

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8135 OF 2019

Megha Bhatulal Thakur
aged 39 years, residing at B-10,
Prabhusparsh Karmyogi Nagar, Tidke
Colony, Nayantara, CT 2, Nashik, Dist.
Nashik

...Petitioner

Versus

1. State of Maharashtra
through its Secretary, Tribunal
Development Department, Mantralaya,
Mumbai – 400 032
2. Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar,
through its Member Secretary, having
its office at Sakri Road, near RTO
office, Nandurbar, Dist. Nandurbar.
3. Directorate of Printing & Stationary
Department Through its Manager
having its office at Charni Road,
Mumbai.

...Respondents

Mr. R. K. Mendadkar, for the petitioner.
Mrs. Rupali Shinde, AGP for the State/Respondents.

**CORAM: RANJIT MORE &
N. J. JAMADAR, JJ
DATED: 29th AUGUST, 2019**

JUDGMENT :- (Per : N. J. Jamadar, J.)

1. Rule. Rule made returnable forthwith and, with the
consent of the Counsels for the parties, heard finally.

2. The challenge in this petition is to an order passed by the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar, ("the Committee") dated 5th July, 2019, whereby the committee invalidated the claim of the petitioner of being a member of Thakur, Scheduled Tribe.

3. The petition arises in the backdrop of the following facts:

The petitioner claims to belong to Thakur, Scheduled Tribe, which is notified as a Scheduled Tribe under the Constitution (Scheduled Tribes) Order, 1950. The competent authority issued a tribe certificate to the petitioner on 31st October, 2000. On 3rd December, 2011, on the strength of the said certificate the petitioner came to be appointed to the post of 'Clerk-cum-Typist', with respondent no.3, to a post which was reserved for the members of the Scheduled Tribe. Eventually, the claim of the petitioner came to be forwarded to respondent no.2 – Committee for verification. Since respondent no.2 – Committee did not decide the claim of the petitioner, the petitioner was constrained to file Writ Petition, being (ST) No.23662 of 2018, seeking a mandamus to decide the tribe claim. By order dated 22nd October, 2018, this Court directed respondent no.2 – Committee to decide the tribe

claim of the petitioner as belonging to 'Thakur' Scheduled Tribe latest by 31st March, 2019. The Committee, thus, decided the tribe claim of the petitioner by the impugned order dated 5th July, 2019. It was, *inter alia*, held that there was an oldest entry of the cousin grand-father of the petitioner, of the year 1917, which recorded the caste of the said cousin grand-father as "Bhat". Thus, the validity certificates, which were issued to the blood relatives of the petitioner were of no avail. Consequently, the claim of the petitioner of being a member of Thakur – Scheduled Tribe was held to be unsustainable.

4. Being aggrieved by, and dissatisfied with, the aforesaid order, the petitioner has invoked the writ jurisdiction of this Court.

5. Heard Mr. Mendadkar, the learned Counsel for the petitioner and Mrs. Shinde, the learned AGP for the State.

6. Mr. Mendadkar urged that respondent no.2 – Committee has committed a grave error in negating the claim of the petitioner, in the face of voluminous record including the validity certificates granted to the blood relatives of the petitioner. It was submitted that the error on

the part of respondent no.2 – Committee is further accentuated by the fact that the validity certificates to the cousin uncle of the petitioner namely Vinod Vasantrao Suryavanshi and the cousin of the petitioner Mohan Ravindra Thakur were granted pursuant to the orders passed by this Court, in petitions filed against orders invalidating their claims by the concerned Scrutiny Committees. Thus, the validity certificates to the near relatives of the petitioner were granted pursuant to the judicial orders passed by this Court. In that backdrop, it was not open to the Scrutiny Committee to short-shirft those validity certificates by ascribing a reason that the oldest entry as regards the cousin grand-father of the petitioner was that of 'Bhat'.

7. We have perused the impugned order. The Committee has noted that three of the near relatives of the petitioner, namely, Vinod Vasantrao Suryavanshi, Prashant Kailas Thakur and Mohan Ravindra Thakur have been granted validity certificates in pursuance of the orders passed by this Court in the writ petitions wherein the invalidation of their claims by the concerned Scrutiny Committee were challenged. The Committees, however, professed to play down the grant of those validity certificates on the premise that the

true facts about oldest documents were not placed before the Scrutiny Committee and this Court.

8. The learned AGP, did not dispute the fact that the blood relatives of the petitioner have been granted the validity certificates in pursuance of the orders passed by this Court, upholding the claim of those persons that they are the members of the Thakur – Scheduled Tribe. In this view of the matter, the approach of the Scrutiny Committee in discarding the validity certificates issued pursuant to the orders passed by this Court is not at all commendable. By way of illustration, we may refer to the judgment of this Court in the case of Mohan Ravindra Thakur (Writ Petition No.5793 of 2011), the cousin of the petitioner. In the said case, after referring to the material, especially, documents which had pre-constitutional origin, this Court observed that there was no reason to discard those documents, commanding more probative value. Evidently, the tribe claim of the Mohan Thakur has attained finality.

9. An useful reference, in this context, can be made to the judgment of this Court in the case of ***Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny***

Committee & others,¹ wherein it was held that if the relationship by blood is established or not doubted, and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent in the Committee testing the same evidence and making the same conclusion unless of course the Committee finds, on the evidence, that the validity certificate of such relation has been obtained by fraud.

10. In the case at hand, the validity claims of the near relatives of the petitioner have been upheld by three judicial determinations. In the face of such judicial imprimatur, it is simply not open to the Committee to discard the claim on the premise that the correct facts were not placed before the Court. We are, therefore, of the firm view that the claim of the petitioner could not have been negated in the face of the three validity certificates in favour of her near relatives, especially when those were granted pursuant to the orders of this Court.

11. The upshot of the aforesaid consideration is that the impugned order becomes legally unsustainable. Resultantly, the impugned order is liable to be quashed and set aside and

12010(6) Mh.L.J. 401.

the claim of the petitioner of being a member of the Scheduled Tribe deserves to be upheld. Hence, the following order:

- (i) The petition stands allowed.
- (ii) The impugned order dated 5th July, 2019 stands quashed and set aside.
- (iii) It is hereby declared that the petitioner belongs to Thakur, a notified Scheduled Tribe.
- (iv) Respondent no.2 – Committee is directed to issue tribe validity certificate to the petitioner within four weeks from the date of communication of this order.

12. Rule made absolute in aforesaid terms. No costs.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]