

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

WRIT PETITION NO. 10194 OF 2018

1 Akash Sanjay Gawali & Anr. ... Petitioners

Vs

1 The State of Maharashtra & Ors. ... Respondents

Mr. Chintamani K. Bhangoji i/b R.K. Mendadkar for the Petitioner.

Mr. V.M. Mali, AGP, for the Respondent No.1 to 3-State.

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

THURSDAY, 13TH DECEMBER, 2018

P.C. :

1 The petitioners in this petition are brothers and sisters. They have challenged a common order passed by the Scrutiny Committee dated 24th July, 2018, Exhibit-A to the petition, invalidating their claim towards Thakar Scheduled Tribe. It is stated that the same is recognised and notified as a Scheduled Tribe in terms of the Constitution (Scheduled Tribes) Order, 1950.

2 It is claimed that relying upon the caste certificate granted in their favour, the first petitioner enrolled and admitted himself as a student of an Engineering Degree course and has completed the MBA Post-graduate degree course in the fourth respondent college.

3 The petitioner No.2 has been joined as a petitioner simply because in the event the certificate of validity which is quashed and set aside by the common order is restored, she may, in future, derive benefits as belonging to this Scheduled Tribe. Presently, she has completed her Post-graduate degree course in Commerce, but by not availing of the concessions and relaxations meant for Scheduled Tribes in the State of Maharashtra.

4 We are not inclined to grant any relief to petitioner No.2 having competed on merit and secured admission on the basis of the competition in open seat and not availing the benefit of reservation. We do not think that the advantage of this order can be derived by her. She can prosecute her studies as an open category candidate without availing of the benefits meant for the Scheduled Tribes.

5 As far as the petitioner No.1 is concerned, his case is that this impugned order is *ex-facie* erroneous, illegal and vitiated by non application of mind. It is claimed that there was a common ancestor Hari Gawali. He had two sons Krishna and Patluba. The petitioners are successors-in-title of the said Patluba from paternal side. Patluba had five children. He had three sons and two daughters. The petitioners belong to the Branch of Shivba, one of the sons of Patluba. Shivba had ten children. The names of these ten children are set out in paragraph 7 of the petition. The petitioners' grandfather is one of the sons of Shivba, namely, Janardhan. The genealogy and family tree, copy of which is at Exhibit-D to the petition, according to the petitioners, would exhibit that the said Janardhan was the grandfather of the petitioners and he was admitted in a Primary School on 9th June, 1938. The entries in the caste column pertaining to him are crucial and they are pre-constitutional. The grandfather is from the paternal side and equally there is a cousin grandfather born on 9th May, 1923 and in relation to his records and entries, one would find the Tribe 'Thakar' being mentioned. From paragraph 10 onwards, the petitioners place

reliance upon the birth certificate extract of several of their grandfathers (cousin grandfathers from the paternal side) and such narration continues right upto paragraph 23.

6 It is claimed that relying upon such overwhelming documentary evidence and certificates of validity issued in favour of the close relatives from the paternal side, the petitioners were expecting the Committee to issue a certificate of validity in their favour. However, this certificate of validity is denied on untenable grounds.

7 Our attention is invited to the pleadings at page 17 of the writ petition to urge that the Committee has picked up some documents and entries therefrom which reflect the caste as Maratha and it may be that they pertain to the relatives from the paternal side. However, when close relatives from the paternal side were denied certificates of validity and they challenged such orders of the Committee in this Court, all these documents and entries therein were duly considered and still the petitioners succeeded. Thus, this was a case of a contra material in the form of pre-constitutional documents carrying entries as 'Thakar' and

specifically in favour of the petitioners. Hence, the certificates of validity granted in favour of close relatives from the paternal side following this Court's binding orders could not have been discarded and omitted from consideration. This is termed as a perversity in the impugned order by Mr. Chintamani Bhangoji appearing for the petitioners.

8 With his assistance, we have perused the writ petition and the impugned order and what we find is that in paragraph 7 of the same, the Committee holds that the appreciation and appraisal of the documentary evidence on record reveals that there are conflicting entries in the caste column pertaining to the close relatives from paternal side and while there are entries as 'Thakar' in some documents of 1924, 1927, 1928, 1936 and 1944, equally there are documents as old as 1932, 1933 and 1938 etc. some of which are also pre-constitutional where the entries were Bhat, Maratha or Marathi. In such circumstances, the Committee finds that the certificates of validity, copies of which were produced, cannot be taken as a conclusive and decisive proof. The probative value of these certificates of validity thus gets diluted is the opinion of the Committee. We would have ordinarily

upheld such findings of fact for they are based on appreciation and appraisal of the material on record and in their totality. Once no perversity can be attributed to the Committee, then, we would not have hesitated to dismiss this petition.

9 These certificates of validity have been discarded and their probative value doubted on the basis of the findings in the report of the Vigilance Committee.

10 Further, there is a reasoning assigned and that is that in the light of the conflicting entries in the pre-constitutional documents, the claims of this family and the Branches of this family cannot be accepted. They are not trustworthy and reliable, but are dubious and doubtful. In fact, the show cause notices have been issued to the certificates of validity holders and such certificates of validity would now be re-scrutinised and re-verified in the light of the above conflicting material. However, beyond issuing the show cause notice, the Committee has not shown any progress in that regard.

11 It is in the above circumstances and facts peculiar to

this case, that we proceed to quash and set aside the order of the Scrutiny Committee and direct that a certificate of validity shall be issued to the petitioner No.1, enabling him to continue his studies and draw benefits as a member of the Thakar Scheduled Tribe on par with the others within the family. However, once the certificates of validity in relation to others are recalled / set aside, then, automatically the benefit of this order would cease and the petitioner No.1 will not be able to rely on the certificate of validity issued in his favour pursuant to our order.

12 We expect the Scrutiny Committee and particularly after noticing allegedly dubious and questionable entries, to conclude the proceedings against the certificate holders as expeditiously as possible. We grant the Committee a time of four months to conclude this re-scrutiny and re-verification and if the Committee is of the *prima facie* opinion that there is a fraud / deliberate misrepresentation of facts, then, it is its bounden duty and in larger public interest to exercise the statutory powers so as to conclusively nullify such certificates. The Committee should not be reluctant, once a show cause notice is issued, to carry out such an exercise expeditiously. It is in order to prevent a

perpetuation of dubious and doubtful claim that we pass the order with a positive direction to the Committee to conclude the re-verification and re-scrutinisation within the time stipulated above.

13 Within fifteen days from today, a certificate of validity shall be issued to the petitioner No.1, but the petitioner No.1 is warned that in the event other certificates of validity in the family, particularly of his father are cancelled, then, the petitioner No.1 cannot continue to rely on the Tribe status or the certificate to that effect. The petitioner then would cease to be a member of the Thakar Scheduled Tribe.

14 With this rider, the certificate of validity and the benefit thereof can be availed of by the petitioner. In the event the Scrutiny Committee does not complete the process of re-verification and re-scrutiny within the period of four months as directed above, then, it will not be open for it to follow up its show cause notice or re-open the certificates of validity issued a good 16 to 17 years ago.

15 The writ petition is disposed of in these terms, but
without any order as to costs.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.