

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8763 of 2018

Kum. Sweta Mohan Gaikwad .. Petitioner
Versus
State of Maharashtra & ors .. Respondents
...
Mr. R.K.Mendadkar for the petitioner.
Mr. S.B. Kalel, AGP for the State.

...
CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.

DATED : 8th AUGUST 2018

JUDGMENT (Per BHARATI H. DANGRE, J)

1 Being aggrieved by the impugned order dated 24th July 2018 passed by the Scheduled Tribe Certificate Scrutiny Committee, Pune, thereby invalidating the claim of the petitioner as belonging to Thakar Scheduled Tribe, the petitioner has approached this Court by filing the present Writ Petition. The petitioner, apart from praying for quashing and setting aside the said impugned order, has also sought directions to the respondent no.2 Committee to issue certificate of validity in favour of the petitioner and declare her to be

belonging to Thakar – a recognized Scheduled Tribe. The petitioner is desirous of prosecuting her studies for an MBA degree course and the respondent no.3 Directorate of Technical Education has already admitted the petitioner to the said course against a seat reserved for Scheduled Tribe category in the respondent no.4 college, subject to production of caste validity certificate on or before 10th August 2018. The Committee, by the impugned order passed on 24th July 2018, has rejected the claim of the petitioner, resultantly, she is held not entitled to retain the seat allotted in respondent no.4 College.

2 In order to substantiate her claim of belonging to Thakar Scheduled Tribe, the petitioner tendered, before the Committee, documentary evidence in form of the entries recorded in the school documents of her ancestors as early as 1916-1917 recording the caste in caste column as 'Thakar'. She placed reliance on the documents in favour of her cousin great grandfather, cousin – cousin grandfather, grandfather and would submit that the said record produced by her is of the pre-constitutional era and the emphasis of the petitioner is that the

said documents carry a great probative value and ought to have been given due weightage by the Committee while examining the claim of the petitioner. The petitioner also placed reliance on four validity certificates issued by the Pune Committee in favour of her blood relatives and would rely on the judgment of this Court in case of *Apoorwa Nichale*. The first validity certificate in point of time being issued in favour of her cousin-cousin aunt i.e. Pushpavati Sadashiv Gaikwad followed by issuance of validity certificate in favour of her cousin brother Keshav Dattatraya Gaikwad, cousin sister Sujata Chandrashekhar Gaikwad and uncle Chandrashekhar Gopal Gaikwad. It is the case of the petitioner that the documentary evidence tendered by her before the Committee was sufficient enough to conclude that the petitioner belongs to Thakar - a recognized Scheduled Tribe and she is eligible for availing the status of the said Tribe for the purposes of her education.

3 We have heard Shri Mendadkar, the learned counsel appearing for the petitioner and Shri Kalel, learned AGP representing the respondent authorities including the

respondent no.2 Scheduled Tribe Certificate Scrutiny Committee.

Perusal of the impugned order would reveal that the Committee had made over the claim of the petitioner to the Vigilance Cell and had collected several entries in the school Registers of the ancestors of the petitioner. This included the oldest entry in favour of the cousin great grandfather of the petitioner Sadashiv Rama Thakar, who was admitted in the school on 15th July 1916 and the caste/sub-caste is recorded as 'M.Thakar'. This is followed by another entry in favour of the same person which is recorded as on 1st May 1923 with the same caste being mentioned. One entry which the Committee was able to trace during Vigilance enquiry is in respect of cousin cousin grandfather of the petitioner i.e. Dattatraya Baloba Gaikwad where the date of entry in the school is recorded as '1st April 1932' and the caste is mentioned as 'Thakar Hindu'. Then, there is an entry in favour of grandfather of the petitioner - Gopal Bansi Gaikwad and he is shown to be admitted in the school on 1st April 1933 and the caste is

recorded as 'Thakar Hindu'. The Vigilance Cell also collected the documents in favour of cousin great great grandfather, Raghunath Ananta Thakar and one Dagdu Rama Thakar - cousin grandfather and the Vigilance Cell has reported that the caste is recorded as 'Marathi'. As far as the entries in respect of death are concerned, the Committee has taken note of two documents in favour of the cousin great great grandfather – Awai Kom Ananta Thakar and cousin great great grandfather Rangunath Ananta Thakar where the caste is recorded as 'Thakar'. Another entry which the Vigilance Cell has obtained from Tahsildar, Karmala, District Solapur is in respect of great great great grandfather where the date of death is recorded as '19th May 1917' and the caste is recorded as 'Thakar' and the entry is of one Ananta Sakharam Thakar.

4 The Vigilance Cell report was forwarded to the Committee and the Committee issued a show cause notice to the petitioner and sought an explanation. In the reply submitted by the petitioner, the petitioner denied the relationship with Shri Waman Shankar Thakar, Gulab Shankar

Thakar who have been depicted as relatives of the petitioner. The petitioner has also denied relationship with Rajan Dashratha Thakar whose entry is recorded as 'M.Thakar'. According to the petitioner, they are not the relatives of the petitioner and do not find place in the genealogical tree brought on record by the petitioner. Further, the entry in respect of Awai Kom Ananta Thakar where the caste is recorded as 'M.Thakar' is also denied by the petitioner on the ground that he is not the relative of the petitioner from the paternal side. The petitioner has placed reliance on the entries relating to her blood relatives and she had submitted in her reply that the Vigilance Cell did not bring on record any material disputing the genuineness of the said documents and there is no allegation of any tampering or falsification of records, and hence, she was entitled for the status of Thakar, Scheduled Tribe. As far as the affinity test is concerned, she placed reliance on the judgment of the Hon'ble Apex Court in case of *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims & ors*¹ and submitted to the Committee that affinity test

¹ 2012(1) SCC 113

is not the sole test to determine the social status and the Committee would then be required to take into account the oldest documentary evidence recording the caste to grant the claim of the petitioner.

5 The Committee proceeded to examine the claim of the petitioner and perusal of the impugned order would reveal that the Committee has referred to all the documents in the form of the school entries in respect of the blood relatives of the petitioner as well as the entries in respect of birth and death which were verified by the Committee through the Vigilance Cell. It also refers to the statement of Shri Mohan Gopal Gaikwad i.e. of the father of the petitioner which was recorded during the Vigilance Cell inquiry in relation to the cultural traits and characteristics of the community. The Committee concluded that the petitioner was not able to establish cultural affinity with Thakar Scheduled Tribe as the traits and characteristics revealed by the petitioner do not match with that peculiar to Thakar, Scheduled Tribe.

6 As far as the documentary evidence is concerned, the Committee recorded a finding that the petitioner was not able to unequivocally prove her claim on the basis of the said documents. For arriving at such a conclusion, the Committee has cited no reasons specifically when the petitioner/claimant had denied relationship with those relatives who were attempted to be passed on by the committee as her blood relatives, shown by the petitioner, where the caste was recorded as 'M.Thakar'. In respect of the other old documents, the Committee did not make any comments and cited no reason to cast any doubt on such entries which included the entry of Gopal Bansi Gaikwad who, admittedly, is the grandfather of the petitioner and the said entry is recorded on 1st April 1933 and caste is recorded as Thakar. Further, an entry in respect of cousin cousin grandfather Dattatraya Baloba Gaikwad where the caste is recorded as 'Thakar Hindu' on 1st April 1933, is also not dealt by the Committee. The pre-constitutional documents where the caste is clearly recorded as 'Thakar', assumes great importance, since the time of recording the entries, Scheduled Tribe order was not in force and there was no reason for the

ancestors of the petitioner to record such an entry merely with an intention to grab the benefits flowing from recording of such a Tribe in contemplation of it being recognised as a Scheduled Tribe. These entries were recorded in its natural course as caste of a person and no doubt can be expressed about these entries. The Committee has not levelled any allegation about any manipulation or fabrication of these entries and they ought to have been treated as pre-constitutional entries having great probative value, and , ought to have been relied upon by the committee, specifically when the petitioner had established her relationship with the said persons.

7 The petitioner had also placed reliance on the validity certificates and the Committee referred to a validity certificate of Pushpavati Sadashiv Gaikwad, cousin cousin aunt of the petitioner. The Committee, in the impugned order recorded that the claim of the aunt was verified by the Caste Scrutiny Committee of Pune. However, at that time, the entries of M.Thakar of the year 1916, 1923, Marathi Thakar of 1917, 1922, had not surfaced and rather she had annexed

along with her claim the documents in favour of her father-in-law Shri Bhanudas Maruti Londe. The Committee recorded that the caste flows by birth and from the father, and this fact was ignored while granting claim of Smt.Pushpavati Sadashiv Gaikwad and on the basis of the certificate issued in her favour, the validity certificates were issued in favour of Keshav, Sujata and Chandrashekhar Gaikwad, who are the relatives of the petitioner. It is alleged by the Committee that all the said validity holders have been issued with a show cause notice as to why the validity granted in their favour is not liable to be cancelled.

8 The petitioner has placed on record the genealogical tree and perusal of the same would reveal that the petitioner is daughter of one Mohan Gopal Gaikwad. The entry in the school register of Gopal Bansi Gaikwad, who is father of Mohan recorded on 1st April 1933, clearly records the caste as Thakar Hindu. Shri Gopal Bansi Gaikwad who is the grandfather of the petitioner and an entry recorded in his favour in the year 1933 clearly reflects the caste as 'Thakar' and there is no reason given

by the Committee to doubt this entry. The entry in favour of Sadashiv Rama Thakar who is shown to be the cousin great grandfather of the petitioner where the entry is recorded as 'M.Thakar' is heavily relied upon by the Committee to dispute the claim of the petitioner, would reveal that there is no ancestor Rama, as shown in the genealogical tree and father of Sadashiv Gaikwad is "Ramchandra Gaikwad" and not "Rama". Perusal of the genealogical tree produced by the petitioner at page 43 of the petition would reveal that the relationship which the petitioner has denied in her response to the show cause notice issued by the Scrutiny Committee on obtaining the Vigilance Cell Report, the name of those persons on whose entries the Committee has relied on, do not feature in the genealogy at all and therefore, the petitioner is justified in denying her relationship with the said persons. The claim of the Committee that Pushpavati had relied upon the documents of her father-in-law also appears to be doubtful since Pushpavati must have also relied upon those documents of the ancestors, on which the petitioner has placed reliance and in addition, it is possible that she has relied on the documents of

her father-in-law. However, that itself cannot make the claim of Pushpavati doubtful and since now the Committee has already issued show cause notice to Pushpavati, it is open for the Committee to re-open her claim and re-examine the same. However, that cannot be the basis for denying the benefit to the petitioner, since she is supported by the documentary evidence in form of old entries of her own grandfather and great great grandfather reflecting the caste as 'Thakar – Scheduled Tribe'.

We do not understand what prohibited the Committee from proceeding with the inquiry which it had initiated against Pushpavati and also Keshav, Sujata, Chandrashkhar, who according to the Committee were granted validity based on the validity of Pushpavati. It is open for the Committee to proceed with the said inquiry which it had initiated and if on conclusion thereof, the Committee arrives at a finding of some fraud being played by the validity holders, the petitioner will also have to meet with the same fate and then, she would not be entitled to hold on her claim of Thakar Scheduled Tribe. However, at present, we do not see any sufficient material to deny the claim to the petitioner on the

basis of the documentary evidence which she has independently produced on record apart from validity certificates in favour of her cousin cousin Aunt Pushpavati and her cousin brothers and sisters.

9 As a result of the above discussion, Writ Petition succeeds. Rule is made absolute in terms of prayer clauses (a) and (b). The certificate of validity shall be issued to the petitioner on or before 9th August 2018. The learned AGP to communicate this order to the Committee forthwith.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)

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