

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

WRIT PETITION NO.9066 OF 2018

Kunal Umragosingh Chamargore
Since Minor, Through his Natural
Gurdian and Father,
Umraosingh Jaisingh Chamargore
R/at Flat No.410, Dutt Vihar,
Katraj, Pune.

...Petitioner

V/s.

1. The State of Maharashtra
Through its Principal Secretary,
Urban Development Department
Mantralaya, Mumbai- 400 032.
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurgngabad Division,
Aurangabad.
3. The Sub-Divisional Magistrate,
Aurangabad.
4. The Directorate of Technical
Education, Maharashtra State,
Mumbai. 3, Mahapalika Marg,
Opp. Metro Cinema, Dhobi Talao,
Chhatrapati Shivaji Terminus
Area, Mumbai.

5. The Principal
College of Engineering, Pune

...Respondents

Mr.S.B. Talekar i/b M/s.Talekar and Associates for the Petitioner.

Mr.S.B. Kalel, AGP for Respondent-State.

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

DATE : 13th AUGUST 2018.

JUDGMENT : (Per Smt.Bharati H. Dangre,J)

1. Rule. Rule made returnable forthwith.

2. The petitioner, a minor through his natural guardian has approached this Court being aggrieved by rejection of his claim as belonging to Thakur, Scheduled Tribe at the hands of the respondent No.2-committee at Aurangabad. In view of invalidation of his claim, the petitioner is not held eligible for availing benefits of belonging to a Scheduled tribe and the petitioner apprehends to be deprived of his admission in the College of Engineering at Pune. The respondent No.2-committee has invalidated the claim of the petitioner on 10.08.2018 and the petitioner has approached this Court on 13.08.2018.

In view of the urgency expressed by the petitioner and on realising the same, we have taken up the Writ Petition for final hearing. Hence, Rule. Rule made returnable forthwith. Heard finally by consent of parties.

3. The claim of the petitioner as belonging to Thakur,

Scheduled Tribe was forwarded to the Scheduled Tribe Scrutiny Committee, Aurangabad through the Principal of the institution in which the petitioner was pursuing his studies. In support of the claim, the petitioner relied on several documents of his forefathers reflecting the entries of Thakur, in their records, including the record of birth register etc. He also placed reliance on the validity certificates granted in favour of his father, uncle and real paternal aunt and requested the committee to confer the status of Scheduled Tribe upon him as as to enable him to pursue his education from the said category. The petitioner appeared before the committee personally, on receipt of the Report from Vigilance Cell and he also filled in the requisite information as sought in the questionnaire form, about the traditions, customs, rituals, names of gods, goddesses and deities etc. It is claim of the petitioner that the committee did not bother to consider material placed by him before the committee and has mechanically passed impugned order on 10.08.2018 thereby rejecting his claim as belonging to Thakur, Scheduled Tribe.

4. The learned counsel Shri.Talekar appearing for the petitioner would submit that the entire approach of the committee is revengeful and since the petitioner was keen and insistent on the

committee to scrutinize his claim expeditiously so that he could avail the benefit for the academic session 2018-2019, the committee has acted with vengeance. Shri.Talekar, would submit that the committee has issued validity certificate in favour of his father and once the father of the petitioner is declared to be belonging to Thakur, Scheduled Tribe and the said validity certificate exists since 28.12.1999, the committee has committed a gross error in denying the same social status to the petitioner, as a Scheduled Tribe. Shri.Talekar would also submit that committee has also misdirected itself to the claim of the petitioner as a Scheduled Tribe and has merely picked up the extracts from the judgment of the Hon'ble Apex Court and this Court and has randomly placed reliance on it, without applying the principle contained therein and by referring stray observations from the said judgments. He would therefore pray for quashing and setting aside of the impugned order dated 10.08.2018.

We had called the learned AGP Shri.Kalel, to produce the record of the Scrutiny Committee before us and Shri.Kalel has abided by the said direction. He would justify the order of the Caste Scrutiny Committee but he is unable to support the said order full heartedly in light of the settled principles of law which have been set out by the Hon'ble Apex Court as well as this Court in the catena

of judicial pronouncements.

5. With the assistance of the learned counsel for the respective parties we have perused the Writ Petition and also the impugned order. The petitioner has placed reliance on several documents wherein the caste of the predecessors of the petitioner has been recorded as Thakur. The committee had before it, the claim of two applicants namely Shri.Kunal Umraosingh Chamargore i.e. the petitioner and one Shri.Yashsingh Kishansingh Chamargore who is the cousin of the petitioner. The applicants before the committee had relied on extract of birth register in the name of their grandfather Jalsingh Umraonsingh Chamargore. The date on which the entry was effected in the Birth register is 30.10.1941 and the caste is recorded as "Thakur Adivasi". Apart from this, the petitioner has placed on record the entry in the Birth register of his father Umraonsingh recorded, on 21.11.1967 entered into the Register by his mother Sulochana Jalsingh Chamargore, where the caste is recorded as 'Thakur(ST)'. Other documents were also placed on record by the petitioner and the petitioner is aware that the said documents of recent times, where caste is recorded as 'Thakur' would not conclusively prove his claim, he would lay his emphasis on the oldest entry of the pre-constitutional period in

favour of his grandfather dated 30.10.1941 where the caste is recorded as 'Thakur Adiwasi'.

On receipt of such documents the claim of the petitioner was referred to the Vigilance Cell and the Vigilance Cell collected certain entries in form of school documents and has located the entry of Umraosingh Jalsingh Chamargore i.e. father of the petitioner recorded in Hutatma Pansre Primary School, Dharmabad as on 03.07.1972 where the caste is recorded as 'Thakur'. However, the committee has also procured one entry in favour of Kisansingh Jalsingh Chamargore from the same school i.e. Hutatma Pansre Primary School, Dharmabad in favour of the uncle of the petitioner and according to the committee the caste column reflects the caste as 'Rajput Bhamta, NT, Thakur'. The remark which the Vigilance Cell has made on this document reads thus :-

“In the caste column-'Rajput Bhamta, NT' is written and the said words are encircled and thereafter the word 'Thakur' is inscribed.”

6. The Vigilance Cell has also collected certain other entries of Rajput Bhamta and has claimed that the said entries belong to the members of community of the petitioner and has

described them as 'समाज बांधव'. As far as Revenue entries are concerned, it has referred to one entry which is found to be recorded with the Police Patil, Mukhed and it is a birth entry of Jalsingh Umraosingh Ramsingh Chamargore bearing the date as 30.10.1941 in favour of the grandfather of the petitioner where caste is recorded as 'Thakur'. However, the Vigilance Cell was not able to trace this document. The Research Officer who was part of the said Vigilance Cell, on recording the statement of the father of the petitioner Umarapsingh Jalsingh Chamargore arrived at a conclusion that the cultural traits festivals, gods, goddesses which were referred to by the deponent did not conclusively prove that the petitioner belongs to Thakur, Scheduled Tribe.

7. Based on the said Vigilance Cell Report the committee proceeded to determine whether the petitioner has been able to prove his claim of Scheduled Tribe on the basis of the documents tendered by him.

The observations of the committee makes a very interesting reading. As far as the extract of the birth register of the petitioner's father recorded on 21.11.1967 is concerned, the committee has found some interpolation in the word 'Jaisinghrao'

and 'Omsinghrao' and as far as caste column is concerned it had pertinently observed though initially it was recorded as Rajput, it is encircled and below it the words 'Thakur, S.T.' is found to be inscribed. This according to the committee makes the document doubtful. As far as the crucial document in favour of the grandfather of the petitioner where the date of birth is recorded as 18.10.1941 and the entry taken in the birth register of Mouje-Mukhed, Taluka-Khandar, District-Nanded, the committee observes that the place of birth of the grandfather of the petitioner Mouje-Mukhed, Taluka-Khandar, District-Nanded meaning thereby that he had travelled there, but this is not the place of usual residence of Thakur, Scheduled Tribe and therefore the committee casts a doubt about the said entry. The the Vigilance Officer indulges himself into ascertaining whether there are such similar entries of the year 1940, 1941 and 1942. However, it was informed that the original register books of these years are not available. On an inquiry with the Police Patil, Mukhed it was informed to the committee that the said extract produced by the petitioner was not transcribed by him and there was no such birth Register available. On this specious ground, the committee had discarded this document. As regards other documents of the father of the petitioner where the caste is recorded as Thakur the committee has recorded that from 1972 onwards all

the school documents of the petitioner's father, the caste is recorded as Thakur (Thakur), S.T. However, as it is revealed during the Vigilance Inquiry that the original entry in the caste column of the document of the father was 'Rajput Bhamta, NT' but it was later on changed to 'Thakur' and therefore the committee did not find this document to be reliable. As regards the uncle of the petitioner, Shri.Kisansingh Jalsingh Chamargore and aunt Kum.Jaishree Jalsingh Chamargore, the committee has noted that the original caste entry was 'Rajput' but it was subsequently changed to 'Thakur'. The Committee also placed reliance on documents of the other relatives of the petitioner where the caste is recorded as 'Rajput Bhamata'.

8. It is the specific case of the petitioner that the father of the petitioner Umraosingh Jalsingh Chamargore had approached this Court in the year 1985, calling in question the decision of the Caste Scrutiny Committee and the Appellate Authority, when he had sought admission in Medical College in Marathwada Region from Scheduled Tribe Category.

This Hon'ble Court by an order dated 12.06.1998 partly allowed the petition by setting aside the impugned order and remanded the matter to the committee to decide the Tribe claim by

affording an opportunity to adduce additional evidence to establish the cultural or customary traits of the members of the Thakur, Scheduled Tribe. In furtherance of the said order the committee examined the claim of the father of the petitioner in the backdrop of the cultural and ethnological affinity with Thakur, Scheduled Tribe and issued a validity certificate in favour of the father of the petitioner on 28.12.1999. On the basis of the said validity certificate, real paternal uncle Kisansingh Jalsingh Chamargore and real paternal Aunt Smt.Jaishree Jalsingh Chamargore were also conferred with the validity certificate by the said Respondent No.2-Committee.

The petitioner has never concealed the existence of Rajput entries in the records of his uncle and Aunt. The petitioner has admitted that the entries were so recorded, however, when the uncle and aunt of the petitioner approached the Education Officer, Zilla Parishad, Nanded stating that their caste was “Thakur” but it was wrongly recorded as “Rajput” and they submitted documentary evidence to support their claim of belonging to “Thakur” Scheduled Tribe, the Education Officer, Zilla Parishad, Nanded directed the Head Master, Hutatma Pansare Primary School, Dharmabad to correct entries in their school record by passing an order on 27.07.1981. The petitioner has placed on record the said order

passed by the Education Officer on 31.08.1981 at Exhibit 'X' to the petition. Perusal of the order would reveal that the Education Officer has taken recourse to Rule 26.4 of the Secondary School Code and has permitted change of the caste in respect of three students mentioned in the said order namely :-

- | | | |
|----|---------------------------|------------------------|
| 1) | Kum. Kishinsingh Jalsingh | Class 9 th |
| 2) | Kum. Jayshree Jalsingh | Class 6 th |
| 3) | Kum. Umraosingh Jalsingh | Class 10 th |

It was also directed by the Education Officer that the change should be recorded in the entry register in red ink. In furtherance of the said order the Headmaster of the Hutatma Pansre Primary School, Dharmabad had carried out the said entries. The respondent No.-2-committee however conveniently ignored the said order of the Education officer though produced before it and the petitioner is therefore perfectly justified in submitting that the committee has committed perversity in recording conclusion that the caste entries were manipulated and changed from Rajput to "Thakur".

The petitioner has fallen back on the oldest entry in favour of his grandfather namely Jalsingh Umraosingh Chamargore recorded in the birth register as "Thakur Adivasi" on 30.10.1941. The said entry relates back to pre-independence era, the caste is

recorded as Thakur Adivasi. It was at a period when Thakur's were known as Adivasi and they were not known as Scheduled Tribe or Anusuchit Jamat. The Vigilance Cell has not doubted this entry. In such circumstances, the petitioners reliance on the said document of 18.10.1941 supports his claim to be belonging to Thakur Scheduled Tribe and we are of the clear opinion that the finding recorded by the committee about interpolation does not bear any justification. The committee's observation that the entries taken in the register in relation to his father, uncle and aunt on the instructions of the Head Master is only effected in order to secure benefits of belonging to Thakur, Scheduled Tribe is also unfounded as the Education Officer on being satisfied that the oldest entry in favour of the grandfather Shri.Jalsingh Umarosingh Chamargore reflected the caste as Thakur, Adivasi, permitted such a change to be effected. The documents on which the Vigilance Cell has placed reliance are alleged to be belonging to the members of the community of the petitioner. However, the committee has not placed on record any material to reflect the relationship of the said persons with that of the petitioner. The finding recorded by the committee therefore can only be described as suffering from total non-application of mind and also being perverse as it has not taken into consideration the relevant material produced by the petitioner and rather taken into

consideration some irrelevant material which has no connection with the petitioner and not which is germane to the decision of the case of the petitioner as to whether he belongs to Thakur, Scheduled Tribe.

9. As a result of the above discussion, the impugned order dated 10th August 2018 invalidating thereby the claim of the petitioner, is quashed and set aside. The second respondent Committee is directed to issue a Certificate of Validity to the petitioner latest by 14th August 2018 at 12.30 p.m.

The respondent nos.3 and 4 shall grant the admission to the petitioner or confirm it, if it is granted already, by proceeding on the footing that this order ensures issuance of the certificate of validity to the petitioner. Merely because that certificate issued in the prescribed format by the second respondent is not produced, does not mean that he or she is disentitled to admission.

We clarify that this order is subject to any scrutiny or inquiry in relation to the certificate of validity issued to the petitioner's father Umraosingh Jaisingh Chamargore. In that event, the outcome of that inquiry will decide the fate of the petitioner as well.

The learned AGP to communicate the order to the respondent no.2 Committee forthwith.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)

Nilam
Santosh
Kamble

Digitally signed by
Nilam Santosh
Kamble
Date: 2018.08.23
03:50:04 +0530