

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

WRIT PETITION NO.9158 OF 2018

- i. Amit Ganesh Thakur
- ii. Sumit Ganesh Thakur
Both Minors, through mother and
natural Gurdian Smt.Manisha Ganesh
Thakur
C/o.S.H. Thakur, Survey No.52/2
Vinayak Nagar, Sainath Colony,
Room No.9, Navi Sangavi,
Pune-37.

...Petitioners

V/s.

- 1. State of Maharashtra
Through its Secretary,
Higher Education Department,
Mantralaya, Mumbai- 400 032.
- 2. Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar Division
Nandurbar through its Joint Commissioner
& Vice Chairman having its office at
Nandurbar.
- 3. Commissioner & Competent Authority,
State CET Cell, Mumbai having its office
at New Excelsior Build, A.K. Nayak Marg,
Fort, Mumbai-400 001.
- 4. Bansilal Ramnath Agarwal Charitable
Trust's Vishwakarma Insitute
of Tehnology, Bibwewadi, Pune.
- 5. Pimpri Chinchwad Education Trust
Pimpri Chinchwad College of Engineering
Pune.

...Respondents

Mr.Chintamani K. Bhangoji I/b Mr.R.K. Mendadkar for the
Petitioners.

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

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

DATE : 14th AUGUST 2018.

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

1. The petitioners, real brothers and claiming to be belonging to Thakur, a notified Scheduled Tribe, are aggrieved by the invalidation of their claim by the Scheduled Tribe Scrutiny Committee at Nandurbar. The petitioners being desirous of securing admission to an Engineering Degree Course appeared for the Common Entrance Test (CET) conducted by the Commissioner and Competent Authority State CET Cell, Mumbai-respondent No.-3 and claimed a seat reserved for Scheduled Tribe Category. They were permitted to participate in the admission process and were granted admission in the respondent No.4 and 5-College respectively. In view of the urgency expressed by the petitioners, we have taken up the petition by consent of parties for final hearing. Hence, Rule. Rule made returnable forthwith.

2. We have heard the learned counsel for the petitioner Shri.Mendadkar along with Shri.Chintamani K. Bhangoji appearing for the petitioner and Shri.S.B. Kalel, learned Assistant Government Pleader appearing on behalf of the State as well as the respondent No.2-Committee.

3. The petitioners, being desirous of prosecuting his studies in Engineering Degree Course, obtained a Caste Certificates belonging to Thakur, Scheduled Tribe and their claim came to be referred to the respondent No.2, Scheduled Tribe Certificate Scrutiny Committee, Nandurbar for its verification. In support of the claim staked by the petitioners, they placed reliance on several documents belonging to their grandfather and cousin grandfather reflecting the caste as Thakur as early as in the year 1951 and 1968. The petitioners also placed reliance on a caste validity certificate issued by Scheduled Tribe Caste Scrutiny Committee, Aurangabad on 22.09.1994 in favour of their cousin uncle. Shri.Mendadkar would heavily rely upon the judgment of this Court in case of *Apoorva D/o. Vinay Nichale V/s. Divisional Caste Scrutiny Committee No.1 & Ors*¹.

1 2010-6-MLJ-401

Since, the petitioner had participated in the process making them eligible for admission to the professional course of Engineering, and were insistent on deciding their claim by the committee so as to avail the benefit available to a Scheduled tribe and for seeking admission on a seat reserved for Scheduled Tribe candidate. The petitioners were supplied with the copy of Vigilance Cell Inquiry and appeared before the committee on 08.08.2018 in order to substantiate the claim and requested the committee to deliver its decision before 10.08.2018 since, the said date was stipulated as a last date for submission of validity certificate, failure to do so would result in cancellation of the admission of the petitioner. The respondent No.2-committee proceeded to decide the claim of the petitioners, made over to it, by its decision dated 09.08.2018 declined to confer the status of Scheduled Tribe on the petitioners by a reasoned order. The petitioner received the copy of the said order on 10.08.2018 and immediately approached this Court by filing the present Writ Petition.

4. The learned counsel for the Petitioners Shri.Mendadkar, on the basis of the pleadings as set out in the petition would submit that the respondent No.2-committee has acted in an arbitrary manner and even ignored the mandate of the Constitution Bench

Judgment in case of State of Maharashtra V/s. Milind Katware². Shri.Mendadkar, would submit that the Vigilance Cell, during course of its inquiry has relied upon several documents reflecting the caste of the relatives of the petitioners as Bhat, Brahmabhat, Maratha etc. However, it is specific submission of the petitioners that the said documents are of the relatives, who are the maternal relatives of the petitioner and the committee has failed to consider the basic premise in conferring the caste status that the caste of a person flows from his paternal side i.e. the side of the father and not from the maternal side from that is from the side of the mother. Shri.Mendadkar would submit that reliance on such documents by the Committee is completely misdirected and the finding recorded by it is based on pure conjunctures and surmises. As far as the affinity test is concerned the case of the petitioners is that the committee has merely recorded the finding, that the narration of the petitioner about the traits and characteristics, traditions and customs as well as cultural affinity do not match with that of Thakur, Scheduled Tribe. However, Shri.Mendadkar, would submit that affinity test is not the sole test to determine a claim staked by a claimants and therefore when the committee itself was groping in dark about the traits and characteristics of a peculiar Thakur,

2 2001-1-SCC-4

recognised as Scheduled Tribe, according to the petitioner the reasoning given by the committee smacks of malafides and arbitrariness.

We have heard learned AGP Shri.Kalel, who would rely on the Vigilance Cell report and would submit that the petitioner has concealed the documents belonging to his close relatives where the caste is recorded as Hindu Brahmabhat as early as in the year 1946 and that the Vigilance Cell has recorded the statement of the cousin uncle of the petitioner Shri.Avinash Vasudev Thakur, resident of Therola, Taluka-Raver, District-Jalgaon who narrated the details about the cultural traits and the genealogy of the petitioner. Shri.Kalel, would thus submit that the committee was perfectly justified in relying upon the said documents and in rejecting the claim of the petitioner.

5. Perusal of the impugned order passed by the Committee on 09.08.2018 would reveal that the petitioner, in order to substantiate his claim has relied mainly two documents, which are in the form of school admission extract in favour of his grandfather and cousin grandfather. The first document is a school admission extract from Book No.01, Registration No.4 in the name of one Shri.Namdev Dayaram Thakur who is the grandfather of the

petitioner and the date of issuance is dated 01.03.1951. In the said document the caste of Shri.Namdev is recorded as Thakur (Hindu). Another document on which reliance has been placed by the petitioner is in the name of Vasudev Dayaram Thakur cousin grandfather, which is also a school admission extract from Book No.2 and the date of school leaving is depicted as 01.06.1968. In this document also the caste is recorded as Hindu, Thakur. While dealing with the said documents, the respondent No.2-committee has observed that the genuine Scheduled Tribe, Thakur does not possess old documentary evidence because education started in their life hardly 30/40 years back when the Tribal Development Department started Ashram Schools in their habitat. The said reasoning by the committee cannot be accepted. It is not known as to on what basis the committee record such a finding as if the people from Tribal community did not obtain an entry in school except the Ashram Schools. The document of the admission in the school or leaving the school is at the very preliminary stage and infact the document on which reliance is placed by the petitioner, is of one Dayaram Zipur Thakur, the great-grandfather of the petitioner. The said document finds place at Serial No.48 of the paper book and it is an extract of the school admission register of Zilla Parishad Prathamik School Lahan Vaghode, Taluka-Raver,

District-Jalgaon. The date of birth of Dayaram Zipur Thakur is recorded as 15.01.1917 and he was admitted in the school for the first time on 25.07.1924 and the date of school leaving is recorded as 12.02.1925 and it is also mentioned that the holder of the document left the school in first standard. The Committee did not even make a reference to this document nor did it dispute its genuineness. It was open to the Vigilance Cell to verify the existence or genuineness of this document which is in form of school admission entry of the great-grandfather of the petitioner where the caste is clearly recorded as Thakur as early as in 1924. The holder of the document left the school within a period of one year and that is quite probable as the people from the Tribal Community did not pursue their education but committee cannot conclusively record a finding that the claimants of Thakur, Scheduled Tribe never went to the school or got admitted in the school. The committee has failed to give due weightage to the document at page 48 produced by the petitioner before this Court and according to the petitioner this document was placed before the committee but no reference to the said document finds place in the order of the committee except the one which we have referred to above.

The oldest document produced by the petitioner is

therefore of the great-grandfather Shri.Dayaram where the caste is clearly recorded as Thakur and the petitioner has placed on record the genealogical tree where the relationship of the petitioner with Shri.Dayaram is established. The said genealogy is placed on record before the committee by the cousin uncle of the petitioner Shri.Avinash Vasuded Thakur who has been granted certificate of validity by the Aurangabad committee. When the committee did not dispute the relationship of the petitioner with Shri.Dayaram whose document has been placed by the petitioner on record and the caste of Shri.Dayaram has been recorded as Thakur, in clear terms, it is not open for the committee to record a finding that the said caste is not Thakur, Scheduled Tribe but an open Thakur entry, in light of being recorded as early as in the year 1924, when there was no premonition on the part of the ancestors of the petitioners that Thakur would be recognised as a Scheduled Tribe, in the post constitution era.

6. The committee has adopted a very strange approach in relying upon certain stray entries of Bhat and Hindu Brahmabat and referring to the said entries as those of the close maternal relatives of the petitioners. The committee has recorded that the applicant's maternal relatives have been traced during Vigilance Cell Inquiry

and in the documents the caste of those relatives is recorded as Bhat and Hidu Brahmaghat in the year 1908 and 1946 and this reflects the affinity of the applicant with Bhat and Brahmaghat. Perusal of the said document would reveal that they are of the distant relative of the petitioner and that too, on the maternal side, that is from the side of the petitioners mother. The committee prefers to place reliance on the school leaving certificate extracts of these so called relatives of the petitioner he is ready to accept the said entries as if the people from Bhat community were securing admissions in the schools and were getting educated in the year 1908 but as far as Thakur Tribe is concerned the committee observes that they were not going to school and not getting themselves educated until the Ahsram Schools were established. This reasoning of the scrutiny committee, according to us is strange and also illogical. Suffice is to say that the committee relying on these certificate extracts of the distant relatives from maternal side of the petitioners rejected the claim of the petitioners on the ground that they have some affinity with Bhat and Brahmaghat and therefore not a Thakur, Scheduled Tribe.

As far as the validity certificate issued in favour of the cousin uncle of the petitioners Shri.Avinash Vasudev Thakur, the committee has recorded that Shri.Avinash Vasudev Thakur is

ordinary resident of Tharole, Taluka-Raver, District-Jalgaon but the certificate which he has obtained from the Executive Magistrate, Kannad, District-Aurangabad who was not competent to issue said certificate. Shri.Avinash has stated in his statement before the Vigilance Cell that he was residing at maternal aunts house at Kannad for some period of time however the committee observes that this did not confer jurisdiction on the Executive Magistrate Kanad to issue Scheduled Tribe Certificate. The committee proceeds to observe that in the jurisdiction of the Aurangabad Committee various tribe certificates have been obtained by fraud and therefore the Government had constituted a Special Investigating Team under the Chairmanship of Divisional Commissioner of Aurangabad Region. The entire reasoning adopted by the committee, is to say the least, illogical and irrational. What is under scrutiny before the committee is the claim of a particular caste/tribe and not as to whether the certificate of belonging to particular caste or tribe is issued by the Competent Authority. The cousin uncle of the petitioner was issued with the caste certificate as belonging to Thakur and which was scrutinized by the Aurangbad committee and was validated by it. It is not open for the respondent No.2-committee to reopen the said certificate or merely to doubt it on the ground that the authority which granted the caste certificate in

favour of the cousin uncle was not competent to do so. The committee is not justified in questioning the said certificate merely so as to deny the extension of it to the case of the petitioners.

This Hon'ble Court in case of *Apoorva d/o Vinay Nichale V/s. Divisional Caste Certificate Scrutiny Committee No.1 and Ors. (Supra)* has clearly held that where the caste claim of the applicant is scrutinized and accepted and when one committee has recorded a finding about the validity of the said caste, then another committee ought not to refuse the same status to his/her blood relatives who applies. The Division Bench had observed thus :-

“The Division Bench of this Court in Mahesh Pralhadrao Lad v. State of Maharashtra - 2009(2) Mh.L.J. 90 has observed that in the absence of any power under the Rules conferred on the Government to issue a Govt. Resolution, the Govt. Resolution cannot be said to be binding on the committee nor the committee in exercise of its jurisdiction is bound to follow the same. The Division Bench further observed that the Government Resolution may be considered in the context of Rule 12 of the Rules and if the committee while exercising jurisdiction is satisfied that the caste validity certificate issued to a blood relative is genuine then instead of calling the Vigilance Cell Report it may proceed to issue the caste validity certificate. We are in respectful

agreement with the view taken by the Division Bench. We would further add that the committee would be entitled to refuse to follow the caste validity certificate granted to a blood relative if it appears to the committee that the earlier caste certificate has been scrutinized by a Committee without jurisdiction or the validity order is obtained by committing fraud on the Committee.”

7. The respondent No.2-caste certificate Scrutiny Committee has also relied on the affinity test to reject the claim of the petitioner. Perusal of the impugned order would reveal that it only placed reliance on some stray observations from the orders/judgments of this Court and derived a conclusion that the petitioner has failed to prove his claim by establishing his affinity towards Thakur, Scheduled Tribe. The Hon'ble Apex Court as well as this Court had on several occasions dealt with the issue of affinity and has concluded that the affinity test is not to be applied as litmus test and if there are old documents which inspire confidence and no doubt is expressed by the committee about the same, then, the claim cannot be rejected merely by applying affinity test. Before us we have petitioners who have an oldest document in favour of their great-grandfather where the caste is recorded as Thakur. But the committee refuses to extend the benefit of the said document to the

petitioners merely on an assumption that the said entry necessarily would not reflect that it is of a Scheduled Tribe. The reasoning adopted by the committee cannot be sustained in light of the settled pronouncements of this Court in the past, relating to Thakur, Scheduled Tribe.

8. As a result of the above discussion, the writ petition succeeds. Rule is made absolute in terms of prayer clause (a).

9. The petitioners shall be issued Certificates of Validity on or before 17.8.2018.

10. Since the Certificates of Validity have to be issued at Nandurbar, we direct that the Commissioner and Competent Authority, State CET Cell and the Director of Technical Education, Government of Maharashtra shall proceed on the basis of the copy of this order provided to it and the intimation by the learned AGP.

11. The petitioners will produce the Certificates of Validity in the event the admission goes through on 21.8.2018.

12. The writ petition is allowed in these terms but subject to any inquiry or proceedings in relation to the Certificate of Validity issued to the cousin uncle of the petitioners.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)

Nilam
Santosh
Kamble

Digitally signed
by Nilam
Santosh Kamble
Date: 2018.08.23
03:49:04 +0530