

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1032 WRIT PETITION NO.1429 OF 2008

VINOD SHARAD VISALE
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...

Mr. S.R. Barlinge, Advocate for the petitioner.

Mr. S.G. Karlekar, A.G.P. for the State/respondent Nos.1 & 3.

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CORAM : S.V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.

DATE : 13 December 2019.

PER COURT :-

1. The caste claim of the petitioner is invalidated. Mr. Barlinge, learned Counsel for the petitioner submits that there is not a single contra entry. The school record of the grandfather of petitioner for the year 1918 records the caste as "Thakur". The another entry of the year 1948 of the school record of applicant's father Sharad records his caste as "Hindu Thakur". All documents produced record the caste as "Thakur". The real brother of the petitioner is issued validity certificate under the judgment and order dated 18th August 1994 of this Court in Writ Petition No.2612 of 1994.

2. Only on the ground that the petitioner has failed in affinity test, the claim is invalidated.

3. Mr. Karlekar, learned Addl. Government Pleader submits that the petitioner failed in affinity test. The petitioner also does not belong to the area where Thakur Scheduled Tribe persons reside. The validity in favour of the petitioner's real brother is prior to the judgment in the case of *Madhuri Patil Vs. Addl. Commissioner*. As such, the same cannot be relied on.

4. We have considered the submissions and also gone through the judgment.

5. It appears that the school record of the petitioner's grandfather namely Damodar records caste as "Thakur". The petitioner's father's record of year 1948 records the caste as "Thakur". Other evidence produced in respect of the petitioner's grandfather, father, uncle record caste as "Thakur". There is not a single contra entry on record.

6. The caste claim of the real brother of the petitioner namely Kamlakar was invalidated by the Committee. This Court in Writ Petition No. 2612 of 1994 allowed the said Writ Petition and directed the Committee to issue validity certificate to him. The another brother of the petitioner is also issued with validity certificate by the Government.

7. The Apex Court, in the case of *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.* reported in *2011 AIR SCW 6559* has held that affinity test is not a litmus test.

8. Considering the fact that there is not a single contra entry, there are pre-constitutional documents recording caste 'Thakur' and that in case of brother of petitioner this Court had allowed the writ petition and directed the Committee to issue validity certificate, we quash and set aside the impugned order. The Committee shall issue validity certificate to the petitioner of "Thakur" Scheduled Tribe.

9. Writ Petition is accordingly allowed.

(AVINASH G. GHAROTE, J.)

(S.V. GANGAPURWALA, J.)