

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9257 OF 2019

Akshay Rajendra Thakur	...	Petitioner
versus		
State of Maharashtra and Ors.	...	Respondents

Mr.R.K.Mendadkar for the Petitioner.

Mrs.A.A.Purav, AGP for State.

CORAM :- S. C. DHARMADHIKARI &
G.S.PATEL, JJ.

DATE :- AUGUST 28, 2019

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioner challenges the order passed by the Scrutiny Committee dated 6th July, 2019, copy of which is at Exhibit 'A' to the petition.

2. A brief reference to the factual position, as emerging from the memo of this writ petition and the additional affidavit, is necessary for the final order that we propose to pass in this writ petition. We do not repeat the contents of the earlier orders for we reproduce them. The two orders are dated 23rd August, 2019 and 26th August, 2019. They read thus :-

ORDER DATED 23rd AUGUST, 2019

“1. Let the original record be produced by the learned AGP in order to satisfy us that there was indeed a defect in the caste certificate issued. The caste certificate, copy of which is at page 30 of the paper book, according to the AGP, is not issued in proper format. That is issued on 21st February, 2003 to the petitioner Akshay Thakur. In 2003, this petitioner, who is today 23 years of age, was a minor. We are, therefore, left wondering as to how this person/petitioner is responsible for the certificate not being issued in the required format. For that purpose, the scrutiny and verification of his claim could not have been refused or carried out superficially, as has been complained by Mr.Mendadkar.

2. In order to satisfy our judicial conscience, we direct production of original record on the next date of hearing.

3. Stand over to 26th August, 2019 at 3.00 p.m.”

ORDER DATED 26th AUGUST, 2019

“1. In pursuance of the earlier order dated 23-8-2019, the original file is produced.

2. From a perusal of the original record, we posed the following queries to Mr. Mendadkar:-

3. The petitioner before us is one Akshay Rajendra Thakur. Rajendra Thakur is the father of Akshay. Rajendra Thakur says in his statement before the Committee that he was born in Village Var, Taluka and District Dhule on 5-7-1965. At Exhibit “E” to the petition is a copy of the General Register maintained by the Zilla Parishad, Shetki Shala, Var, Taluka and District Dhule. In that it is stated that the said Rajendra entered the school on 27-7-1971 and thereafter left the school on 9-5-1981. If this school was left by Rajendra in 1981, how Rajendra proclaims that in search of work and livelihood, he moved to District Pune and on 29-6-1996 the petitioner Akshay was born at Village Lohegaon, Taluka and District Pune. The petitioner Akshay was admitted in Saraswati Primary Vidyalaya Municipal Corporation School No.206 (Boys), Vidyanagar,

Pune. At the same time, from the records produced before us and the annexures to the writ petition, it is evident that Rajendra was employed in M.Y. Holkar Vidyalaya, Wafgaon, Taluka Khed, District Pune. This Khed Taluka is now known as Rajgurunagar. There is absolutely no reference in the records as to how the petitioner Akshay was issued a Caste Certificate in Format "B" which recites that the petitioner's father Rajendra was residing in Village Dhanori, District Pune. The petitioner's family is stated to be ordinary resident of Village Dhanori in Pune District. Now, this Village Dhanori has nowhere been mentioned as a place of ordinary residence of this family in Pune District. The places that are mentioned are, Village Lohegaon, Taluka Haveli, District Pune and the place of employment of Rajendra is M.Y. Holkar Vidyalaya in Khed Taluka, District Pune.

4. Our query was, therefore, that if the petitioner is indeed assailing the correctness of the finding at page 19 of the paper-book, internal page 5 of the Committee's impugned order (para 9), then he would have to demonstrate that not only the said Rajendra was born in Village Var, Taluka and District Dhule but he left Dhule and came to reside in Pune. He was at one time in Lohegaon Village but later on moved to some other village in Pune District. That other village may or may not be Dhanori. Therefore, relying upon the Caste Certificate issued in favour of Rajendra, the Committee insisted that the same ought to carry an entry of the ordinary place of residence, or the village where Rajendra and his family ordinarily resided. If they were indeed in Dhule District at one time, then, the explanation of Rajendra, on oath, before the Committee was acceptable provided his son Akshay's Certificate carried the endorsement that Akshay's father Rajendra moved from Dhule in search of employment, came to reside in Pune District, obtained a job in Pune District and was at one time an ordinary resident of Village Dhanori. If he was not an ordinary resident of Village Dhanori but of some other village, then for how many years, the reason why and when he left the village with the family and when he came and resided in Village Lohegaon, needed a proper clarification and explanation.

5. Mr. Mendadkar, on this reasoning of the Committee and the document at page 30 (Exhibit-I) being pointed out so also the papers from the original records, says that he would speak to the petitioner and obtain complete instructions so as to answer the above queries. Purely to accommodate Mr. Mendadkar and in order to pass final

orders, we place this matter on **Wednesday, 28th August, 2019**. It shall be listed at 3:00 p.m. on that day.”

4. Today when the matter was placed, an additional affidavit has been tendered. The additional affidavit, pertinently and surprisingly, is affirmed by the petitioner and he speaks for his father and sets out details of his residence and employment.

5. It is stated in this affidavit that Rajendra Vitthal Thakur was born on 5th May, 1965 in village Var, Taluka and District Dhule. He took his primary education in that very village. He left the school at that village after VIIth standard and joined another school in Dhule District itself. He passed the S.S.C. examination in the year 1985 in Dhule District itself. In the Academic Year 1986-1987, he was in Dhule District and he completed his Xth and XIIth standard studies in that District.

6. He says that he was admitted in first year B.A. Degree course during the Academic Year 1987-1988. He completed that Degree course in the year 1991. There is no reference, save and except to a College, but in Satara District. It is pertinent to note that for B.A. Degree course, neither the name of the institution nor the town or village from where he commuted to the college and nearby has been set out. Be that as it may, after obtaining the Bachelor of Arts Degree in the Academic Year 1991, Rajendra

married the daughter of his maternal uncle. The maternal uncle was residing at village Lohgaon, District Pune. However, Rajendra joined Bachelor of Education Degree course in Azad College of Education at Satara and completed that course in 1994 by residing in a hostel.

7. On acquiring these two Degrees, he enrolled himself in the Employment Exchange and his name was sponsored for the vacant post of Assistant Teacher in Rayat Shikshan Sanstha, Pune. The Rayat Shikshan Sanstha had a school at village Wafgaon, Taluka Khed, District Pune known as “M.Y.Holkar Vidyalaya”, which Rajendra joined on 5th August, 1994. At that time, he was residing in Shramik Nagar, Dhanori, Pune 411 0115. The assertion is that he used to travel everyday from Shramik Nagar, Pune to Wafgaon in Khed Taluka.

8. The present petitioner-Akshay Rajendra Thakur was born at village Lohgaon, Taluka Haveli on 29th June, 1996. The assertion now is that the petitioner was born at his maternal grandfather's place of residence. He resided there itself. The said Rajendra resigned from the service of Rayat Shikshan Sanstha, Pune on 30th June, 1996. He took up employment in Pune District Education Association, Pune's school known as “Shri Mhalsakant Vidyalaya”, village Akurdi, Taluka Haveli, District Pune on 1st

July, 1996. It is stated that village Dhanori is the main revenue village of Pune District. Shramik Nagar and Vidyanagar are situate within the boundaries of this village Dhanori. Since Shramik Nagar falls in the said village Dhanori, the competent authority issued the caste certificate in favour of the petitioner. It is claimed that this authority is competent and, in any event, when the caste certificate was granted and issued, the caste certificate rules were not in existence. No reliance could have been placed on Rule 5(2) of the said Rules.

9. Mr.Mendadkar's criticism is that the Committee has lost sight of this vital aspect of the matter and proceeded to deny the certificate of validity on flimsy grounds. It refused to verify and scrutinise the claim only because it found that the caste certificate has not been obtained from the competent authority. It has been obtained from the authority, not of Dhule District and that is the original place of residence of the petitioner's father Rajendra, but from a competent authority in District Pune. This finding, according to Mr.Mendadkar, is *ex-facie* erroneous and that is now demonstrated by the additional affidavit.

10. We do not express any opinion on the contentions raised before us. The learned AGP supports the impugned order and particularly, the reasoning in para 9 by urging that even the

additional affidavit does not help to remove the shadow of doubt or suspicion. It is, according to her, perplexing that a copy of the ration card is annexed to the additional affidavit, but that does not denote as to when the petitioner came to reside in Shramik Nagar. That ration card is dated 31st May, 2001, whereas, the petitioner has inhabited this village in Pune District much prior thereto. She, therefore, would submit that the Committee's reasoning cannot be termed as perverse and should not be interfered with.

11. We are faced with a piquant situation. We have before us the adjudication made by this Committee on merits. The Committee proceeds to hold that once a certificate showing the caste or tribe issued by authority is produced before it, so long as it is not satisfied that the authority who has issued the certificate was competent to issue it, it is not obliged to scrutinise and verify the underlying claim under the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (For short, "Maharashtra Act 23 of 2001"). So far so good. If that was the position, the Committee could have returned the claim with this reasoning only. However, the Committee's

reasoning prior to para 9 and subsequent would denote that it has accepted the claim and undertaken the process of verifying and scrutinising it. The petitioner's claim was made over to a Vigilance Cell and Vigilance Cell's report is also on record. The petitioner was called upon to discharge the burden cast on him by law and that is to establish and prove that he belongs to "Thakur Scheduled Tribe". That is how on 27th June, 2019, the petitioner and his father Rajendra attended the Committee's office. The Committee raised several queries and which they attempted to answer. The Committee disbelieved the version of the petitioner's father and observed that there is no question of issuing the certificate of validity when the socio cultural affinity is not conclusively proved.

12. Then the Committee proceeds to discard a documentary evidence, namely, a certified true copy of a caste validity certificate issued to one Suresh Piran Salunkhe (Thakur) on the specious plea that the relationship with this Suresh Piran Salunkhe has not been established. We say nothing about this, but we find that if the Committee was indeed not happy with the tribe certificate issued in favour of the petitioner's father- Rajendra, then, that reasoning was enough to disallow the claim, but the Committee does not do so. It is aware of the fact that it

cannot refuse to fulfill its obligations towards the tribal on technical grounds. It cannot refuse the scrutiny and verification of the underlying claim on such grounds as are assigned in para 9 running page 19 of the impugned order. Therefore, the Committee goes ahead and raises questions and seeks answers with regard to socio cultural affinity. Finally, it considers the probative value of the documentary evidence as well. However, the entire documentary evidence has not been appraised and appreciated. We do not see how, we can, therefore, sustain the impugned order.

13. Now, the petitioner says that he has enough material to establish and prove that the tribe certificate issued to Rajendra was indeed issued by the competent authority. That every single document produced for substantiating and proving the claim has high probative value. That socio cultural affinity is not a litmus test and that the petitioner may not be required to go through the same in the light of the law laid down by the Hon'ble Supreme Court and that no certificate of validity could have been discarded in the manner done.

14. We are, therefore, satisfied that this criticism of the Committee's order is legal and valid. The Committee has not performed its duty in accordance with law. The original record

produced before us would indicate that number of documents were produced to substantiate and prove the claim. That documents were also produced to prove the residence of Rajendra in Dhule District and equally in Pune District.

15. For all these reasons, we quash and set aside the impugned order. We allow the writ petition. We send the matter back to the Scrutiny Committee for verification and scrutiny of the underlying claim strictly in accordance with law. While doing so and carrying out a fresh exercise in terms of our order, the Committee should not be influenced by anything it has observed in the impugned order or generally by its contents. The Committee should bear in mind that in the case of “Thakur Scheduled Tribe” itself, this Court and the Hon’ble Supreme Court, on numerous occasions have expressed themselves and which expression and view is binding on it. This Court and the Hon’ble Supreme Court have criticised the approach of the Committee indirectly or by oblique method applying the same criteria/area restriction which stands abolished and removed by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. Further, this Court and the Hon’ble Supreme Court have come down heavily on the Committees for relying on answers given in the affinity test or the material gathered during

the course of considering such socio cultural affinity. This is not a determinative or conclusive exercise. Today's generation and born much after the independence, may very well fail to give some answers or may be unaware of certain peculiarities of the Community and Tribe, but that by itself does not indicate that the candidate or the applicant is not tribal. It is time that the Committee must change its approach. Equally, we find that when the documentary evidence is appraised and appreciated, the ordinary and normal test is kept aside and on presumption, either contrary or unknown to law or assumptions which have no basis in law, the documentary evidence is omitted from consideration or discarded very casually. The orders of these Scrutiny Committees are mechanical and stereo type in matters after matters pertaining to "Thakur Scheduled Tribe". It is in these circumstances that one more order of this nature is criticised, quashed and set aside by us today. Therefore, while the matter is remanded to the Committee, it must apply the law laid down by the Hon'ble Supreme Court and go by the wording of Entry No.44 of the Schedule to the Constitution (Scheduled Castes) Order, 1950. It shall not add or subtract anything from this entry, but apply it to the case of the petitioner before us.

16. Needless to clarify that the Committee can insist on the presence of the petitioner's father-Rajendra before it and demand from him, an affidavit in relation to facts and events, which are to the personal knowledge of Rajendra. It cannot expect the son of Rajendra to give satisfactory answers pertaining to Rajendra's birth and his assignments, which he took in various institutions within Pune District. Let, therefore, the Committee, allow Rajendra to participate in the proceedings and take on record his affidavit.

17. On remand, the Committee shall pass an order within a period of two months from the date of the first appearance of the parties before it.

18. With the aforesaid directions, the writ petition is disposed of.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)