

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1381 OF 2013
WITH
CIVIL APPLICATION NO. 1603 OF 2015

Kumari Dipali D/o Babanrao Thakur .. Petitioner
Vs.
The State of Maharashtra and ors. .. Respondents

Mr.Chintamani Bhangoji a/w Ms.Priyanka Shaw I/b Mr.R.K.
Mendadkar, for the Petitioner.
Mr.R.M.Shinde, AGP for State.

**CORAM : S.C.DHARMADHIKARI &
M.S.KARNIK, JJ.**

RESERVED ON : 18th FEBRUARY, 2019
PRONOUNCED ON : 18th APRIL, 2019

ORDER (PER M.S.KARNIK, J) :

. Rule. The respondents waive service. By consent,
Rule made returnable forthwith and heard finally.

2. The caste claim of the petitioner as belonging to
'Thakur – Scheduled Tribe' which is incorporated in the list of
Scheduled Tribes at serial No. 44 came to be rejected by

respondent No.2 – the Scheduled Tribe Certificate Scrutiny Committee, Nashik Division (for short 'Committee'). This invalidation of the caste claim is challenged by the petitioner invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

The facts of the case in brief are as under :

3. The petitioner was issued with a caste certificate dated 24/12/2003 as belonging to 'Thakur Scheduled Tribe' community by the Sub-Divisional Officer, Malegaon Division, Malegaon, District - Nashik. The petitioner was admitted to B.Ed course in Adhyapak Mahavidyalaya, Aranyeshwar, Pune. The tribe claim of the petitioner was referred to the respondent No.2 – Committee through her College for verification. The Vigilance Officer made inquiry and submitted a report to the Committee on 06/01/2005. After obtaining report of Research Officer on the said vigilance cell report on 26/03/2012, the Committee directed the petitioner to submit explanation on the

report.

This explanation was called for as the vigilance report is in favour of the petitioner.

4. Heard learned Counsel for the parties. We have gone through the Petition and annexures thereto. The Committee, while refusing to validate the caste/tribe claim of the petitioner, has rendered a finding that mere mentioning of the caste as “Thakur” in the school and/or any other records cannot be a sole ground to hold that the applicant belongs to Thakur Scheduled Tribe Community. The Committee further observed that though the Scheduled Caste and Scheduled Tribes Orders (Amendment Act) 1976 which came into effect from 18/09/1976 whereby the area restriction is removed, the petitioner still has to establish that she or her predecessors migrated from such an area and at present are residing in an area where they were not residing prior to area restriction removal notification. The Committee found that it is not the

case of the petitioner that her forefathers have migrated to Sangameshwar, Taluka - Malegaon, District- Nashik from any one of places where Thakur/Thakar, Scheduled Tribe was restricted in the State of Maharashtra, which talukas are mentioned at page 140 of the paper-book. The Committee was of the opinion that as the Thakurs/Thakars were restricted only in these talukas and as the petitioner's ancestors were residing at Sangameshwar, Taluka – Malegaon, District- Nashik, her case would not be covered by Area Restrictions Order. Thus, the Committee rendered a finding that the petitioner is ordinarily resident of Sangameshwar, Taluka – Malegaon, District- Nashik, which is not scheduled for Thakur, Scheduled Tribe community.

5. The petitioner has filed the genealogy along with affidavit-in-support which is at page 88 of the paper-book. The Committee has observed that the grandfather of the applicant was admitted in the School in the year 1911. In the general register of the School which is on record, caste is indicated as 'Thakur'. The said document is discarded by the Committee on

the ground that the predecessors of the petitioner were residing at Sangameshwar, Taluka – Malegaon, District- Nashik and not in the area where the Thakur/Thakar Scheduled Tribes were restricted in the areas mentioned on page 140 of the paper-book. The Committee further held that the petitioner was not able to establish that her ancestors migrated from the said scheduled area.

6. The Committee after hearing the petitioner invalidated the caste claim mainly on the ground of area restrictions and on the ground that the materials on record are not sufficient to prove the caste claim of the petitioner.

7. The other pre-constitutional document on record that of Ramchandra Gajanan Thakur who is petitioner's grandfather's real brother from the paternal side, also shows his caste as Thakur. In all other documents on record of the petitioner and her relatives, entry in the caste column is shown as 'Thakur'.

8. Thus, the only ground for invalidation of the caste claim is based on the finding of the Committee that the petitioner and her forefathers have not demonstrated that they have migrated to Sangameshwar Taluka Malegaon, District – Nashik from the Talukas where the tribe was predominantly resided. According to the Committee, Thakur/Thakar, Scheduled Tribe was restricted only to the following areas.

Ahmednagar District –	Akola, Rahuri and Sangamner Talukas.
Kolaba District –	Karjat, Khalapur, Pen, Panvel & Sundhagad talukas & Matheran.
Nashik District –	Igatpuri, Nashik & Sinnar Talukas.
Poona District –	Ambegaon, Junnar, Khed & Maval talukas
Thana District –	Thana, Kalyan, Murbad, Bhivandi Bassein, Wada, Shahapur, Palghar Jawhar & Mokhada talukas.

9. It is conceded that this is the only point on which the claim is negated. Thus, the removal of area restriction was the point specifically raised by the petitioner, but the Committee opined that despite such contention, the area restriction is not an issue which can be entirely brushed aside. In the garb of finding out whether the claimant belongs to “Thakur” Scheduled Tribe, the Committee invariably, in its order, traces the

residence of forefathers. This Court has repeatedly observed that while tracing the residence, the Committee essentially applies the principle as to whether petitioner's forefathers resided in the concerned Talukas mentioned hereinabove. Thus, by a back-door method, the area restriction is introduced. This is unmindful of the fact that by Act No.108 of 1976 styled as Scheduled Tribes Orders (Amendment Act), 1976 published on 18th September, 1976, these restrictions of area have been removed.

10. In several decisions of this Court rendered by various Division Benches, reference may be had to one such decision which was presided over by one of us (S.C.Dharmadhikari, J.) in **Motilal S/o Namdeo Pawar Vs. Scheduled Tribe Certificate Scrutiny Committee, Nashik and ors. in Writ Petition No. 07 of 2014 dated 22/12/2017**, this Court extensively referred to the principle of area restriction, its removal and its impact on the verification and scrutiny of the claims of this nature. In that process, it also referred to a recent order of the Hon'ble Supreme

Court wherein the Hon'ble Supreme Court holds that the inquiry should now be restricted to finding out whether the claimant/applicant belongs to 'Thakur' Scheduled Tribe as listed at Entry No.44 in the Presidential Notification. Beyond that, nothing should be introduced, much less by a back-door method. Once this authoritative pronouncement is in the field, then, we cannot sustain the impugned order. It has to be quashed and set aside. It is accordingly quashed and set aside.

11. Rule in this petition is made absolute in terms of prayer clause (B) also because the petitioner relies upon the school records of the petitioner's grandfather from the paternal side which is a pre-constitutional document wherein the caste is recorded as "Thakur". The other pre-constitutional document on record that of the petitioner's grandfather's brother from the paternal side also shows his caste as Thakur. Even the vigilance cell report favours the petitioner.

12. While making the Rule absolute in terms of prayer

clause (B), we direct that a certificate of validity shall be issued to the petitioner as expeditiously as possible and within a period of four weeks from today.

13. The Writ Petition, accordingly, stands disposed of. There will be no order as to costs.

14. After the judgment was pronounced in the main matter, Mr.Mendadkar submits that the Civil Application which was heard alongwith the writ petition prays for consequential directions.

15. The consequential directions are that, now a caste validity certificate would be issued by the Committee in pursuance of our order within four weeks from today, which would enable the petitioner to claim the benefit of regularisation of her services. She shall then be reckoned as a permanent employee and entitled to all benefits.

16. After the petitioner is held to be a candidate belonging to reserved category (in this case “Thakur- Scheduled Tribe”) and the certificate of validity validates her claim towards that tribe, then, necessarily all consequences must follow, including granting the petitioner the status of a permanent employee and regularising her services.

17. The Civil Application is allowed accordingly.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)