

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8400 OF 2012
WITH
CIVIL APPLICATION NO. 2305 OF 2018

Deepak S/o Madhukar Wankhede

Age : 34 years, Occ : Service

R/o N-3, M-16, Shivaji Chowk,

Old Cidco, Nashi Dist. Nashik

.. Petitioner

Vs.

1. Scheduled Tribe Certificate

Scrutiny Committee,

Nashik

Gadkari Chowk, CBS Road,

Nashik Dist. Nashik

Through its Member Secretary

2. Zilla Parishad,

Nashik Dist. Nashik

Through its Chief Executive Officer

.. Respondents

Mr.Mahesh Deshmukh, for the Petitioner.

Mrs. S.D.Vyas, 'B' Panel Counsel for Respondent No.1.

Mr.Mainak Adhikary h/f Mrs.Anamika Malhotra, for Respondent No.2.

CORAM : B.R.GAVAI &

M.S.KARNIK, JJ.

DATE : 26th OCTOBER, 2018

ORAL JUDGMENT (PER : M.S.KARNIK, J) :

. Rule. Rule is made returnable forthwith. Heard by

consent.

2. By this Petition filed by the Petitioner under Article 226 of the Constitution of India, the Petitioner challenges the judgment and order passed by the Respondent No.1 – Scheduled Tribe Scrutiny Committee (for short 'Committee'), Nashik dated 09/07/2012 invalidating the caste claim of the Petitioner.

The brief facts of the case in a nutshell are as under :

3. The Petitioner was issued with the caste certificate by the Sub-Divisional Magistrate, Nashik dated 19/07/1990 as belonging to 'Thakur' Scheduled Tribe. The Petitioner was appointed as a Primary Teacher under the Zilla Parishad, Ratnagiri after following due procedure as against the seat reserved for Scheduled Tribe category. The Petitioner's caste claim was referred for scrutiny to the Respondent No.1 – Committee. The Petitioner apart from other evidence relied upon the school record pertaining to his grandfather and father

of the years 1922 and 1949 in which the caste is indicated as Thakur. The Petitioner had also produced the validation certificate in respect of his uncle Shri Gulab Bhagwan Thakur.

4. The Vigilance Cell conducted an enquiry and submitted the report dated 19/06/2012. By the impugned order the caste claim of the Petitioner came to be invalidated. Assailing the order passed by the Caste Scrutiny Committee, the learned Counsel for the Petitioner submitted that the Petitioner having relied upon the School Leaving Certificate of his grandfather having left the School on 01/09/1926 and the School Leaving Certificate of his father wherein the caste is recorded as Hindu – Thakur, which entries are admittedly pertaining to the pre-constitutional period has a higher degree of probative value attached to it. In his submission, the Scrutiny Committee has mainly on the basis of the affinity test and on the basis of area restrictions has rejected the caste claim.

5. Learned AGP on the other hand supported the order

passed by the Scrutiny Committee and for the reasons recorded by the Scrutiny Committee submits that the present Petition is devoid of any merits.

6. Heard learned Counsel. We have perused the impugned order passed by the Committee. Respondent No.1 – Committee is of the opinion that the claim deserves to be rejected as the Petitioner has not been able to succeed in the affinity test and has not been able to establish his tribe claim as belonging to the Thakur community.

7. In our opinion, the order passed by the Scrutiny Committee is not sustainable and deserves to be set aside for the following reasons.

8. The Hon'ble Apex Court in the case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and ors. (2012) 1 Supreme Court Cases 113** has clearly held that the affinity test may be used to corroborate the documentary

evidence and should not be the sole criteria to reject a claim. The Apex Court has held that the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe.

9. The Hon'ble Apex Court has further held that while dealing with the 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.

10. In the present case, the Petitioner has relied upon the School Leaving Certificate of his grandfather where the caste is recorded as Thakur. This School Leaving Certificate indicates that the Petitioner's grandfather was admitted to the School on 17/06/1922 and has left the school on 01/09/1926. Even in respect of the School Leaving Certificate of the Petitioner's father the caste recorded as Thakur. In the said School Leaving Certificate, it is recorded that the Petitioner's father was

admitted on 02/03/1949 and left the School on 03/05/1958. Even the Vigilance Officer does not report that the documents produced by the Petitioner in support of his claim are false. We find that the documentary evidence produced by the Petitioner in support of his caste claim has been brushed aside by the Committee holding that the mere mentioning as caste as Thakur in School Leaving Certificate or any other record cannot be the sole ground to establish that the Petitioner belongs to the Thakur Scheduled Tribe. The Committee has thus proceeded to invalidate the caste claim primarily only on the ground that the affinity test and the area restrictions.

11. As indicated earlier, the Apex Court in the case of **Anand** (*supra*) has held that affinity test cannot be regarded as litmus test and the pre-constitutional documents have greater probative value. Even the Vigilance Cell do not find that these pre-constitutional documents relied upon by the Petitioner in support of his claim are false. In our opinion, documentary evidence produced by the Petitioner was not examined and

appreciated in its proper perspective and the Committee has laid undue stress on the affinity test. Thus, the decision of the Caste Scrutiny Committee to cancel and confiscate the caste certificate is un-tenable. In this view of the matter, the present Petition deserves to be allowed. Rule is made absolute in the following terms :-

ORDER

- I] The impugned order dated 09/07/2012 is quashed and set aside.
- II] It is held and declared that the Petitioner belongs to “Thakur” Scheduled Tribe.
- III] Respondent – Scrutiny Committee is directed to issue Validity Certificate in favour of the Petitioner within a period of two weeks from today.
- IV] Needless to state that all consequential benefits shall follow.

V] In the facts and circumstances of the case, no order as to costs.

VI] In view of disposal of Writ Petition, Civil Application does not survive and accordingly stands disposed of.

(M.S.KARNIK, J.)

(B.R.GAVAI, J.)