

Rekha Ashok Thakur	}	Petitioner
versus		
State of Maharashtra and Ors.	}	Respondents

Mr.Ajinkya Udane I/b. Mr.Anurag Jain for respondent
no.4.

DATED :- JULY 5, 2019

2. On 28th May, 2019, the petitioner, armed with a tribe certificate issued by the Sub-Divisional Officer, Dhule approached the Scrutiny Committee so as to have the claim scrutinised and verified. The Scheduled Tribe Certificate Scrutiny Committee,

Nandurbar, in a lengthy order, has invalidated the claim. The claim has been invalidated on the ground that the petitioner has failed to produce documentary evidence to establish and prove that she belongs to Thakur Scheduled Tribe. The next ground on which the claim is invalidated is that the petitioner has failed to establish her affiliation with the Thakur Scheduled Tribe. The third ground on which the tribe certificate has been cancelled is that there are copies of caste validity certificates issued and relied upon, but none of the tribe validity certificates are issued to any close relatives from the paternal side.

3. At the outset, we clarify that insofar as the findings of fact on the last point, namely, probative value of the tribe validity certificates issued to Priyanka Dattatray Bagul, Pravin Prakash Bagul, Kalpesh Suryakant Bagul, Pramod Prabhakar Ahire, Mr. Rajesh Nimba Wagh, Santosh Prabhakar Ahire and Yuvraj Shivaji Ahire are concerned, these have rightly been held to be not valid proof. There is no probative value attached to them because these persons are not close relatives of the petitioner from the paternal side. Hence, we do not reopen the findings of fact on this point. We have difficulty in accepting the reasoning of the Scrutiny Committee on the other two points.

4. We could have understood the reasoning of the Scrutiny Committee had the scrutiny and verification been done by accepting that it is not necessary that Thakurs have to reside only in Thane, Pune, Colaba, Ahmednagar and Nashik. It is not necessary that Thakurs have to reside in only these districts even after the area restrictions have been removed after the Schedule Caste/Scheduled Tribe Area Restriction Removal Order, 1950. Now, the scrutiny and verification cannot be on the footing that anybody not residing within these districts cannot claim to be a Thakur. The Scrutiny Committee proceeded on the footing that the socio cultural affinity test has to be conducted firstly by ascertaining the place of residence. If the place of residence is not in the above five districts, then, the socio cultural affinity test ought to be answered in the negative. The other reasoning of the Scrutiny Committee is that the petitioner's predecessor in title resided in Tarkheda, Taluka Pachora, District Jalgaon. The petitioner, therefore, could never obtain any tribe/ caste certificate from the Sub-Divisional Officer, District Dhule. She has suppressed the fact of her residence in Jalgaon and that is how the caste/ tribe certificate itself is vitiated being not issued by an authority competent to issue the same.

5. In that regard, we have taken on record an additional affidavit tendered by the petitioner. In that additional affidavit, the petitioner has set out the facts and circumstances in which the petitioner's father and mother resided and continue to reside in Dhule District. Beyond this affidavit, we find that if the tribe certificates have to be issued in the prescribed form and in terms of the law, then, the Scrutiny Committees should carefully peruse the Maharashtra Scheduled Caste, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012. The substantive provision, namely, section 3 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2001 provides for a caste certificate. Any person belonging to any of the Scheduled Castes/ Scheduled Tribes shall apply in such form and in such manner as may be prescribed, to the Competent Authority for issuance of a Caste Certificate. Naturally, the form is what is appended to the law and what is prescribed is prescribed by the Rules. Upon such an application being made, the competent authority satisfies itself about the genuineness of the claim and following the procedure as prescribed, issues a caste/tribe

certificate within such time limit and in such form as may be prescribed or rejects the application for reasons to be recorded in writing.

6. In the instant case, the rules have completely been lost sight of. In rules, the word “form” is defined to mean a form appended to the rules. The term “deemed date” is defined in Rule 2(e) to mean the 10th August, 1950, that is the date of Presidential Order for Scheduled Castes and the 21st November, 1961 for De-notified Tribes (Vimukta jatis) and Nomadic Tribe and the 13th October, 1967 for Other Backward Classes and Special backward Category. The competent authority may issue a caste certificate to the applicant who is a permanent resident of the concerned area on deemed date for which the competent authority is designated or appointed by the Government by notification published under clause (b) of section 2 of the Act in the Official Gazette. In case of the applicant who is born after deemed date, the place of ordinary residence for the purpose of issuance of caste certificate shall be the place of permanent residence of his father or grandfather or great grandfather on deemed date.

7. We do not see why the Scrutiny Committee in this case insists that the petitioner must produce proof of how she came to reside in Dhule District. Apart from that, the understanding is,

those claiming to be Thakur, but residing in Dhule, Jalgaon and Nandurbar Districts can never be said to be Thakurs and that is the theme running in the entire order.

8. We do not think that the Scrutiny Committee's observations, summarised at pages 44 and 45 of the paper book would stand scrutiny on the touchstone of law.

9. We have found that the Scrutiny Committee, in several matters, continues to brush aside the area restriction removal order. The removal of area restriction is a very crucial aspect in this inquiry. Time and again, this court has passed orders that the Scrutiny Committees cannot fall back on the area restriction and ignore the mandate of law. It cannot also ignore the binding judgments of this court and the Hon'ble Supreme Court.

10. For the foregoing reasons, we quash and set aside the order of the Scrutiny Committee. We remand the matter back to the Scrutiny Committee on the inquiry on point nos. 1 and 2. The Scrutiny Committee shall hold a fresh inquiry and scrutiny. It shall pass an order totally uninfluenced by its earlier findings, observations and conclusions. This order should be passed afresh and strictly in accordance with law. It should be passed on the merits of the claim of the petitioner. We find that in passing the

impugned order, the Scrutiny Committee has also ignored the procedure that has to be followed and prescribed by the Maharashtra Scheduled Tribe (Regulation of Issuance and Verification of) Certificate Rules, 2003. There as well, the procedure is set out and Rule 3 of these Rules reads as under:-

“3. Procedure for obtaining Scheduled tribe certificate from the Competent Authority.

(1) A person who claims to belong to any of the Scheduled Tribes and accordingly desires to have a Scheduled Tribe Certificate shall submit his application in Form A to the Competent Authority.

(2) The applicant shall file with the application an affidavit in Form A-1 duly sworn before the authorised Officer or a Court, mentioning,-

(a) particulars of the Scheduled Tribe, tribal community, part or group of tribe, which he claims to belong to;

(b) religion;

(c) the place from which he originally hails;

(d) whether he had applied for grant of Scheduled Tribe Certificate in the State of Maharashtra or in any other State;

(e) whether any Scheduled Tribe Certificate was issued or refused to any of his near relatives in the State of Maharashtra or in any other State;

(3) The applicant shall furnish the attested copies of the following documents with his application for obtaining the Scheduled Tribe Certificate and shall produce the originals thereof, on demand, by the Competent Authority:-

(a) (i) Extract of the Birth Register in respect of applicant, his father or elderly relatives from paternal side;

(ii) extract of the Primary School Admission Register of the applicant, his father or grand father, if available; and

(iii) Primary School leaving certificate of the applicant and his father;

(b) documentary evidence in regard to the Scheduled Tribe and ordinary place of residence prior to the date of notification of such Scheduled Tribe;

(c) an extract of service record (book) mentioning the Tribe of the applicant's father or blood relatives who are in Government or any other services;

(d) validity certificate, if any, of the father or real uncle or any other elderly relatives from paternal side of the applicant granted by the Scrutiny Committee;

(e) revenue record or village panchayat record if any; and

(f) other relevant documentary evidence, if any;

(4) If the applicant is unable to produce any one or more of the documents mentioned in clauses (a) to (f), in such cases, the applicant shall state reasons therefor in his affidavit and the Competent Authority may consider the same and after conducting enquiry as he deems fit, shall decide the claim on merit."

11. A bare perusal of sub-rule (2) would indicate that when the rule itself says the place from where the applicant originally hails, whether he had applied for grant of Scheduled Tribe certificate in the State of Maharashtra or in any other State, then, coupled with the other requirements of furnishing attested copies of documents enumerated in sub-clause (3) of Rule 3, which *inter alia* means documentary evidence in regard to the Scheduled Tribe and ordinary place of residence prior to the notification of

such Scheduled Tribe, an extract of service record (book) mentioning the tribe of the applicant's father or blood relatives who are in Government service, would clarify that it is not necessary to approach the competent authority of the District from where the tribe hails or the tribe is to be found.

12. We do not think that this was present to the mind of the Scrutiny Committee. It in these circumstances, we have reached the conclusion that the Scrutiny Committee's order was vitiated by non application of mind so also perverse. In that, it ignores the prescription set out in the Act and the Rules. The writ petition, therefore, succeeds. On remand, the matter must be decided by the Scrutiny Committee as expeditiously as possible and in any event, within a period of three months from the date of the communication of this order.

13. Now, what remains is the employment of the petitioner with the fourth respondent. It is stated on oath by the fourth respondent that prior to the communication of court's earlier orders and in the earlier round of the litigation, the services of the petitioner have been terminated. The fourth respondent has filed an affidavit and specifically stated that the order of termination does not violate the condition that is imposed by the earlier order of this court. In other words, the notice should not have been

served on the respondent threatening contempt. Respondent no. 4 has terminated the services of the petitioner only after 15th June, 2019. They have been terminated on 17th June, 2019.

14. We do not wish to enter into this controversy for the simple reason that the fourth respondent has not filled up the vacancy till now. The petitioner, therefore, shall be taken back in the employment of respondent no.4. The break in service shall be condoned. The benefit of continuity should be granted with full salary. The petitioner shall, however, not be in a position to hold this post in the event the caste/ tribe claim is not accepted and the caste/ tribe certificate is invalidated and cancelled. No equities can be claimed thereafter and all consequences in law shall follow. The order of termination dated 17th June, 2019 is quashed and set aside.

15. The writ petition is disposed of in terms of the above. There would be no order as to costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)