

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4651 OF 2015**

Vithoba Balkrishna Thumbare
Versus

.. Petitioner

1 The State of Maharashtra

2 Scheduled Tribe Certificate
Scrutiny Committee, Konkan
Division, Thane, having office at
Vartak Nagar, Ward Office,
Vedant Complex, Thane (W).

3 Chief Executive Officer,
Zilla Parishad Sindhudurg,
District Sindhudurg,

4 Principal,
Zilla Parishad, Walaal (Karmali)
School, Tal. Kudal,
District Sindhudurg.

.. Respondents

...

Mr. Sushant C. Yeramwar for the petitioner.
Mr. A.I. Patel, AGP for the State.

**CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.**

RESERVED ON : 19th SEPTEMBER, 2019

PRONOUNCED ON : 04th OCTOBER, 2019.

JUDGMENT : (Per BHARATI DANGRE, J)

1 In the second round of litigation, the petitioner claiming to be a Scheduled Tribe Thakar has approached this Court praying for quashing and setting aside the impugned order dated 23rd March 2015 passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane, invalidating his claim.

 The petitioner obtained a caste certificate on 28th June 2002 from the competent authority which declared that he belongs to Thakar (Sr.No.44) of the Constitution (Scheduled Tribe's Order 1950). The petitioner, relying on the said certificate came to be recruited as a Shikshan Sevak on 21st April 2008 by the Zilla Parishad, Sindhudurg, the Respondent No.3 and posted in the school of Respondent No.4 where he is presently working. The appointment of the petitioner was on a post of Shikshan Sevak which was reserved for Scheduled Tribe. Pending verification of the claim, the appointment order was issued to the petitioner and his claim was made over to the Respondent No.2 Committee by the Respondent No.4 which resulted into the impugned order being passed on 23rd March 2015, which is a subject matter of the present petition.

2 In support of his claim before the Committee, the petitioner furnished several documents. This included the copy

of the resident certificate issued to the petitioner by the Sarpanch, Gram Panchayat, Pinguli, Taluka Kudal, District Sindhudurg. He also relied on a School Leaving Certificate issued in his favour where the caste is recorded as 'Thakar' and the date of admission is recorded as '23rd June 2000'. An attested copy of birth certificate in respect of applicant's father Balkrishna Abaji Thumbare issued by the Registrar, Birth/Death Registrar, Grampanchayat, Pinguli was also relied on. A copy of the School Leaving Certificate in respect of his uncle Thumbare Manohar Aba issued by the Head Master, Kudal High School, District Ratnagiri wherein the caste is recorded as Hindu Thakar (Backward) where the date of admission is recorded as 10th June 1968 was also placed on record. A document in respect of applicant's paternal relative Thumbare Vishram Dattaram, again issued by the Principal, Kudal High School, Ratnagiri where the caste is recorded as Hindu Thakar and date of admission as 12th June 1961 was also produced on record.

The Committee after making reference to the order passed by this Court in an earlier round of litigation instituted by the petitioner in form of Writ Petition No.3084 of 2013 called the petitioner for personal hearing. Reference was also made by the Committee to a judgment of this Court in case of Writ Petition No.7343 of 2013 in case of Madhuri Nitin Jadhav Vs. State of Maharashtra & ors which revoked in relation to Thakur Scheduled Tribe and to which a reference was made by a Division

bench while disposing of Writ Petition No.3084 of 2013 filed by the petitioner. The petitioner was granted liberty to file additional evidence, oral as well as documentary before the Committee and the Committee was directed to reconsider every aspect, on remand by affording necessary opportunity to the petitioner.

3 The Committee referred to the documentary evidence relied on the petitioner and made an exhaustive reference to the place of residence of the petitioner and also ventured into ascertaining the affinity of the petitioner towards the Thakar, Scheduled Tribe. As regards the place of residence, the Committee highlighted in great detail the history/background of the Thakars of Sindhudurg district of which the applicant is a Member and it then makes a reference to the Constitution (Scheduled Tribes) Order 1950 which included only Thakur community initially. It then made a reference to the Amendment Order 1956 by which the Thakur or Thakar including Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar were included in the Scheduled Tribe Order by imposing area restriction and extending the recognition of the said community in 25 Tahsils of 5 districts of Maharashtra. The Committee also make a reference to the Scheduled Caste and Scheduled Tribe (Amendment Act 1976). After removal of area restriction and the entry at no.44 reads as “Thakur, Thakar, Ka-Thakur, Ka-Thakar, Ma-Thakur and

Ma-Thakar” and the entry is made applicable to the whole State of Maharashtra. The Committee then makes a reference to a Government Resolution dated 21st November 1961 when the Thakar community was included in the list of Nomadic Tribes at Entry 22 which came to be deleted by a subsequent resolution dated 2nd June 2004. This is taken as a basis for determination of the claim of the petitioner and the Committee records that Thakar community from Sindhudurg district was covered in the list of Nomadic Tribe till the year 2004 and not into Scheduled Tribes as this particular group of Thakars in Sindhudurg district were not included in the list of Scheduled Tribes of Maharashtra by any parliamentary enactment. The Committee has then reasoned the rejection of the claim of the petitioner on the ground that in the State of Maharashtra, Thakars Scheduled Tribe, Thakars are included Nomadic Tribes and and Thakars are also found to be in OBC category and most crucially after removal of 'Thakar' from Nomadic Tribe and OBC, now those Thakars are to be treated as open category and cannot take recourse on account of mere nomenclature as 'Thakar'. The Committee also do not find favour with the petitioner on the point of affinity and after reproducing certain portions from the judgment of the Apex Court, it record that the act of taking benefit of the nomenclature of Thakars is a wholesale fraud of the facilities and concessions meant for genuine Scheduled Tribes in the State of Maharashtra. Without commenting and individually dealing with the claim of

the petitioner, with this observation of wholesale fraud , the committee proceeds to invalidate the claim of the petitioner by the impugned order.

4 The petitioner has placed on record an additional affidavit dated 9th December 2018 and he has invited our attention to the genealogical tree. He also makes a statement that the Vigilance Inquiry was conducted in case of his real brother i.e. Milind and the same Vigilance Report was considered by the Committee while examining the claim of the petitioner. The said Vigilance Report, the Vigilance Officer had recorded that in case of his real paternal uncle i.e Prabhakar Aba Thumbare and Manohar Aba Thumbare, in the School Admission Register, the caste is recorded as Hindu Thakars, while seeking an entry in the school on 20th June 1956 and 25th June 1958 respectively. The concerned Head Master had struck down the word “Thakar’ and replaced it with the word ‘Magaslele” and countersigned the correction. The Vigilance Officer obtained those entries from the school admission register and had annexed the same along with the Vigilance Cell Report mentioning the said fact. The Deputy Superintendent of Police, Vigilance Cell concurred with the said remarks of the Vigilance Officer. The explanation offered by the petitioner is that the Thakar community came to be recognized as Nomadic Tribe and for some period of time by issuance of a subsequent resolution, it was removed from the list of Nomadic

Tribe. When the proposals in respect of the persons belonging to the said caste were forwarded to the Committee, the Social Welfare Committee returned the same on the ground that it had no jurisdiction to examine the claim and since Thakar was a caste included in Scheduled Tribe, it would be the Scheduled Tribe Certificate Scrutiny Committee who is empowered to verify the claims. This resulted into issuance of communication dated 30th August 1979 by the Deputy Secretary to the Government, intimating that Thakar is included in the list of Scheduled Tribe and the Thakars from Ratnagiri district are to be treated as Scheduled Tribe. The said communication therefore disclose that 'Thakar' was recognized as a Scheduled Tribe irrespective of the area from which they hail.

The entry of Hindu Magaswarga is explained by the communication dated 22nd May 1968 wherein the Education department had directed that while taking admission in the schools, there is no need to enter the caste in the School Admission Register, instead only the religion and whether the incumbent belongs to backward/non-backward category should be written, which would help the students to avail the benefits in the matter of education. The circular was also issued by the Director of Education on 28th October 1969 directing to record the backward/non-backward class and that is how when the uncles of the petitioner i.e. Prabhakar and Manohar took admission in the school, the caste column reflected the entry as

Hindu – Magas and the Head Master whose statement came to be recorded during the Vigilance Inquiry had recorded that the entry was Hindu Thakar, but the word ‘Thakar’ has been erased and replaced by the word ‘Magas’ meaning backward. The Committee has failed to take into consideration the two documents which are of the year 1956 and 1958 where the caste of the uncles of the petitioner is recorded as ‘Hindu Thakar’, which was subsequently modified to ‘Hindu Magas’.

5 Another subsequent development in favour of the petitioner is that his real cousin Devesh Vishnu Thakur has been granted validity by the same Committee which had rejected the claim of the petitioner on 14th February 2019. The genealogy tree establishes that Devesh is the real cousin of the petitioner.

This subsequent development of issuance of a validity certificate in favour of the real cousin of the petitioner if looked at in light of the decision of this Court in case of Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1, 2010(6) Mh.L.J. 401, which discloses that when a validity is granted in favour of a near blood relation, the Committees are not justified in rejecting the claim of the claimant.

6 The Committee has erred in rejecting the claim of the petitioner only on the ground that though it is established that he belongs to ‘Thakar’, caste, he is not a Thakar Scheduled Tribe. By

this time, through the authoritative pronouncements from the Apex Court as well as this Court, it is well settled that it is not permissible to interpret an entry in the Scheduled Caste/Scheduled Tribe order and it is neither permissible for the Committees or the Courts to read it in any different fashion than as what is spelt in the presidential order. The documents filed by the petitioner clearly establish that his forefathers had the caste recorded as Hindu Thakar and the Committee has accepted the explanation collected during the Vigilance Inquiry of the brother of the petitioner. The area restriction being done away by the Act of 1976 and the entry at Sr.No.44 of the Scheduled Tribe Order 1950 includes Thakar, irrespective of the area where the community was traced to, is no justification for the Committee to deny the benefits of being belonging to the said tribe. As far as affinity is concerned, in light of the judgment of the Apex Court in case of Anant Katole Vs. Committee for Scrutiny & Verification of Tribe Claims, 2012 (1) SCC 113, the affinity test cannot be accepted as a litmus test and it would be appropriate to make reference to the following observations of the Apex Court :

22 (ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the

migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

On the basis of the documentary evidence, the claimant has proved that he belongs to Thakar, a recognized Tribe. The rejection of the claim of the petitioner by the respondent no.2 Committee by order dated 23rd March 2015 is not in accordance with the settled position of law and the impugned order deserves to be set aside and is accordingly set aside.

7 We declare that the petitioner belongs to Thakar Scheduled Tribe and should be treated as such for all purposes and is entitled for availing the benefits flowing from a declaration that he belong to Scheduled Tribe.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE