

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

WRIT PETITION NO. 8843 OF 2018.

Neeraj Sanjay Thakur minor through
father and natural guardian Sanjay
P. Thakur

... Petitioner

Vs

1 State of Maharashtra & Ors.

... Respondents

Mr. R.K. Mendadkar for the Petitioner.

Mr. Vikas Mali, AGP, for the Respondent-State.

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

THURSDAY, 09TH AUGUST, 2018

P.C. :

1 By this writ petition under Article 226 of the
Constitution of India, the petitioner challenges an order passed on
1st August, 2018, by the second respondent-Committee.

2 By this order, the claim of the petitioner as belonging
to “Thakur Scheduled Tribe” has been invalidated and the caste
certificate issued on 9th August, 2017, to the petitioner is treated

as cancelled.

3 The petitioner before this Court is a student. His father Sanjay Punilal Thakur is the person through whom he has filed this petition complaining that he was desirous of studying further and, therefore, appeared for the National Eligibility-cum-Entrance Test (NEET-UG2-018) Examination. The result of this examination, held at an All India level, was declared on 4th June, 2018. The petitioner, therefore, claimed admission in the Undergraduate degree in Pharmacy course. The petitioner states that he is admitted, but on the condition that he should produce a certificate of validity on or before 10th August, 2018.

4 The petitioner's counsel Mr. R.K. Mendadkar says that the petitioner has lost the opportunity to take admission against a reserved seat in the Under graduate Health Science Courses because he could not produce the certificate of validity on or before 3rd August, 2018. Now, the only opportunity to the petitioner is to get admission in the Pharmacy course. Even that would be lost because the Committee has firstly delayed the process and secondly has invalidated the claim by the impugned

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order.

5 The petitioner is also trying to take his chances for the MBBS degree course as Mr. Mendadkar, on instructions, states that there is going to be a mop-up round. That mop-up round concludes the process by 18th August, 2018.

6 For these reasons, he would submit that there is an urgency. Mr. Mendadkar would submit that in this case, the certificate of validity has been denied on untenable and flimsy grounds. The petitioner produced documentary evidence to show that the Committee has proceeded on a misconception insofar as the finding on Issue No.3. Though the certificates of validity have been granted to Harish Mansaram Thakur, Kishor Mansaram Thakur by this very Committee, the finding of fact is that these certificates of validity are obtained by a misrepresentation as to the claim itself. In other words, these persons kept back from the Committee the material which would indicate that the present petitioner's great grandfather, grandfather, cousin grandfather, paternal aunt, cousin uncle, uncle and father had their caste recorded as "Thakur" in the years 1919, 1946, 1954, 1953, 1986,

1970, 1979, 1981, 1919 and 1932. As against this, in the years 1970 and 1981, the cousin uncle Sukhdeo Dipchand Thakur and the present petitioner's father Sanjay Punilal Thakur mentioned their caste / tribe in the school leaving certificate as "Hindu - Thakur Other Backward" or "Hindu Thakur *etar magasvargiya*". Hence, this would demonstrate that there are certain persons who are passing themselves off as Thakurs though they belong to forward caste or are certainly not Thakur Scheduled Tribe.

7 Mr. Mendadkar would also draw our attention to the discussion in this regard on Issue No.1 at Internal Page 4 paragraph 18 to 20 of the impugned order to submit that the Committee was aware that it is important to verify whether the petitioner proves the claim as belonging to Thakur Scheduled Tribe listed at Sr. 44 in the List of Scheduled Tribes enlisted for Maharashtra State. If this was the position, then, no amount of reliance on Gazetteers published in the year 1880 and the Government Circulars would falsify the petitioner's claim. Pertinently, in none of the paragraphs has the Committee observed that the pre-constitutional or old records have been tampered with, in the sense, there is either interpolation or

overwriting or scoring off the material and relevant portion and inserting the word "Thakur" therein. In such circumstances, this is not a patent fraud or misrepresentation of facts. The old documents were always a credible and trustworthy evidence. They could not have been discarded so easily and casually.

8 Mr. Mendadkar would submit that the Committee has now and merely because this Court has been approached by the Tribals to protect their rights, vindictively decided to proceed against Harish Mansaram Thakur and Kishor Mansaram Thakur by issuing show cause notices to them and questioning their certificates of validity. Thus, no finality would ever be given to the scrutiny and verification and for generations together.

9 Upon such a serious complaint of Mr. Mendadkar, we inquired with Mr. Mali as to how the Committee has invalidated the claim though the petitioner's father Sanjay Punilal Thakur has been issued a certificate of validity. Mr. Mali, learned Assistant Government Pleader, would submit that at page 16 is the documentary evidence. In the documentary evidence and the entry pertaining to the petitioner's father as found in the school

admission certificate extract shows that on 19th June, 1981 his caste tribe is stated to be “Hindu Thakur *Etar Magasvargiya*”. Then, there is a cousin uncle in whose case as well the said person mentioned that he is “Hindu Thakur Other Backward” on 10th March, 1990., Hence, there is a shadow or ring of doubt or suspicion and the Committee was justified, therefore, in rejecting the claim.

10 On perusal of the writ petition and all the annexures thereto, including the impugned order, we are shocked and surprised as to how the Committee can now proceed against this family by targetting those persons who are either successors in the one branch in the family from a common ancestor or their children. It is evident that the petitioner's name is Neeraj Sanjay Thakur. The petitioner has, apart from the record pertaining to himself, stated that he is Hindu by religion and Thakur Scheduled Tribe. He gave the genealogy and family tree. It is evident from a perusal of this family tree that the common ancestor was Dipchand. Dipchand is the great grandfather of the petitioner. He had four sons. Punilal, Mansaram, Rajaram and Sukhdeo. The petitioner belongs to the branch of Punilal. Punilal is the

grandfather, Sanjay is the father and Sanjay has one daughter Siddhi and one son, namely, the petitioner. It is evident that from the branch of Mansaram, there are two certificate of validity holders. Kishor and Harish are both the cousins of the petitioner's father. Thus, they are the cousin uncles of the present petitioner. Mansaram himself was issued a certificate of validity pursuant to a detailed judgment of this Court delivered on 15th September, 2004, in Writ Petition No. 4156 of 1996. Now, the Committee feels that Mansaram's certificate and those of his sons is vitiated by a misrepresentation. Pertinently, the petitioner's grandfather is Punilal. In the school admission extract book of Punilal dated 1st July, 1946, the entry against the caste column is "Hindu Thakur". The great grandfather of the petitioner and the father of Punilal, Dipchand, mentioned his caste in the school admission extract as "Thakur" on 28th January, 1919. Then, there is another branch of Rajaram and Rajaram is son of Dipchand. In his school admission extract, the entry in the caste column is "Hindu Thakur" and this is dated 4th June, 1953. Pertinently, there is one more entry Thakur of one Rupchand. Insofar as Rupchand is concerned, it is stated that the said Rupchand is the cousin great grandfather of the petitioner

and his school admission extract carries the entry “Thakur”. It is dated 29th January, 1990. Then, one more entry pertaining to another cousin great grandfather bearing the same description on 2nd March, 1932. Thus, the petitioner's great grandfather and his cousin great grandfather may have been admitted to school on the same day, but in their case, the entry in the case of grandfather of the petitioner, the same entry follows in the year 1946. If there is no interpolation, or scoring off or tampering of these books, then, how historical data would assist in falsifying any claims has never been explained to us by any of these Committees. They are in the habit of picking up a stray sentence or an isolated observation in the judgments of the Hon'ble Supreme Court and this Court and proceed to falsify possibly every claim. They rely on Government Gazetteers as also Government Circulars. They prefer to rely on them and deliberately and intentionally ignore binding judgments. If Mansaram Dipchand Thakur has been held to a Thakur Scheduled Tribe on 15th September, 2004, by this Court on his Writ Petition No.4156 of 1996, then, we do not see how the Committee has woken up and has proceeded to go after Mansaram's branch on 31st July, 2018.

11 The Committee possibly is taking out its anger on those candidates and students who lay their claim as belonging to Thakur Scheduled Tribe, but their claims are not verified and scrutinized expeditiously. Resultantly, when they are about to lose their education and career prospects, they approach this Court. This Court directs the Committee to take up old files and dispose them off. This year we had been forced to request the learned Advocate General to intervene and on our intervention, we find that a drive was launched so as to clear off all pending files pertaining to those students who had appeared for NEET Undergraduate 2018 and were anxiously awaiting this certificate of validity so as to confirm or firm up their admissions. Till such certificates of validity are produced, their admission is not secure. Once our directions followed that of the Aurangabad Bench of this Court and made these Committees really functional, the wrath was visited on all candidates and majority of them armed with certificates of validity in their family belonging to Thakur Scheduled Tribe were picked up for such treatment. In their cases, we find a stereo-type and mechanical approach with identical reasoning. There is not a word here or there in the

reasoning of the Scrutiny Committee's orders. Surprisingly, the Scrutiny Committees are based at different places, namely, Nashik, Nandurbar and Pune. There is perfect understanding and harmony and every order of these Committees orders carries the same reasons with marginal difference here and there. Even the arrangement of paragraphs, after the framing of Issues and the findings, is a cut-copy-paste act. It is in these circumstances that the Committee at Nashik had to face severe consequences for this approach. Now, it is the turn of the Committee at Nandurbar.

12 We do not find any reason, much less, one justified by law, which would enable the Committee to discard this voluminous documentary evidence, including a judgment of this Court in the case of Mansaram. This is definitely a vindictive approach. We do not see how the Committee could have, on the specious plea of a Gazetteer or Government Circular reading to the contrary, refuse to issue a certificate of validity to the petitioner. Pertinently, the petitioner's cousin uncles have been issued the certificates of validity. The certificates of validity have been issued to their father Mansaram Dipchand Thakur. Following the case of Mansaram, his sons Kishor and Harish are

recipients of certificates of validity. This was indeed reliable, relevant and trustworthy evidence. Pertinently, Mansaram was a beneficiary or recipient of this certificate of validity pursuant to an adjudication by this Court. This certificate of validity has been issued on 15th September, 2004 and not yet been cancelled. In such circumstances, in the absence of any *prima facie* proof or material pertaining to fraud or misrepresentation, this certificate or the validity thereof could not have been denied to the petitioner.

13 The Committee's order is totally perverse, vitiated by non application of mind. It is a deliberate and intentional act of brushing aside binding judgments of this Court. It is also a product of total misreading and misinterpretation of a constitutional entry. It is also vitiated because reference has been made to extraneous and irrelevant material in the form of Gazetteers and Circulars of the Government which have no application to the present case at all.

14 Resultantly, we allow this writ petition. We quash and set aside the impugned order. We direct the Committee to issue a

certificate of validity forthwith to the petitioner. Our order and direction shall be complied by this Committee before 5:30 p.m. today.

15 In addition, the Members of the Committee shall pay costs, quantified at Rs.50,000/- each, to the petitioner. The costs be paid within two months from today. The learned Assistant Government Pleader shall communicate this order forthwith to the Committee.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.