

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

WRIT PETITION st. NO.15123 OF 2019

Rahul Rajendra Thakur

... Petitioner

Vs

State of Maharashtra & Ors.

... Respondents

Mr.R.K. Mendadkar for the Petitioner

Mr.B.V. Samant, AGP, for Respondent – State

**CORAM: S.C. DHARMADHIKARI &
R. I. CHAGLA, JJ.**

DATED: DECEMBER 2, 2019

P.C.:

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges the order passed by the Scheduled Tribes Certificate Scrutiny Committee, Nandurbar dated 8.4.2019 invalidating the claim of the petitioner as belonging to Thakur Scheduled Tribe.

2. The petitioner has on the strength of a Tribe Certificate issued to him by the competent authority on 22.6.2016 came to be admitted as a student in the Diploma in Engineering (Mechanical).

3. The petitioner has been admitted by respondent No.3 Directorate and the Directorate had after admitting the petitioner against the reserved seat, forwarded caste/tribe certificate for scrutiny and verification to respondent No.2 – Committee. The respondent No.2 – Committee after receipt of this certificate proceeded to issue the requisite notices. The petitioner also placed on record several documents evidencing that in his family, the grandfather Maharu Arjun Thakur informed the school that he is Hindu Thakur. Therefore, in his school leaving certificate, the entry against the tribe/caste column is Hindu Thakur. The petitioner relied upon this entry which is a pre-constitutional entry as also that of his father. In the father's school leaving certificate as well, the Tribe is recorded as Thakur. This entry is made on 20.6.1979. Thereafter, the school leaving certificate of the petitioner's sister Priyanka carries similar entry.

4. The Committee forwarded these documents to the Vigilance Cell and called for a report. On 19.9.2018, the report of the Vigilance Cell dated 15.9.2018 came to be forwarded to the petitioner and the petitioner was called upon to show cause why this report should not be discarded.

5. The petitioner gave a detailed reply to this show-cause notice on 28.9.2018 and pointed out that none of the documents particularly the entry in relation to the petitioner's grandfather has been questioned. The petitioner also forwarded the genealogy and family tree on an affidavit. Despite all this, the Scrutiny Committee held that the petitioner has been unable to establish and prove his claim.

6. Mr.Mendadkar, appearing on behalf of the petitioner, would submit that it is not the quantity but quality of the evidence which is relevant and material. In this case, the committee has misdirected itself completely in taking into consideration certain entries not pertaining to the petitioner's relatives from paternal side but the distant relatives from maternal side. Insofar as these relatives are concerned, their documents or entries in documents pertaining to them are wholly irrelevant. They cannot be held to be germane for the purpose of the present proceedings. Therefore, Mr.Mendadkar would submit that the impugned order suffers from perversity as also it is vitiated by error of law apparent on the face of the record requiring our interference in writ jurisdiction.

7. In order to satisfy ourselves about the arguments of Mr.Mendadkar, we called for the original record. Mr.Samant, learned AGP appearing on behalf of respondent Nos.1 to 3, fairly produced the record before us. In the record, we have found that the petitioner indeed placed an affidavit. That affidavit had an enclosure. That affidavit was affirmed by Vandana Rajendra Thakur, mother of the petitioner, though that was wholly for the purpose of placing the genealogy and family tree on record, undisputedly, the petitioner's father is the son of Maharu Arjun Thakur, the grandfather of the petitioner. The great grandfather of the petitioner viz., Arjun, was one of the sons of Shamrao Thakur. Thus, the branch before us is that of Arjun and Arjun had a son Maharu. Maharu's son is the father of the petitioner. The petitioner, therefore, relied upon the entry in the school leaving certificate of Maharu.

8. The other two entries relied upon (Brahmabhatt) are concededly not pertaining to the petitioner's relatives from the paternal side. It is an admitted position that the caste or tribe is derived from the father. In the instance case, the vigilance enquiry revealed that the said Maharu had stated before the committee

that he was born on 1.8.1932. The record pertaining to Maharu may be old but the Vigilance Committee has specifically endorsed that there is neither any overwriting nor is there anything by which one can infer that the document has been tampered with. It is in these circumstances, while forwarding its report to the Committee, the Cell has not made any adverse comment with regard to this document.

9. In the record, there is this document which was produced. That carries an endorsement in the form of a stamp of the headmaster of the Zilla Parishad (Primary and Secondary) school at village Nagduli, Taluka Erandol, District Jalgaon. This is a school established in the village. Maharu Arjun Thakur was admitted in this school and he was born on 1.8.1932. While admitting himself in the school, the caste was entered by him as Hindu Thakur.

10. To our mind, therefore, the Committee should not have discarded this document and we are not in agreement with Mr.Samant that merely because there are several family members but none of them moved the competent authority to obtain Tribe Certificate nor the Committee for having the claim validated would

mean there is a doubt in relation to the petitioner's claim.

11. To our mind, far from any doubt being expressed, there is no cogent or satisfactory reason assigned by the committee in discarding the claim of the petitioner.

12. The committee framed as many as three issues and two of which are designed to reject the claim.

13. When the first issue reads as to whether the petitioner has proved the claim by producing documentary evidence, the finding is no. Now, in that regard, the family tree is not doubted. If the family tree is not doubted and that the committee went on collecting the details of the family but referred to in its enthusiasm entries in the school records not pertaining to Maharuru but the entry in relation to the wife of the grandfather, great grandfather of the petitioner, then, we are of the firm view that this course charted by the committee smacks of total arbitrariness. With regard to the second issue, there is no record of the petitioner then being required to go through an affinity test. The third issue to our mind may be permissible to be framed but merely because nobody in the family has been issued a Tribe Validity Certificate does not

mean that the petitioner is disentitled to the same.

14. To our mind, therefore, the whole approach of the committee smacks of arbitrariness if not malafides. It has misdirected itself totally in law. It has taken into consideration matters which were irrelevant and not germane but at the same time, brushed aside relevant and germane material. To our mind an entry in the school leaving certificate of Maharu Arjun Thakur and which is undisturbed from 1932 was enough to grant the relief to the petitioner.

15. To our mind, therefore, the order of the scrutiny committee cannot be sustained. We proceed to quash and set aside the same. Rule is made absolute in terms of prayer clause (a). A certificate of validity shall be issued to the petitioner as expeditiously as possible and in any event, within a period of four weeks from the date of communication of this order.

16. Needless to clarify that on the petitioner obtaining and producing before the respondent No.4 the Tribe Validity Certificate, the respondent No.4 as also the Directorate of Technical Education, Government of Maharashtra, shall release the

necessary original documents including the degree certificate in favour of the petitioner. That shall be done within two weeks from the production of the validity certificate.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)