

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5007 OF 2015

Pramila Prakash Atak

.... Petitioner

Vs.

State of Maharashtra & Others

.... Respondents

Mr. Sushant C. Yeramwar for the Petitioner.

Mr. B.V. Samant, AGP, for Respondent Nos.1 & 2.

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : JANUARY 16, 2020

P.C:

1. The petitioner, Pramila Prakash Atak, has challenged the order passed by the Scrutiny Committee rejecting her claim as belonging to “**Thakar**” Scheduled Tribe.

2. The order impugned in this petition, dated 23-3-2015, is passed on remand.

3. The petitioner says that, a Competent Authority issued her the Tribe Certificate on 19-4-2003. This Certificate says that she belongs to Thakar Scheduled Tribe. On the basis of this Certificate, the petitioner sought appointment as Shikshan Sevika. The appointment was sought against a seat reserved for the Scheduled Tribe. The establishment is the

3rd respondent to this petition and the petitioner says that she is working.

4. The petitioner knows that even if she is working from 26-4-2008 on the strength of this Tribe Certificate, such employment does not confer any right in her and until the claim underlying this Certificate is validated by a Competent Scrutiny Committee. This is how the law works and on 27-11-2009, the Certificate was forwarded for scrutiny and verification of the claim by the 2nd respondent.

5. Though the petitioner claims that she has discharged the burden placed on her by the law, in the first round, on 1-8-2012, the Certificate of Validity was refused. In other words, the claim was invalidated. A Writ Petition was brought in this Court being Civil Writ Petition No.3537 of 2014 {Pramila Prakash Atak Vs. State of Maharashtra & Others} and on 3-4-2014 that writ petition was allowed by a Division Bench with the following observations:-

“Rule, returnable forthwith.

Learned counsel for Respondent-State waives service.

Heard finally, by consent of the parties.

2 The present Petition is filed by the Petitioner-student, as her caste certificate is invalidated by the Competent Authority.

3 In earlier **Writ Petition No. 7343 of 2013**

(Madhuri Nitin Jadhav Vs. State of Maharashtra & Ors.) along with two other connected matters on 26 February 2014, by a common reasoned Judgment/order disposed of similarly situated Petitions with regard to the "Thakur" Scheduled Tribes claims and therefore, for the same reasons, as the facts and issues are similar i.e. "non-consideration of documents and evidence", and wrong applications of law by the Scrutiny Committee on "affinity test/issue" "the area restriction-removal" and "the caste certificates of relatives" based upon similar wrongly framed issues, as the same goes to the root of the matter, we are inclined to dispose of the present Petition as it requires re-consideration of above issues, in the following similar terms:-

ORDER

- a) Impugned order of Scrutiny Committee dated 01.08.2012, is quashed and set aside.
- b) The matter is remanded back to the Scrutiny Committee, for reconsideration.
- c) The Scrutiny Committee to re-consider every aspect, by giving an opportunity to all the parties.
- d) The liberty is granted to the Petitioner/parties to apply before the Scrutiny Committee for filing additional evidence, oral as well as, documentary material.
- e) The Petitioner/parties to appear before the concerned Scrutiny Committee, on 17 April 2014. Thereafter, the Committee to fix the date and schedule of hearing accordingly with an endeavour to dispose of the matter as early as possible and preferably within four months from the date of receipt of Judgment/Order.
- f) In case, Scrutiny Committee passes an adverse order against the Petitioner/Claimant, the same should not be given effect to and/or acted upon for four weeks thereafter from the date of communication of the order.
- g) Rule made absolute in the above terms.
- h) All the parties to co-operate.
- i) There shall be no order as to costs.
- j) The interim protection, if any, granted by this Court in Writ Petition/ Civil Application to continue

until the decision and four weeks thereafter. No question of claiming any equities.

- k) The parties to act upon the authenticated copy of this Judgment/order."

On the basis of this order of remand, the petitioner appeared before the Scrutiny Committee and attempted to discharge the burden once again. The Committee has complied with the procedure prescribed by 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 ("the Maharashtra Act No.XXIII of 2001") and the Rules framed thereunder. The claim, however, has been invalidated once again.

6. Hence, this second writ petition.

7. Mr. Yeramwar, appearing for the petitioner, would submit that during the pendency of this petition, the petitioner has filed an additional affidavit in which the petitioner has stated that she has been working diligently and honestly as Shikshan Sevika. After completion of the probationary period, she is now appointed as an Assistant Teacher and drawing the regular pay-scale. The petitioner says that she got hold of old documentary evidence and that documentary evidence is the school record of Dhondi Shankar Atak and Mahadeo Shankar

Atak. These are two cousin uncles of the petitioner. The record pertaining to them is of 1924 and 1928. Even the genealogy is before the Vigilance Cell and the Vigilance Cell has thus forwarded its report.

8. These documents would be vital for the petitioner's claim. Mr. Yeramwar has relied upon the annexures to this additional affidavit.

9. He, therefore, prays for another remand so as to enable the petitioner to discharge the burden placed on her by law.

10. We have carefully perused the petition and the annexures thereto so also the additional affidavit and the annexures thereto. The name of the petitioner is Pramila Prakash Atak. Her claim has been invalidated by the Scrutiny Committee by assigning a specific reason. We need not refer to the impugned order in great details for the simple reason that one of the issues that were framed for consideration by the Committee is that, the petitioner may have suppressed a vital document but the contents of that document are germane for the issue. The document in question is a copy of School Leaving Certificate in respect of her real uncle Mahadev Narayan Atak. This Certificate contains an entry against the caste column (Hindu Maratha). Mahadev's date of birth is

15-7-1941. This is the oldest document submitted by the petitioner/applicant revealing her uncle's Tribe as Maratha. Needless to say that Marathas are higher caste whereas the petitioner lays a claim to be from a Tribe known as Hindu Thakar Scheduled Tribe. In her case, the Vigilance Cell made inquiries and found the record which, the petitioner claims, establishes beyond doubt that the traits, characteristics, custom, rituals, practices are common to the Thakar Scheduled Tribe. However, in the teeth of this document, which is preconstitutional and containing a contra entry, to our mind, the Committee has rightly refused the Certificate of Validity.

11. The attempt of the petitioner to rely on the additional affidavit filed in this petition is of no avail. Now the petitioner does not say that Dhondi Shankar Atak and Mahadev Shankar Atak had laid any such claim and in what manner the Vigilance Officer obtained the documents in relation to these two gentlemen. The petitioner could have placed these documents in the earlier rounds if they were at all relevant and germane. We do not find that, simply because Exhibit-A2 collectively to this additional affidavit are stated to be the records pertaining to the petitioner herself. They are from the service book. They need not be and cannot be the basis for a remand on the third occasion. Now the petitioner had an occasion to give information with regard to her two cousin uncles, but even that,

to our mind, carries the case no further. The petitioner gave a statement as far back as on 4-10-2003 in which she says her grandfather's name is Narayan Balu Atak. He did not take any formal education. The uncles of the petitioner are Mahadev, Shankar and Rohidas. She says that as far as her father is concerned, his name is Prakash. Out of Mahadev, Shankar, Rohidas and Prakash, only Mahadev and Rohidas entered their names and were admitted to a Primary School. The rest had no occasion to educate themselves. Now, page 120 of the paper-book is said to be a genealogy and family tree forwarded way back by the petitioner herself. She says that her grandfather was Narayan Balu Atak. He had four sons, Mahadev, Shankar, Prakash and Rohidas and two daughters, Hira and Pushplata. As far as Mahadev is concerned, he had three daughters. Shankar is said to have one daughter and one son but their names were not known to the petitioner. It is difficult to believe that while affirming the additional affidavit, the petitioner became aware of the names of the cousin brothers from the paternal side. Therefore, apart from her own family, she was unable to give details of others, stated to be cousins. Then there is an entry in relation to Mahadeo Shankar Atak and Rohidas Nana Atak. They are stated to be admitted to school after the Presidential Notification and in the year 1956 and 1965. These are not, therefore, preconstitutional documents. Thereafter, the petitioner relies upon another communication

from the Education Department, Zilla Parishad, Sindhudurg, addressed to her. To our mind, that is of no assistance to her. While seeking a remand, these documents can never be relied upon by her. Thereafter, she relies upon the document, copy of which is at page 130 of the paper-book. That is again said to be entries from the General Register of the Zilla Parishad Primary School, Wairy, Taluka Malvan, District Sindhudurg. This is not a relevant document but containing post-constitutional entries. This would not falsify the finding of the Committee that the real uncle Mahadev is a Hindu Maratha. Now an attempt is made to show that one Dhanaji Atak had a son Babu. This Dhanaji was common ancestor. He had a son Babu and Babu had three sons – Shankar, Narayan and Sitaram. In turn, Shankar had two sons, Mahadeo and Dhondi and Narayan had about six sons and two daughters. Shankar is the son of Narayan and his son is Dattaguru. In the case of Dattaguru, the entries are in the Certificates and the same are placed on record by the Vigilance Officer. It is clear that page 131 is not a document based on any statement made by the petitioner. It is made on the basis of the statement of Dattaguru Shankar Atak. Dattaguru Shankar Atak does not say that he has a cousin sister by name Pramila Prakash Atak. Therefore, this document cannot be said to be a genealogy or family tree. There are two cousin uncles stated to be bearing the names Dhondi Shankar Atak and Mahadeo Shankar Atak. Dattaguru Shankar Atak is not a cousin brother,

as is claimed by the petitioner, because Dattaguru is the son of Shankar and Shankar is said to be the son of Narayan, whereas the other brother of Narayan is Shankar senior and his sons are Mahadeo and Dhondi. If at all true, Dattaguru would have claimed that the two persons – Mahadeo and Dhondi – are his cousin uncles. The petitioner's father, whose name appears in the genealogy, has also not given any affidavit claiming relationship, from the paternal side and particularly with cousin brothers, Mahadeo and Dhondi.

12. In such circumstances, merely on the strength of some information collected by the Vigilance Cell and based on the entries in the caste column of the document pertaining to Dhondi Shankar Atak and Mahadeo Shankar Atak, so also the genealogy and family tree of Dattaguru, the petitioner cannot be given one more opportunity, as desired by her.

13. The additional affidavit filed before us and the statements therein do not inspire any confidence. That appears to be a desperate attempt to obtain one more opportunity to discharge the burden and prove the claim. We do not think that we should allow a remand and on vague and general statements, without any supporting or corroborative materials. Pertinently, the petitioner's counsel is aware that some information obtained by the Vigilance Cell and forwarded to the

Scrutiny Committee by itself has no probative value. This report or information contained therein is not binding on the Committee. The Committee can discard it altogether and all that it has to do is to call upon the person relying on the information to show cause as to why the information and the report of the Vigilance Cell should not be discarded. In the above circumstances, this document has no evidentiary value. This is not an additional evidence or this is not an evidence which, despite due and diligent search, was not in possession of the petitioner on the earlier two occasions.

14. For the above reasons, we do not find any substance in the contentions of Mr. Yeramwar.

15. As a result of the above discussion, the writ petition fails. It is dismissed. There will be no order as to costs. The ad-interim order passed on 8-6-2015 stands vacated forthwith.

16. At this stage, Mr. Yeramwar prays for continuation of the ad-interim order. Once we find that the petitioner has not been able to substantiate and prove her claim on two prior occasions and we have rejected her request for a third remand, it would not be proper to continue the ad-interim order. That would only mean that a bogus and unsubstantiated claim is upheld indirectly or obliquely. In the circumstances, the request is refused.

17. The original records have been returned with the direction to substitute the same with true copies.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)

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