

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2376 OF 2019
WITH
INTERIM APPLICATION NO.4144 OF 2019
IN
WRIT PETITION NO. 2376 OF 2019

Pramod s/o. Vishram Thakar

... Petitioner.

Versus

The State of Maharashtra and Others.

... Respondents.

Mr. Sushant C. Yeramwar, Advocate for the Petitioner.

Smt. P.J. Gavhane, AGP for the Respondent Nos.1 to 3-State.

Mr. Anuj V. Gaikar, for Respondent No.2 (Law officer CVC -Thane).

CORAM : **NITIN W. SAMBRE AND**
 SHARMILA U. DESHMUKH, JJ.

DATE : **December 12, 2022.**

P.C. :

1. Heard.

2. The challenge in the writ petition is to the order dated 28th February, 2007 passed by the Respondent No.2-the Scheduled Tribe Certificate Scrutiny Committee. The Petitioner came to be appointed as a peon with the Respondent No.4-School against the post, which is reserved for 'Scheduled Tribe' category. As a sequel of the aforesaid appointment, the tribe claim of the Petitioner

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came to be referred to Respondent No.2-Committee for deciding its validity. The Respondent No.2-Committee, accordingly analysed the claim of the Petitioner as that of belonging to 'Thakar-Scheduled Tribe' and *vide* impugned order rejected such claim. As such, this writ petition.

3. The contention of the counsel for the Petitioner Mr. Yeramwar is, the order impugned is based on two reasons viz. (a) area restriction; and (b) the failure of the Petitioner to qualify affinity test. According to him, the Petitioner has already produced pre-independence era documents so as to substantiate his claim as belonging to "Thakar" scheduled community tribe based on the birth extract/certificate of his father i.e. Vishram Krishna Thakar. According to him, the father of the Petitioner was born on 10th September, 1931 i.e. prior to the Scheduled Tribe order came into existence. He would as such urge that he would produce one more document, in addition to above. Counsel for the Petitioner would invite attention of this Court to the certificate issued by the Headmaster, Zilla Parishad School, wherein the paternal aunt, namely, Tulsabai allegedly born in the 1945. According to him, in the school record, caste of the aunt of the Petitioner is recorded as 'Hindu Thakar'.

4. In the aforesaid background, his contentions are in view of the law laid down by the Apex Court, the issue of area restriction cannot be considered to the detriment of the Petitioner, particularly, in view of the provisions of the State Reorganization

Act. As such, he would urge that the order impugned is not sustainable on the said count. His further contentions are that once the Petitioner produced pre-independence era document, the said document having more probative value, the claim ought not to have been rejected on the sole ground of failing to qualify the affinity test.

5. Learned Assistant Government Pleader would oppose the prayer, as according to her, entry in the school record of aunt of the Petitioner that was ‘Hindu Thakar’ and not ‘Thakar’. She would further urge that the issue of rejection of tribe claim on the ground of failure of affinity test is already decided by the Full Bench of this Court in the matter of ***Shilpa Vishnu Thakur vs. State of Maharashtra*** reported in ***2009 (3), Mh.L.J. 995***.

6. It is further claimed that the Petitioner having failed to satisfy the affinity test, the Respondent No.2-Committee is justified in rejecting the prayer of the Petitioner.

7. As far as aforesaid rival claims are concerned, the issue as to whether the claim of the Petitioner can be rejected based on the provisions of area restriction is no more *res-integra*. The Apex Court in the matter of ***Jaywanta Dilip Pawar vs. State of Maharashtra and others***, in ***Civil appeal No.2336 of 2011***, decided on ***8th March, 2017***, has already recorded the finding that the claim of a candidate cannot be rejected based on the provisions of area

restriction, once the State Reorganization Act has come into effect. As such, the reasons recorded by the Committee to that effect are not sustainable in law.

8. As far as the issue of rejection of claim of the Petitioner for failure to qualify the affinity test is concerned, it is apparently clear from the catena of judgments, particularly, the judgment in the matter of *Aanand Katole vs. Committee for Scrutiny and Verification of Tribe Claim*, reported in *2011 (6) Mh.L.J. 919*, that the claim for issuance of validity cannot be rejected on the sole ground of failure to qualify affinity test.

9. The facts of the case in hand clearly demonstrate that on record the Petitioner has produced two documents viz. (a) the birth extract record of the Petitioner's father; and (b) school leaving certificate of his aunt. In both these documents, it is in categorical terms recorded that the Petitioner belongs to Thakar Community. Though the learned AGP has raised an objection to the acceptance of the aforesaid documents in evidence, and more particularly, even when in the caste column, the word 'Hindu' is reflected, what can be inferred from the aforesaid entries is, in such pre-independence era document, the word 'Hindu' refers to the religion and, rightly so in the column of religion, the word 'Hindu' can be noticed in the document of paternal aunt of the Petitioner. The aforesaid two documentary entries which are of pre-independence era in categorical terms support the case of the

Petitioner that he belongs to 'Thakar Community'. Resultantly, the said word 'Thakar' to mean that the Petitioner belongs to 'Thakar Upper Caste' cannot be inferred from the findings recorded by the Scrutiny Committee. Rather the record depicts 'Thakar' entries of pre-1950 as sufficiently proved by the Petitioner before this Court.

10. For the reasons stated herein above, the order impugned is hereby quashed and set aside.

11. It is declared that the Petitioner belongs to 'Thakar Scheduled Tribe' and is entitled for issuance of such certificate, which the Respondent No.2-Committee is directed to issue the same within a period of four weeks from the date of presentation of order of this Court. Needless to say that the present judgment is subject to the outcome of the Special Leave Petition (C) No. 24894 of 2009 [*Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and others*].

12. The Writ Petition stands disposed of.

13 In view of disposal of Writ Petition, Interim Application, if any, also stands disposed of.

(SHARMILA U. DESHMUKH, J.)

(NITIN W. SAMBRE, J.)