IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4699 OF 2015

Tatya Vishnu Ranshur]
R/o. Post Salgaon Ghatkar Nagar,]
Tal. Kudal. Dist. Sindhudurg.] .. Petitioner

Versus

1. The State of Maharashtra]
through its Secretary,]
Tribal Development Department,]
Mantralaya, Mumbai – 32.]

2. Scheduled Tribe Certificate]
Scrutiny Committee,]
Konkan Division, Thane,]
Vartak Nagar, Ward Office]
Opp. Kores Co., Vedant Comp.,]
Vartak Nagar, Thane (W).]

3. Superintendent Engineer]
Irrigation Department]
Koyana Circle, Satara.]

4. Executive Engineer,]
Irrigation Department, Alore]
Tal. Chiplun, Dist. Ratnagiri.] .. Respondents

...

Mr. R.K. Mendadkar for the Petitioner.

Mr. M.M. Pabale, A.G.P. for the State.

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CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

RESERVED ON : 19th SEPTEMBER, 2019

PRONOUNCED ON: 04th OCTOBER, 2019.

JUDGMENT:- [Per: Smt. Bharati Dangre, J.]

1. Rule. Rule made returnable forthwith. Heard by consent of the parties.

2. By the impugned Order passed on 05/12/2011, the claim of the Petitioner came to be rejected as belonging to 'Thakar" Scheduled Tribe, which constrained him to approach this Court. On 21/03/2014, the Division Bench of this Court remitted the matter to Respondent No.2-Committee to reconsider the claim of the Petitioner in the light of the principles enunciated in the case of ***Madhuri Nitin Jadhav & Ors. v. State of Maharashtra & Ors. reported in 2014 (4) Bom.C.R. 753***. The Petitioner appeared before Respondent No.2-Committee and was heard by the said Committee, which resulted into an order being passed by it on 23/03/2015 and the claim of the Petitioner as belonging to 'Thakar' Scheduled Tribe once again came to be rejected. It is this order, which is impugned in this petition.

3. With the assistance of learned counsel for the parties, we have perused the impugned order, which do not find favour with

the claim of the Petitioner on three counts viz. the documentary evidence produced by him, the issue of Area Restriction and the Affinity Test.

4. The position of law on all the three counts is no more *res integra* as by this time, through catena of authoritative pronouncements from the Apex Court as well as this Court, it is a crystiallised position of law that the burden to prove the claim as belonging to a particular tribe or a caste which is recognised as a Scheduled Caste or Scheduled Tribe under Articles 341 and 342 of the Constitution is on the Claimant. It is permissible for the Claimant to establish his claim by relying upon the necessary documents belonging to his forefather and the pre-constitutional documents would carry highest probative value. The Petitioner in support of his claim, relied upon School Leaving Certificate in respect of his father – Vishnu Tatya Ranshur issued by the Head Master of Pre Primary School, Salgaon No.2, Tal. Kudal, District Sindhudurg where caste is recorded as 'Hindu Thakar' and the date of admission is 08/09/1949. Another document is the School Leaving Certificate in respect of the Applicant's real uncle Gopal Tatya Ranshur issued by the Head Master of the Higher Grade, Pre Primary School, Salgaon 2 where the date of admission is recorded as 26/10/1950 and the caste is recorded as 'Hindu Thakar'. These documents have been conveniently overlooked by the Committee by observing that though they

reflect the caste as 'Thakar', this entry cannot result in an automatic validation of the tribe claim since the caste 'Thakar' is distinct from Scheduled Tribe Thakar and there is no ethnic linkage between the two. A stray observation is picked up from the order passed by this Court in Writ Petition No.175 of 2000 in the matter of ***Shivaji Ramrao Thakur v. State of Maharashtra & Ors. decided on 30/01/2006*** where it is recorded that it is very difficult to determine whether the Applicant belongs to Thakur caste or Thakur tribe because it is both the caste and the tribe. Reliance is also placed on the judgment of this Court in the case of ***Maharashtra Adivasi Thakur Jamat Seva Mandal & Ors. v. State of Maharashtra & Ors. (Writ Petition No.2088 of 1986)***. In making the said observation, the Scrutiny Committee has clearly ignored the judgment of the Apex Court in the case of ***Palghat Jilla Thandan Samudhaya Samrakshna Samithi & Anr. v. State of Kerala & Anr. reported in (1994) 1 SCC 359*** and also the Constitution Bench Judgment in the case of ***State of Maharashtra v. Milind & Ors. reported in 2001 (1) Bom. C.R. 620***. By the aforesaid pronouncements, the position of law that emerges is that it is neither the State Government nor the Court which can inquire into and/or let in evidence about the correctness of any entry of SC/ST in the Constitutional Orders. It has to be read as it is until it is amended by the Parliament. Resultantly, the entry of Thakur or Thakar including Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar enlisted at Entry No.44 in the Scheduled

Tribe Order are not susceptible of any interpretation and surely not when an entry in the record of a person prior to 1950 is recorded as "Thakar", it is not permissible to interpret whether he is belonging to Thakar caste or a Tribe. After 1950, if "Thakar" is recognised as Scheduled Tribe then it is not permissible for the Court or the State to deprive him of the benefit flowing from being recognised as Scheduled Tribe.

5. Another gross error committed by the Scrutiny Committee is in respect of the area restriction and the Committee not justified in posing the question whether Thakar from Sindhudurg are entitled to being conferred with the status of "Scheduled Tribe". The Committees constituted for determining the claim of Thakar/Thakur Scheduled Tribes are consistent in their reasoning of putting forth the issue of Area Restriction, despite the issue being put to rest by this Court as well as the Apex Court. The clear position of law that emerges from the said authoritative pronouncements is to the effect that the entry as it stands today viz. Entry No.44 of the Scheduled Tribe Order, 1950 which reads as 'Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar' are recognised as Scheduled Tribes in the entire State of Maharashtra. The entry does not read as "Thakur/Thakar – Scheduled Tribe". The Constitution (Scheduled Tribes) Order, 1950 recognised the existing tribes in the country and enlisted those tribes as Scheduled Tribes for the purpose of Article 342 of

the Constitution. The Area Restriction which was imposed by Act of 1956 came to be removed by Act No.108 of 1976. The underlying purpose of the amendment Act, 1976 was to remove the restrictions which were imposed resulting into only the tribe/caste in certain areas of the State being held entitled for availing the benefit flowing from Articles 341 and 342 and this had posed difficulties to the members of the Communities residing in the areas and subsequently migrating. Pursuant to the removal of the area restriction, the position that emerges is to the effect that once such tribe or group of tribes is enlisted in the Scheduled Tribes Order, that particular tribe or group of tribes is deemed to be 'Scheduled Tribe' for that entire State since the Scheduled Tribe Order is notified by the President of India "For the purpose of Constitution" and "In relation to that State". The issue though being settled is unnecessarily being raked up by present impugned order, which in our opinion, we are duty bound to deal with once again.

6. As far as affinity test is concerned, the Committee is not justified in relying upon the same as affinity test is merely considered to be a corroborative test and in terms of the judgment of the Apex Court in ***Anand v. Committee for Scrutiny and Verification of Tribe Claims & Ors. Reported in (2012) 1 SCC 113*** is not to be accepted as a litmus test. The genuineness of the claim is to be construed on thorough examination of the

documents and the affinity test would be taken assistance of in establishing the link of the Applicant with a particular tribe. In a case of the Claimant where he can establish the claim of belonging to a particular tribe on the basis of documentary evidence, merely because he has not been able to establish the affinity to a tribe, would not be a ground for denial of his claim and it cannot be accepted as a sole criteria to reject the claim. The Claimant who bears the burden of proving his caste claim has to produce all the documents in support of his claim and the Committee performs the role of verification by scrutinizing the material produced by him. The Committee is expected to collect the necessary information through its vigilance cell but merely on the characteristics which the Committee ascertains from a regular questionnaire being supplied cannot negate the claim of a particular Claimant. It is the cumulative effect of the documents produced, the identification of the primitive, ethnological and anthropological moorings of a tribe, that the Committee must strike a balance and evaluate the material brought before it. It is expected to conduct a unbiased and unprejudiced inquiry on the touchstone of application of judicious mind and by keeping in mind the Claimant who is entitled to the benefits flowing from being belonging to a particular tribe, which is recognised as a Scheduled Tribe and not to examine his claim only with a preconceived notion that there are spurious Claimant, in an attempt to secure the benefit flowing from Constitutional

mandate make false claims before the Committee. This is what precisely the impugned order has done to the claim of the Petitioner and has rejected the same by ignoring the settled position of law and by giving undue importance to the unnecessary factors and not considering that the Petitioner is in possession of documents in the form of School Leaving Certificate in favour of his father and uncle of the year 1949 and 1950 which recorded have their caste as 'Thakar' which came to be recognised as Scheduled Tribe by the Constitution (Scheduled Tribes) Order, 1950.

7. For the aforesaid reasons, we are unable to agree with the findings recorded by the Committee and resultantly, we quash and set aside the impugned order dated 23/03/2015 passed by the Scrutiny Committee.

8. The Writ Petition is made absolute in terms of prayer clause (a). No order as to costs.

(SMT. BHARATI DANGRE, J.) (CHIEF JUSTICE)

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