

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

CIVIL WRIT PETITION NO.4798 OF 2017

Ravindra Manik Shinde	]	
aged 27 years, residing at	]	
Survey No.34/2 Borate Vasti,	]	
Kharadi, Pune – 411 014	]	 Petitioner.

Versus

1]	State of Maharashtra	]	
	through its Secretary, Tribal	]	
	Development Department,	]	
	Mantralaya, Mumbai – 400 032	]	
		]	
2]	Scheduled Tribe Certificate Scrutiny	]	
	Committee, Pune Division, Pune,	]	
	through its Member Secretary, having	]	
	its office at 28, Queen's Garden,	]	
	Pune 411 001	]	 Respondents.

Mr. R K Mendadkar for the Petitioner.

Mr. V M Mali, AGP for the Respondent Nos.1 and 2.

CORAM : S. S. SHINDE,
 V. G. BISHT, JJ

Reserved on : 26th February 2020
Pronounced on : 04th March 2020

JUDGMENT : (PER S. S. SHINDE, J)

1 Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2 By way of this Petition filed under Article 226 of the Constitution

of India, the Petitioner has challenged the order dated 16/07/2009 passed by Respondent No.2 herein i.e. the Scheduled Tribe Certificate Scrutiny Committee, Pune Division, Pune by which order Respondent No.2 has invalidated the tribe claim of the Petitioner as belonging to Thakar, Scheduled Tribe. The Petitioner seeks further direction to Respondent No.2 to issue certificate of validity in respect of caste certificate dated 16/03/2015 issued by the competent authority of jurisdiction.

3 The factual matrix involved in this Petition, can in brief be stated thus:-

The Petitioner claims to be belonging to Thakar Tribe which is recognized as Scheduled Tribe by Parliamentary Enactment. The Petitioner applied to Respondent No.2 for verification of his tribe claim towards Thakar, Scheduled Tribe. In support of his claim, the Petitioner submitted before Respondent No.2 various documents including the documents in relation to his grandfather Narayan Dagadu Shinde showing caste recorded as Thakar as on 24/08/1929. Thereafter the caste certificate of the Petitioner was referred to the Vigilance Cell for conducting inquiry. Accordingly Police Inspector of Vigilance Cell attached to Respondent No.2, after conducting inquiry, submitted his reports dated 05/12/2005 and 02/07/2007 to Respondent No.2. The copy of the inquiry report of Vigilance Cell was made available to the Petitioner. Thereafter the Petitioner appeared before Respondent No.2 on

31/03/2009 and filed his reply to the said inquiry report. Respondent No.2 heard the Petitioner and his father on 31/03/2009. As stated herein above, Respondent No.2 by its impugned order dated 16/07/2009 invalidated the caste certificate of the Petitioner. According to the Petitioner, Respondent No.2 invalidated the caste certificate of the Petitioner when he was on the verge of prosecuting his further studies after passing HSC examination. Hence this Petition.

4 We have heard the learned counsel for the Petitioner, Shri Mendadkar, and the learned Assistant Government Pleader Shri V M Mali for the Respondents. With their able assistance, we have perused the pleadings and grounds taken in the Petition and annexures thereto.

5 On behalf of the Petitioner, the principal contention of Shri Mendadkar is that in the teeth of the order passed by this Court in Civil Writ Petition No.14182 of 2016 in the matter of Manikrao Namdeorao Shinde v/s. State of Maharashtra and ors dated 19/01/2017 (Coram : S C Dharmadhikari & B P Colabawalla, JJ), the Committee could not have rejected the tribe claim of the Petitioner as this Court has remanded the tribe claim of the father of the Petitioner to the Committee for re-examination and re-verification, and if the impugned order is allowed to remain in filed, it would be used against the said tribe claim of the father of the Petitioner. He submits that the Petitioner has

documentary evidence in the form of extract of school general register wherein the document at Sr.No.1 dated 24/08/1929 in an unequivocal terms describes the social status of the grand-father of the Petitioner from paternal side as Thakar which is notified as Scheduled Tribe. In so far as delay in challenging the impugned order is concerned, the learned counsel for the Petitioner submits that the said delay is not deliberate and intentional but the same has been occurred because of loss of interest of the Petitioner in further studies as his caste certificate was invalidated. He submits that Respondent No.2 has not considered the material produced before it in proper perspective. He also submits that Respondent No.2 without any reason discarded the evidentiary value of caste certificate granted to near relatives of the Petitioner. It is submitted that Respondent No.2 while invalidating the tribe claim of the Petitioner has made very general statement without pointing out any fraud. He submits that the decision taken by Respondent No.2 is arbitrary, mechanical and perfunctory in manner without considering the probative value of the school record of grandfather of the Petitioner. In support of his submissions, the learned counsel appearing for the Petitioner sought to rely upon the judgment of this Court bench at Aurangabad in the case of Sachinkumar Vasantrao Wankhede v/s. State of Maharashtra & ors¹ and judgment of this Court in the case of Vaibhav Dharma Pawar & ors v/s. State of Maharashtra through its Secretary, Tribal Development Department, Mantralaya, Mumbai & ors. dated 09/08/2019 (Coram : S C Dharmadhikari & G S Patel, JJ). He lastly

¹ 2019(5) Bom. C R 355

submits that on the touch-stone of judgment of Writ Petition No.14182 of 2016, this Petition may be allowed.

6 Per contra, it is submitted by the learned Assistant Government Pleader that there is no plausible and satisfactory explanation given by the Petitioner for the delay in challenging the impugned order. Learned AGP further submits that it is well settled that each case stands on its own merits and merely because the caste claim of the father has been remanded to the Committee would not entitle the Petitioner to take the benefit of the same. It is submitted that Respondent No.2, after considering the Vigilance Report, the Reply filed by the Petitioner as well as the material placed before it, has passed the impugned order. It is a well reasoned order and needs no interference at the hands of this Court in writ jurisdiction. The learned AGP lastly submits that the Petition may be rejected.

7 We have carefully perused the original documents submitted by the Petitioner before Respondent No.2. In the said documents, we find the extract of school general register wherein at Sr.No.1 in the column of name of pupil the name of Narayan Dagadu Thakar is written. In the caste column, caste "Thakar" is mentioned as against the name of said Narayan Thakar and in the column of place of birth, his birth place is mentioned as "Inamgaon". In the column of remarks it is mentioned that there is no scratches/ditch/tampering.

Likewise the names of other four persons are written in the said extract of school general register, however, as against their name caste “Hindu Thakar” is mentioned. It appears that Respondent No.2 has rejected the claim of the Petitioner mainly on the ground that during the vigilance inquiry, the Petitioner did not fulfill the so called affinity test meaning that he could not clearly and unequivocally attest to the various established customs, traits and traditions said to be common to the Thakar Scheduled Tribe. This Court in Vaibhav Dharma Pawar’s case (supra) in similar facts situation held that the affinity test is not a litmus test, and therefore, the decision of the Committee mainly on the basis of the said affinity test was set aside.

8 As adverted to herein above, the Petitioner has placed pre-independence document on record. Even the Committee has referred to the said documents and observed in the impugned order that the documents obtained by vigilance cell enquiry officer in respect of applicant’s paternal relatives show caste entries as Thakar, Hindu Thakar etc. from 1916 to 1970.

9 It is required to be noted that the extract of school general register shows that the pre-independence document of one Narayan Dagadu Thakar dated 24/08/1929, who is the paternal grand-father of the Petitioner, describes his caste “Thakar”. During the course of hearing the Petitioner pointed out the said pre-independence document showing the entry regarding the tribe as

“Thakur”. It appears that despite this document, the 2nd Respondent Committee passed the impugned order invalidating the caste certificate of the Petitioner. It also appears that the lineage of the Petitioner is not in doubt and his genealogy is not in question. We find that the 2nd Respondent Committee has misdirected itself on law. The impugned order is therefore inconsistent and self-contradictory. In so far as the said pre-independence document is concerned, the 2nd Respondent – Committee has recorded in its impugned order that only entry Thakar does not denote that the incumbent belongs to Thakar, Scheduled Tribe. If the 2nd Respondent – Committee by the impugned order invalidated the tribe claim of the Petitioner being of Thakur Scheduled Tribe, then the 2nd Respondent was bound to give findings that the pre-independence document of the Petitioner’s paternal grand-father is incorrect, fake or could not be believed. We find that the 2nd Respondent did not record such findings.

10 In the light of the discussion in the foregoing paragraphs, the impugned order is required to be quashed and set aside and the matter is required to be remanded back to Respondent No.2 Committee for de-novo consideration. We, therefore, quash and set aside the impugned order dated 16/07/2009 and remand the matter back to Respondent No.2 for a de novo consideration in terms of the directions as contained herein below :-

- A] The caste claim of the Petitioner as belonging to “Thakar” Scheduled Tribe is remanded back to Respondent No.2 for a de-novo consideration.
- B] Respondent No.2 to re-consider the tribe claim of the Petitioner afresh, and shall consider the probative value of the said document which is of pre-independence, and record a finding in accordance with law.
- C] In addition to the document adverted herein above, Respondent No.2 would proceed on the basis of the material which is already on record.
- D] In the light of the instant judgment, Respondent No.2 would be well advised to issue show cause notice to the Petitioner in respect of the document which we have referred to in the instant order or any other document of which the notice has not been given.
- E] On remand, Respondent No.2 to dispose of the matter within a period of three months of the parties appearing before it. The parties to appear before Respondent No.2 on 16/03/2020, and

shall decide the matter on or before 31/05/2020.

F] The above Writ Petition is accordingly allowed. Rule is accordingly made absolute to the aforesaid extent with parties to bear their respective costs of the Petition.

[V. G. BISHT, J]

[S. S. SHINDE , J]

Laxmikant
G.
Chandan

Digitally signed
by Laxmikant G.
Chandan
Date: 2020.03.04
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