

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

WRIT PETITION NO. 7203 OF 2019

Prabhakar Janardhan Pawar ...Petitioner
vs.
State of Maharashtra and Ors. ...Respondents

Mr. R. K. Mendadkar a/w T. V. Jadhav, for the Petitioner
Mr. Sandip L. Babar - AGP for the Respondent-State.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 01st DECEMBER, 2021

PER COURT:-

1. Heard Shri R. K. Mendadkar, learned counsel for the Petitioner and Shri S. L. Babar, learned AGP for Respondents.

2. This is third occasion wherein the Petitioner has approached this Court with a request to accept his claim being member of Scheduled Tribe – Thakur tribe. He was granted certificate as a member belonging to Thakur Scheduled tribe community on 10/01/2003 by Sub-Divisional Officer, Malegaon, District Nashik. He was employed in the Home department. When his tribe certificate was sent for Scrutiny, lastly the Committee as per the impugned order dated 12th April 2019 refused to issue validity certificate. This

decision is challenged before us.

3. Earlier to that the scrutiny Committee as per the order dated 29/10/2012 was refused to issue validity certificate. The said decision was assailed by the Petitioner by way of Writ Petition No. 9729 of 2012. The matter was referred to the scrutiny committee for deciding it afresh as per the order passed by the Division bench on 20/12/2012. It seems that the scrutiny Committee as per the order dated 17th May 2013 has refused to issue him validity certificate. This was subject matter of the challenge in Writ petition No. 8748 of 2013. This Court vide order dated 17/07/2017 set aside the said decision and again directed the Committee to decide the Petitioner's claim within a time limit. The observations in para 7 are important. It is reproduced for better understanding as follows:

“The Committee shall also take into consideration the documents of the year 1934 filed by the Petitioner relating to his grand father. The Committee shall also take into account the fact that the certificate of cousin brothers Dhiraj and Sanjay were granted on the basis of the certificates granted in favour of one Sunil Murlidhar Thakur whose matter for remand is pending before the Committee.”

4. However on this occasion also the scrutiny committee refused to issue him validity. We do not want to encroach upon the power of

the Committee. They have got every right not to grant validity. However, when this Court is issuing certain directions, it is at least minimum expectation that the Committee will understand the observation and then decide the claim. However, unfortunately it has not happened on this occasion also. There is every reason for us to believe that the Committee is determined to refuse the validity. We are saying so because on this occasion also the Committee refused the validity by giving reasons which does not appeal to conscious.

5. The main grievance of the Petitioner is that the committee totally failed in considering the 1934 documents belonging to his grandfather. There was a direction given by this Court to that effect as reproduced above. The second important grievance is even though this Court directed the Committee to consider tribe validities granted in favour of his cousin brothers Dhiraj Avinash Pawar and Sanjay Yadavrao Pawar, however for un-justifiable reason, the committee has refused to consider those validities in favour of the Petitioner.

6. On this background, with assistance of both the sides we have perused the impugned order dated 12th April 2019, We agree with both the grievances made on behalf of the Petitioner.

7. The Committee in para 12 of the impugned order tried to

justify its decision of refusing those two validities. In the impugned order the Committee has referred to the claim of one Sunil Murlidhar Thakur and by giving the background of the Court proceeding, the Committee has mentioned that his claim is pending for re-consideration. When we have seen the Family tree (page 49) we do not find the said Sunil referred therein.

8. It may be true that validity certificate is not issued in favour of one Sunil Murlidhar Thakur. It may also be true that this Court has directed to issue him validity as per order dated 20/06/1996. It may also be true that as per order dated 21/01/2004, the Hon'ble Supreme Court has directed this Court to re-consider its decision. It may also be true that on those directions, this Court has directed to issue validity as per order dated 26/10/2004. The said order is also the subject matter of the petition before the Hon'ble Supreme Court. On this occasion, the Hon'ble Supreme Court sent back the matter for review to Nashik Scrutiny Committee. The Committee refused to grant him validity as per order dated 06/09/2012. This Court as per orders dated 05/03/2014 and 26/12/2018 sent back matter to the Scrutiny Committee, Nashik. These are the orders passed in case of said Sunil Thakur and referred by the Committee. Finally, the

present Committee mentioned that the said matter is pending before them.

9. For the above events narrated by the Committee, while passing impugned order Committee feels that validities issued to Sanjay Yadavrao Pawar and Dhiraj Avinash Pawar also needs review. It further mentions that the committee is going to take a decision on that aspect. For the above reasons, the committee refused to accept those validities. However there is no material placed before us suggesting that those validities have been cancelled.

10. So far as, the proceedings referred and as reproduced above in case of Sunil Murlidhar Thakur may also be true. However we differ with the same logic applied by the Committee to the case of the Petitioner. There is no reasoning given in the impugned order as to why the case of present Petitioner stands on the same footing as that of said Sunil Murlidhar Thakur. It is true that the Committee can review the decision. But there are limitations. As held in case of Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee “On the same facts merely because different view is possible, it will not entitled the Committee dealing with subsequent caste claim to reject it. However when earlier certificate is obtained

by fraud, Committee is entitled to refuse the subsequent caste claim and to initiate proceedings for cancellation too.” Recently in case of Anil S/o Shivram Bandawar Vs. The District Caste Certificate Verification Committee, Gadchiroli, in Writ Petition No. 8107 of 2019, Division Bench (Nagpur bench) has explained what is meaning of the word fraud particularly when applied in the context of grievance about obtaining a caste certificate by applying fraud. In that case, Committee has issued show cause notice for canceling earlier validity certificate in a subsequent caste validity inquiry. Division bench took note of the fact that there is absence of observation in the show cause notice and in the impugned order about earlier validity certificate was obtained by playing fraud. In a subsequent Caste Validity claim, Committee referred to 1920 – 1924 caste records mentioning the caste as Kunbi and observed that by not producing the same it amounts to fraud. It was observed that this material could have easily been discovered by the Scrutiny Committee. On these facts, the decision to cancel Caste Validity Certificate was set aside. The review can be done in a limited contingencies. After reading abovesaid observations one can say that review can be ordered if the validity is obtained by playing fraud on

the Committee that is to say by producing forged documents. It can be done even when certain relevant and important documents are not placed. There is another facet. If the Committee could have recourse to such withheld document or not also needs to be verified. When we have read impugned order and particularly para 12, we do not find any of the contingencies occurring as mentioned by us above.

11. That is why we have said that the decision of the Committee refusing to consider two validites in favour of the Petitioner is wrong. As on today it is not the case of the Committee that any action has been taken to review the validities granted in favour of Sanjay Yadavrao Pawar and Dhiraj Avinash Pawar.

12. The said Dhiraj is the grand son of one Yadavrao and said Yadavrao is cousin grand father of present Petitioner Prabhakar. Whereas the said Sanjay is son of said Yadavrao who (Yadavrao) is the cousin grand father of present Petitioner. It is mentioned in family tree at page 49. This is not disputed in the impugned order. We can certainly say that both these holders belonging to family of Petitioner Prabhakar.

13. The Committee in its impugned order has referred to following

facts:

- (A) Entry of relatives of the Petitioner in school record.
- (B) School inquiry and home visit inquiry and the facts disclosed in those inquiries.
- (C) The opinion given by the Vigilance Officer.
- (D) The Information given by the Petitioner about Cultural affinity.
- (E) The entries of Hindu-Thakur found in the documents produced by the Petitioner before the Committee.

14. Those entries pertain to documents of the years 1934, 1966, 1972, 1988, 1990, 1992 and 1975 (backward). On page No. 9 Committee observed that it is not proper to rely on only documentary evidence including 1934 documents but Committee is of the opinion that the claim needs to be considered by applying affinity test. After forming an opinion that the validities granted in favour of Dhiraj Avinash Pawar and Sanjay Yadavrao Pawar needs to be relooked into. (Copies are filed at page 68 and 69), the Committee finally opined that the Petitioner is not fulfilling the customary traits of Thakur Scheduled tribe community.

15. So what we feel is that committee has considered three factors:-

- (A) The documentary evidence,
- (B) Affinity test,
- (C) Validities granted to two persons.

16. What we feel is that the Committee has given predominance to the customary traits rather than the documents. We are compelled to observe that it is known fact that after passage of time, civilization, economical development, customary traits of any community including Thakur Scheduled Tribe communities changes. Some of the customary traits continues whereras some traits are discontinued. That is why, the Hon'ble Supreme Court has observed in various judgments that it is always better to consider the documentary evidence. They need to be given priority over the customary traits. It has further been clarified that customary traits have not become redundant. However, when there is un- impeachable evidence in the form of documents, those evidence needs to be given priority and claim can be decided on that basis and it is immaterial where the claimant in question is not following the traits of Thakur scheduled tribe community. This court in the order dated 17th September, 2017 in para no. 7 passed in Writ Petition No. 8748 of 2013 has referred to 1934 documents. The Committee in para no. 9 has referred to

documents pertaining to various years but the description is not given.

17. We find following documents filed alongwith petition.

(A) School leaving certificate of Janardhan Madhavrao Pawar describing his caste as Hindu-Thakur (date of birth as 04/02/1962) (Page 50).

(B) Said Janardhan is father of Petitioner.

(C) Extract from School register belonging to father Janardhan – mentioning the caste as Hindu-Thakur and date of birth as 04/02/1962 (page 51)

(D) School leaving certificate of Mahadu Shivram Thakur (Grand father of Petitioner) – mentioning the caste as Hindu-Thakur and date of birth 16.03.1924. (page 52)

(E) School leaving certificate of said Mahadu mentioning the caste as Hindu-Thakur and date of birth 16.03.1924. (page 53)

(F) School leaving certificate and extract of birth certificate of Yadavrao Shivram Pawar – mentioning the caste as Hindu-Thakur and date of birth as 15.03.1937. (page 58 and 59)

(G) Said Yadavrao is cousin grandfather of the Petitioner.

(H) School leaving certificate and extract of birth certificate of Ananda Shivram Pawar – mentioning the caste as Hindu-Thakur and date of birth as 30.05.1947. (page 61 and 62)

(I) Said Ananda is cousin grandfather of the Petitioner.

18. It is true that the birth date of persons above referred is prior to 1950. It is also true that none of the documents belongs to the period prior to 1950. But it is admitted that tribe Hindu-Thakur is mentioned in those documents. So there is every reason to believe that some of these documents pertains to period in prior 1950. At that time question of reservation was not there and that is why there is reason to believe that entry of caste must have been made genuinely. The Committee has not considered these aspects and have straight away refused to accept these documents.

19. For the above decisions we feel that the Petitioner has made out the case for grant of validity certificate. On this occasion we do not want to remand the matter to the Scrutiny Committee. Hence we are inclined to pass following order:-

OPERATIVE ORDER

(a) The Petition is allowed.

(b) The Scrutiny Committee- Respondent No. 2 is directed to issue certificate of validity in favour of the Petitioner within a period of four weeks from today.

(c) The petitioner is permitted to submit the validity certificate to his employer/respondent-State. On production of such certificate, the employer of the Petitioner to take consequential steps as per the provisions of law.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)