

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

WRIT PETITION NO. 8298 OF 2019

Prathamesh Ravindra Thakur : Through
his father & natural guardian ... Petitioner

Vs

1 State of Maharashtra & Ors. ... Respondents

Mr. R.K. Mendadkar with Mr. T.V. Jadhav and Ms. Priyanka Shaw
for the Petitioner.

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

Mr. Aadesh Sawant for Respondent No.3.

**CORAM : S.C. DHARMADHIKARI &
S.K. SHINDE , JJ.**

TUESDAY, 30TH JULY, 2019

P.C. :

1 We have heard both sides. We have perused the writ
petition and the annexures thereto.

2 By the impugned order of the Scrutiny Committee at
Nandurbar dated 15th July, 2019, the petitioner's claim towards
Thakur Scheduled Tribe has been invalidated.

3 Mr. Mendadkar, learned counsel appearing on behalf of the petitioner submitted that the Committee conducted a vigilance enquiry in the case of the petitioner's father and on the basis of the vigilance report dated 22nd October, 2018, invalidated the tribe claim of the petitioner's father. The petitioner's father has filed a Writ Petition before this Court, being Writ Petition No.13143 of 2018 challenging the order passed by the Scrutiny Committee-Respondent No.2 and the same is pending adjudication. The committee held that the vigilance report of the petitioner's father's case is applicable to the petitioner. The petitioner was, therefore, served with a show cause notice dated 12th July, 2019. The claim of the petitioner was towards Thakur Scheduled Tribe Entry No.44 of the Scheduled Tribe Control Order, 1950 as amended in 1976. The Committee invalidated the tribe claim of the petitioner as Thakur Scheduled Tribe.

4 Mr. Samant, learned AGP appearing on behalf of the respondent supported the impugned order.

5 After having perused the petition and the annexures thereto, including the impugned order with the assistance of both sides, we find that the petitioner completed his twelfth standard HSC examination. He appeared for the State Common Entrance Test for Bsc Agriculture Degree course under the reserved category of Scheduled Tribe. By the impugned order, the Respondent No.2 Committee cancelled the tribe caste claim of the petitioner. The petitioner wants to avail the concession and relaxation in education in the form of reservation of seats for the Scheduled Caste/Scheduled Tribe. For that, he was required to produce the certificate of validity before the cut-off date.

6 The petitioner complains that a hurriedly held hearing resulted in voluminous documentary evidence being disregarded on flimsy grounds.

7 There is some substance in the contentions of Mr. Mendadkar and for the simple reason that we have found as a matter of habit, that this Scrutiny Committee at Nandurbar is brushing aside binding orders of this Court and the Hon'ble Supreme Court. When it is obliged to find out whether the

claimant before it is Thakur Scheduled Tribe within the meaning of Entry 44, it does not carry out the task assigned to it by law in that manner. It charts a completely different course and reverts to the area restriction in the garb of finding out whether a person from other than the areas, where Thakur Scheduled Tribe were ordinarily residing and to be found, is indeed a Thakur. He must be possessed of some knowledge of the areas in which this Tribe was earlier residing and inhabiting. The claimant must, therefore, be aware of all such traits, characteristics, traditions, practices, customs, usages in addition to his ancestors or forefathers residing in this area. This is the test and devised by the Committee, though it is aware that this approach of the Committee has been frowned upon, severely criticised and not upheld repeatedly by this Court.

8 The certificate of validity of the cousin uncle of the petitioner, namely, Mahendrapal Vitthal Thakur is discarded. About the Nandurbar Committee's approach, much would have to be said to appreciate the anxiety of the Committee Members and they feel that people belonging to Maratha caste are trying to snatch the benefits meant for Thakur Scheduled Tribes by

passing themselves off as members of the Thakur Scheduled Tribe. The general observation is that those residing and to be found in Jalgaon and Nandurbar Districts with surnames Thakurs are, in fact, not members of this Scheduled Tribe, but belong to caste Maratha or a higher caste. The Committee then refers to some orders of this Court upholding the stand of the Committee for denying them validity certificates. The Committee also then conveniently makes a reference to the observations in the orders of this Court that a minimal inquiry is necessary to find out whether the forefathers of such persons have hailed from the Districts in which Thakur Scheduled Tribe was predominantly found, namely, five or six Districts in the State of Maharashtra. The Committee firms up its opinion by saying that in these five or six Districts where this tribe is predominantly found, Nandurbar and Jalgaon is never mentioned or included. Therefore, the presumption that these persons from Jalgaon and Nandurbar Districts having surnames Thakur are not Thakur Scheduled Tribe. This Court in individual cases upheld this approach because the Committee's finding in those cases were backed by solid reasons and proof. In the instant case, we do not find any such backup proof at all. The Committee then should

have referred to several binding judgments of this Court and the Hon'ble Supreme Court, but conveniently omits them. It picks and chooses judgments and orders of the Hon'ble Supreme Court and this Court by pre-determining its own conclusion. The judgments which are consistent with the conclusions reached in a predetermined manner by the Committee are then extensively referred to.. The Committee feels that it is its duty to enlighten and educate Judges of this Court. We are aware of every single judgment, whether delivered by our Benches or by the Hon'ble Supreme Court. Trained as we are and with a judicial mind, we know that judgments are not statutes and not to be read like statutes. Judgments, but interpret statutes. Therefore, whenever a judgment laying down a principle of law is cited, whether it is attracted or applicable to the facts and circumstances of a particular individual case, is a duty which we perform and we are expected to perform. We are appointed for that purpose and when we hold constitutional posts, the Committee need not educate us because there is enough material available for our guidance. In the event the Committee is repeating the course criticised by us and not upheld, we will not hesitate to direct removal of the Committee members as we have done in the case

of Nashik Scrutiny Committee and also impose heavy personal costs on the members for they are compelling and forcing the parties like the petitioner to approach this Court. Legal costs are indeed very heavy and the time spent is also a factor which would prevail upon us to award costs. These costs would be payable by the Committee Members personally and on their failure, the Government would be directed to recover it from their salaries and emoluments. We say nothing more.

9 The impugned order is full of conjectures and premises. It is totally unsustainable. So long as the certificate of validity has not been doubted or suspected and held to be vitiated by fraud or misrepresentation of facts, after a show cause notice being issued to the certificate holder, a due inquiry as contemplated by law held and the certificate confiscated and cancelled, the same could not have been omitted from consideration or the same could not have been termed as having no probative value. This approach of the Committee in the instant case exhibits total perversity. The impugned order is vitiated by error of law apparent on the face of the record.

10 For the reasons aforestated, we allow this Writ
Petition. We quash and set aside the impugned order and direct
the certificate of validity to be issued to the petitioner, latest by
31st July, 2019 so as to enable the petitioner to meet the deadline
for admissions. The deadline is stated to be 2nd August, 2019.

11 We direct all concerned to act on an authenticated
copy of this order and proceed on the basis that our order
validates the claim of the petitioner. A formal certificate of
validity will have to be issued by the Scrutiny Committee now and
that may be made available after some time. Should it not reach
the office of the Common Entrance Test Admission Cell, then, our
order would suffice for the purposes of granting admission to the
petitioner if she is otherwise eligible.

12 There will be no order as to costs.

S.K. SHINDE, J.

S.C. DHARMADHIKARI, J.