

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

WRIT PETITION NO.11177 OF 2017

Rajshree Dilip Thakur

..Petitioner

Versus

State of Maharashtra and others

..Respondents

Mr. R. K. Mendadkar, Advocate for the Petitioner.

Mr. V. M. Mali, AGP for Respondent Nos.1 to 3 – State.

Mr. P. M. Patil, Advocate for Respondent No.4 – BMC.

Ms. Pallavi Dabholkar, Advocate for Respondent No.5.

CORAM : B. R. GAVAI &

SMT. BHARATI H. DANGRE, JJ.

DATE : 17th APRIL, 2018

PC.

1] Rule. Rule made returnable forthwith. Heard by consent.

2] The Petitioner has approached this Court being aggrieved by the order dated 31st August 2017, thereby rejecting the claim of the Petitioner of belonging to “Thakur, Scheduled Tribe”.

3] The Petitioner has been issued a Caste Certificate certifying as she belongs to Thakur, Scheduled Tribe on 26th August 2004. The Petitioner has taken admission for MBBS course against the seat reserved for Scheduled Tribe. As such, the claim came to be referred to the Respondent No.2 committee for verifying it.

4] A vigilance enquiry was also conducted. However, the scrutiny committee by order dated 12th March 2007 rejected the claim of the Petitioner. The Petitioner has approached this Court by way of Writ Petition No.3706 of 2017. The Division Bench of this Court vide order dated 23rd August 2010, finding that the report of the vigilance cell was in favour of the Petitioner and setting aside the order passed by the Scrutiny Committee, remanded the matter back for adjudication afresh. Again the vigilance enquiry was conducted on second occasion. In both the vigilance enquiry, a document pertaining to the Petitioner's grandfather Sakharam Thakur, which relates to his admission in the Zilla Parishad Primary School on 1st April 1925 showing his caste to be Thakur was found to be genuine. However, again the claim is rejected by the impugned order dated 31st August 2017. Hence, the present Petition.

5] The perusal of the material placed on record would reveal that the Petitioner is in possession of a document of the year 1925, wherein the caste of his grandfather namely Sakharam Thakur has been found to be Thakur. The said document has been verified by the vigilance cell on two occasions and found to be genuine. The genealogy has also been proved. However, the said document has been discarded by the committee by observing that it does not mention "Scheduled Tribe". We find that the approach of the committee is totally without application of

mind and to say least is perverse. The Government Resolution notifying the Scheduled Caste and Scheduled Tribe was published for the first time in the year 1950. As such, there could not have been occasion as writing Scheduled Tribe in the year 1925. Another ground for rejection is that the Petitioner has failed affinity test. The Apex Court in the case of Anand V/s. Committee for Scrutiny of Tribe Claims and others reported in (2012) 1 SCC 113 has held that if a candidate possesses a pre-constitutional document, then more weightage has to be given to such pre-constitutional document.

6] In that view of the matter, we find that the impugned order is not at all sustainable in law. The same is liable to be quashed and set aside. Rule is therefore made absolute in terms of prayer clause (a).

7] The Caste Validity Certificate be issued to the Petitioner within a period of two weeks from today.

8] Needless to state that all consequences shall follow.

[SMT. BHARATI H. DANGRE, J.]

[B. R. GAVAI, J.]