

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2377 OF 2019

Uday Vishram Thakar

..Petitioner

Versus

1. The State of Maharashtra

2. The Scheduled Tribe Certificate
Scrutiny Committee.

3. Dr. Balasaheb Sawant Konkan
Agricultural University, Dapoli.

..Respondents

Mr. Sushant C. Yeramwar for Petitioner.

Smt. Ashwini A. Purav, A.G.P. for Respondent-State.

CORAM : SMT. SADHANA S. JADHAV &
SARANG V. KOTWAL, JJ.

RESERVED ON : 26th AUGUST 2021.
PRONOUNCED ON: 07th SEPTEMBER 2021.

JUDGMENT: (*Per Sarang V. Kotwal, J.*)

1. Rule. Rule made returnable forthwith. The petition is heard finally with consent of both the parties.

2. This petition is preferred by the petitioner challenging the order dated 28/02/2007 passed by the Respondent No.2 i.e. Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane, invalidating the petitioner's claim that, he belonged to 'Thakar-Scheduled Tribe'. By another prayer the petitioner has sought directions to the Respondent No.3 to allow him to work as Agricultural Assistant pursuant to the appointment order dated 29/10/2007.

3. The Sub Divisional Officer, S. D. Savantwadi issued a certificate in favour of the petitioner that, he belonged to 'Thakar – Scheduled Tribe' community. The certificate was issued on 05/12/2001 bearing No.MSC/SR/1464/2001. The petitioner had applied for verification of his claim that he was belonging to 'Thakar – Scheduled Tribe'. He had made such application on 24/10/2003.

4. The petitioner was selected and appointed as Gram Sevak on temporary basis vide order dated 12/12/2005. He was posted at Gram Panchayat, Hardakhale by order dated

12/02/2006. The appointing authority had directed him to submit Caste Validity Certificate.

5. The petitioner had approached this court by filing Writ Petition No. 6714 of 2006. This court, vide order dated 10/10/2006 had directed the Respondent No.2 Committee to decide the petitioner's claim on or before 28/02/2007. Pursuant to this direction, the Respondent No.2 Committee decided the petitioner's claim and rejected it vide their order dated 28/02/2007. His claim that he was belonging to 'Thakar – Scheduled Tribe' was held invalid and the aforementioned Caste Certificate issued to him was cancelled and confiscated.

6. The petitioner's case is that, he was not made aware of this order. The petitioner had again preferred Writ Petition No.14111 of 2018 before this court. That petition was disposed of vide order dated 17/12/2018, based on a communication dated 11/12/2018 addressed to the learned A.G.P. by the Vice President of the Respondent No.2 Committee. This court, while disposing of the said petition directed the Respondent No.2 Committee to decide

the petitioner's claim as expeditiously as possible and preferably within a period of three months from the date of the order i.e. from 17/12/2018.

7. Subsequently, it transpired that the petitioner's claim was already decided and rejected by the Respondent No.2 Committee on 28/02/2007. An affidavit was filed in the present petition by Shri. Nitin Kopulwar, Research Officer of the Respondent No.2 Committee, wherein it was mentioned that the Respondent No.2 Committee, because of misinformation and misunderstanding, inadvertently issued the directions to the learned A.G.P vide communication dated 11/12/2018 that the petitioner's claim would be decided in three months; resulting in the order that was passed by this court as mentioned earlier.

8. During pendency of this petition, there were subsequent developments and the petitioner filed additional affidavits to bring them on record. Vide affidavit dated 09/05/2019 the petitioner has produced a copy of the order dated 11/03/2019 passed by the Division Bench of this court in Writ Petition

No.4652 of 2015, whereby it was held and declared that the petitioner's cousin Geeta Namdev Thakar was belonging to 'Thakar – Scheduled Tribe'. Her claim was earlier invalidated by the Respondent No.2 Committee and, therefore, she had challenged that order in Writ Petition No.4652 of 2015. The petitioner's father was Vishram and Geeta's father was Namdev. Vishram and Namdev were real brothers.

9. The petitioner filed another additional affidavit dated 18/07/2021 wherein he relied on the Judgment and order passed by a Division Bench of this court in Writ Petition No.4805 of 2015 dated 04/10/2021. Vide that order the petitioner's real sisters' (Pramila, Urmila and Sharmila Thakar) claim was accepted and it was declared that the petitioner's sisters belonged to 'Thakar – Scheduled Tribe' (Sr.No.44) of The Constitution (Scheduled Tribes) Order 1950 and it was also held that they were entitled for the benefits flowing from the said status being conferred on them. The petitioner's claim, therefore, is that, since his cousin from the father's side and also his sisters were held to be belonging to 'Thakar – Scheduled Tribe'; the petitioner was also entitled for the

same relief. Therefore, it was necessary to set aside the impugned order passed by the Respondent No.2 Committee.

10. The Respondent No.2 filed affidavit in reply, wherein, it was mainly contended that, there was inordinate delay of 12 years in challenging the impugned order. However, it was admitted that the petitioner's sisters Pramila, Urmila and Sharmila were issued validity certificates pursuant to the aforementioned order dated 04/10/2019 passed in Writ Petition No.4806 of 2015.

11. We have heard Shri. Sushant Yeramwar, learned counsel for the petitioner and Smt. Ashwini Purav, learned A.G.P. for the State.

12. Learned counsel for the petitioner submitted that the Respondent No.2's own stand shows that the petitioner was not made aware of the impugned order till 2018. On 17/12/2018 this court had directed the Respondent No.2 to decide the petitioner's claim within a period of three months from the date of that order, which was based on a communication sent by the Respondent No.2 Committee to the learned A.G.P. He submitted that, in any case,

since the petitioner's sisters and paternal cousin were granted certificates; based on the ratio laid down in the case of *Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee and others*¹, the petitioner is entitled for the same relief.

13. Learned A.G.P. harped on the belated approach by the petitioner in challenging the impugned order.

14. We have considered these submissions and we have perused the impugned order, as well as, aforementioned orders passed in various writ petitions, including the petitions wherein the petitioner's sisters' claim and his paternal cousin's claim was accepted.

15. The petitioner in support of his claim had submitted about 12 documents which are mentioned in the impugned order. Out of them, one document was the School Leaving Certificate of the petitioner. According to the petitioner, throughout in the school record his religion and caste was noted as 'Hindu – Thakar'. The document pertaining to the school record of the petitioner's father Vishram Thakar also mentioned his religion and caste as 'Hindu –

¹ 2010 (6) Mh.L.J. 401

Thakar'. The petitioner had also submitted the school record of his grand father Shankar Dhondu Thakar in respect of Saraswati Vidya Mandir, Konalkatta. He was admitted in that school on 08/02/1927 and his religion and caste was noted as 'Hindu – Thakar'. There were other documents, as well, which were considered by the Respondent No.2 Committee. The Committee had also called for the Vigilance Inquiry. The Committee observed thus :-

“ Taking into consideration the occupation, traits and characteristics, dances, dress habits, rituals, marriage and death ceremonies, the surnames, nomadic nature of the Thakars of the Sindhudurg district etc. and as the applicant has obtained Caste Certificate and the Validity Certificate from the competent authority belonging to Thakar, Nomadic Tribe, the Committee Members have been convinced, beyond doubt, that the applicant does not belong to Thakar, Scheduled Tribe enumerated at Sr.No.44 in the Presidential Order of 1950. The person belonging to Thakar caste *ipso-facto* cannot be treated as person belonging to Scheduled Tribe Thakar, under the Presidential Order, under the Article 342 of the Constitution meant for the State of the Maharashtra.

In the instant case, the applicant has not been able to prove his affinity towards Thakar, Scheduled Tribe.”

These very observations were specifically considered by a Division Bench of this court in Writ Petition No.4806 of 2015 concerning the petitioner's sisters' claim. The reasoning of the

committee was not accepted and the order passed invalidating their claim was set aside. In that order, the applicant's father Vishram's School record was considered. Similarly, the petitioner's grand father's school record was also considered. Both these documents were relied on by the Division Bench of this court. Since they are the common ancestors of the petitioner and his sisters, the same documents can be relied on by the petitioner in support of his claim.

16. Similarly, in the case of petitioner's paternal cousin Geeta, a Division Bench of this court, vide order dated 11/03/2019 passed in Writ Petition No. 4652 of 2015 had declared that she belonged to 'Thakar – Scheduled Tribe'. In that case, Caste Validity Certificate dated 11/09/2018 of Geeta Namdev Thakar's father's real brother Pratap Shankar Thakar was relied on. The Division Bench also relied on the ratio of the judgment of Division bench of this court passed in the case of *Apoorva (supra)*.

17. In *Apoorva's* Judgment it was held that, when during the course of inquiry the candidate submits a caste validity

certificate granted earlier certifying that a blood relation of the candidate belonged to the same caste as that claimed by the applicant, the Committee may grant such certificate without calling for Vigilance Cell Report, unless the committee found that the earlier caste certificate was tainted by fraud or was granted without jurisdiction.

In the present case, the petitioner's own sisters' claim is accepted by another Division bench of this court. Similarly, in Geeta Thakar's order the ratio in *Apoorva's* case was followed in accepting Geeta Thakar's claim. In Geeta's case, her uncle's caste validity certificate was produced before the Division bench of this court and it was accepted to be in favour of Geeta Thakar. Her claim was rejected by the concerned committee much earlier i.e. on 31/12/2012 and her uncle was granted caste validity certificate on 11/09/2018. By relying on the orders in Writ Petition No.4652 of 2015 and Writ Petition No.4806 of 2015 by which the petitioner's paternal cousin and sisters were declared to be belonging to 'Thakar – Scheduled Tribe', the same course can be adopted in the present petition.

18. Therefore, the petition succeeds.

19. The Rule is made absolute by quashing and setting aside the impugned order dated 28/02/2007.

20. It is held and declared that the petitioner belongs to 'Thakar – Scheduled Tribe'.

21. The Caste Validity Certificate be issued to the petitioner within a period of four weeks from the date of uploading of this order.

22. The petitioner shall be entitled for all the benefits flowing from the said status being conferred on him.

(SARANG V. KOTWAL, J.)

(SMT. SADHANA S. JADHAV, J.)