

Pradnya Bhogale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8969 OF 2019

Ashok s/o Pandurang Mahale,
Age-59 years, Occ. Retired as Junior Auditor,
R/o A-2, IVY/602, Yogi Dham, Gauripada,
Kalyan (West), Tq. Kalyan, Dist. Thane. ..Petitioner

Versus

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32.
Through its Secretary.
(Copy to be served on the Government
Pleader, High Court of Judicature at Bombay)
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division, Nandurbar
Through its Member Secretary.
3. The Chief Accountant (Finance),
General Section, Brihanmumbai,
Mahanagar Palika, Head Office,
Mahapalika Marg, 4th Floor,
Fort Mumbai – 400 001. ..Respondents

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Mr. S.C. Yeramwar for the petitioner.
Ms. R.M. Shinde, AGP for State.

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**CORAM : RANJIT MORE &
M.S. KARNIK, JJ.**

DATE : 21st NOVEMBER, 2019

ORDER :

. Rule. By consent, Rule made returnable forthwith and heard finally.

2. By this petition filed under Article 226 of the Constitution of India the petitioner challenges the decision dated 27.06.2019 of the respondent No.2-The Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Division, Nandurbar (for short 'Committee') invalidating the Tribe Claim of the petitioner. The caste certificate dated 25.10.1977 that he belongs to 'Thakur-Scheduled Tribe' community was referred to the respondent no.2 for scrutiny. The petitioner relied upon several documents in support of his caste claim. He primarily relied upon the school record of his father (Pandurang Fakira Thakur) which indicates that in the admission register his father's caste is recorded as 'Thakur'. Apart from the other documents the petitioner relied upon in support of his claim,

he placed reliance on the caste validity certificate of his real sister (Shobha Pandurang Mahale) validating the caste claim as belonging to Thakur-Scheduled Tribe. The caste validity certificate in favour of the petitioner's sister was issued in view of the order passed in Writ Petition No. 856 of 1998.

3. By the impugned order the Scrutiny Committee appreciated the documents on record and concluded that the caste certificate issued in favour of the petitioner deserves to be invalidated.

4. Heard learned Counsel and AGP. The impugned order can not be allowed to stand for reasons more than one. There is no dispute that the caste claim of the petitioner's real sister is already validated. The Scrutiny Committee has rejected the caste claim on the ground that the erstwhile Committee which issued validity in favour of the petitioner's sister has not examined the caste claim of the petitioner's sister as per the provisions 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 (hereinafter referred to as 'the Act of 2001'). This approach of the Committee is completely erroneous. For one, when the caste claim of the petitioner's sister was considered and a validity issued in her favour on 07.10.1999, the Act of 2001 was not in force. The caste claim of the petitioner's sister was validated in accordance with the valid procedure then prevailing and as per the law laid down by the Apex Court. Thus, the caste validity of the petitioner's sister has become final. In such circumstances, in the light of the law laid down by the Division Bench of this Court in case of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others 2010 (6) Mh.L.J. 401**, once the caste claim of the close blood relation of the petitioner is already validated then there is no reason why the caste claim of the petitioner should be invalidated unless the claim of such blood relation is vitiated by fraud, material misrepresentation or is granted without jurisdiction and that too after giving an opportunity to such a blood relation. The caste

validity certificate of petitioner's real sister is issued by the Committee competent and having jurisdiction to issue such a certificate. On this count alone the impugned order deserves to be set aside.

5. Thus, the respondent No.2- Committee was not justified in rejecting the caste claim on the ground that the caste claim of the petitioner was not examined in the light of the Act of 2001, as on the date when the caste claim of the petitioner's sister was validated, the Act of 2001 was not in force. The caste claim of the petitioner's sister was validated on the touchstone of the legal provisions then existing.

6. Even otherwise it is a matter of record that the school record of the petitioner's father of the year 1933 mentions the caste as 'Thakur' and this being a pre-constitutional record has a high probative value. The Committee has committed error in discarding this certificate only on the ground that the petitioner has stated his native place as Nhave, Taluka Chalisgaon whereas the school admission register of the petitioner's father shows that the same pertains to

Devgaon, Taluka Parola, District Jalgaon. When there is no dispute that this is a pre-constitutional document and as it is not anybody's case that the school record of the petitioner's father is forged or fabricated, the Committee was not justified in discarding the said document.

7. Further this Court in the case of **Ravindra Pralhadrao Khare Vs. The State of Maharashtra and Ors.** in Writ Petition No.6224 of 2015 has extensively dealt with the manner in which the caste claim of those who claim to belong to the 'Thakur' caste should be dealt with. This Court has observed that in the pre-constitutional document there cannot be an entry of 'Thakur-Scheduled Tribe' as 'Thakur' itself came to be recognized as Scheduled Tribe after the Constitution came into force and, therefore, in any pre-constitutional document, it would be difficult to find an entry 'Thakur-Scheduled Tribe'. Even the issue of area restriction has now been put to rest in the light of the decision of the Hon'ble Apex Court in the case of **Jaywant Dilip Pawar Vs. State of Maharashtra & Ors.** in Civil Appeal No.2336 of 2011 decided on 08.03.2017. In the light of the

pre-constitutional document of 1933 in the form of school admission register of the petitioner's father which records his caste as 'Thakur' and also in the light of validation of the Tribe Claim of the petitioner's sister as belonging to the 'Thakur' caste, the present petition deserves to be allowed. Hence, the following order :-

ORDER

(1) The impugned order is set aside.

(2) The respondent No.2 is directed to issue the caste validity certificate as belonging to the 'Thakur'-Scheduled Tribe in favour of petitioner within a period of six weeks from today.

8. Writ Petition is allowed.

9. Rule is made absolute with no order as to costs.

(M.S. KARNIK, J.)

(RANJIT MORE, J.)