitioner is resident of Chikhalthan No.1, Taluka - Karmala, District – Solapur, whereas the origin of the Thakar/Thakur is normally restricted to five districts viz. (1) Ahmednagar District in Akola, Rahuri and Sangamner Taluka, (2) In Kolaba District (now Raigad), Karjat, Khalapur, Pen, Panvel and Sudhagad Talukas and Matheran, (3) In Nashik District Igatpur, Nashik and Sinnar Talukas, (4) In Thane District Thane, Kalyan, Murbad, Bhiwandi, Vasai, Wada, Shahapur, Palghar, Jawhar and Mokhada Talukas. It is not the case of the Petitioner that the family migrated to Khamgaon from any of these areas. The Petitioner contends that after removal of area restrictions, it is not necessary for him to establish that his family has migrated from the restricted areas of origin. Reliance is placed on the judgment in the matter of *Dinesh Ramesh Thakur v/s. State of Maharashtra and Ors.*

reported in **2013(3) Bom.C.R. 463**. In the aforesaid matter the Scrutiny Committee held that the removal of area restrictions by Act No.108 of 1976 would not enable any person belonging to any tribe/community to claim the status of Thakur Scheduled Tribe and that he will have to establish that he and his predecessors have migrated from the earlier prescribed area. The decision of the Scrutiny Committee in the aforesaid matter was under challenge before the Division Bench. The Division Bench, on consideration of various judgments of other Division Benches, dealt with the issue and relying upon Full Bench judgment decision in the matter of **Shilpa Vishnu Thakur** has drawn the conclusion as recorded in paragraph 37 of the judgment, which reads thus :

“37. We need not dilate over the issue as, in our view, upon removal of the area restriction by the amending Act of 1976, the persons belonging to a particular Scheduled Tribe, though residing in different areas than earlier specified or migrated from the said area, can also claim to be belonging to the same Scheduled Tribe. In our view, however, the respondent Tribe Scrutiny Committee is not prohibited from applying the test of original place of residence as one of the factors to be considered in arriving at a decision of validation of the claim of the claimant in view of the clear pronouncement of law in Full Bench decision of this Court in Shilpa Vishnu Thakur vs. State of Maharashtra & Others, quote (supra).”

8. The decision of the Division Bench in the matter of ***Dinesh Ramesh Thakur*** interpreting Full Bench judgment in the matter of ***Shilpa Vishnu Thakur***, have been held to be the correct proposition of law. The Full Bench of this Court in the matter of ***Yogita Anil Sonawane v/s. State of Maharashtra*** reported in ***2018(1) All MR 76*** has held that one of the important factors for tribe Scrutiny Committee to consider would be to find if or not the applicant is or his ancestral resided in earlier scheduled areas. It may not be the sole criteria but however is one of the important consideration while dealing with the issue.

9. In the instant matter, the Petitioner, on the basis of the documentary evidence, has failed to establish that he belongs to Thakar S.T. Similarly, the vigilance report also does not support the claim of the Petitioner. He has failed to demonstrate affinity with the Thakar S.T. Apart from this, the Petitioner himself has stated before the Committee that he belongs to 'Bhat Thakar' Community which admittedly is not part of Thakar S.T. The Petitioner has placed reliance on the judgment in the matter of ***Motilal s/o. Namdeo Pawar v/s. Scheduled Tribe Certificate Scrutiny Committee, Nashik and Ors.*** reported in ***2017 SCC OnLine Bom 9778*** as well as the decision in the matter of ***Jaywant Dilip Pawar v/s. State of Maharashtra & Ors. in Writ Petition No. 2152 of 2007*** decided on 26th September 2017. The proposition of

law enunciated in the aforesaid judgment is also in tune with the discussion as recorded above and more specifically, is inconsonance with the law laid down by the Full Bench in the matter of ***Shilpa Thakur*** as well as ***Ku. Yogita Anil Sonawane***.

10. For the reasons recorded above, no interference is called for in the decision recorded by the Scrutiny Committee. The Petition is devoid of substance and does not deserve favourable consideration. The Petition stands rejected.

(Prithviraj K. Chavan, J.)

(R. M. Borde, J.)

Jyoti
Prakash
Pawar

Digitally
signed by Jyoti
Prakash Pawar
Date:
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