

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12705 OF 2019**

Alka Balkrishna Suryawanshi	]	
@ Mrs. Alka Bharat Salunkhe	]	
aged 58 years, Occ. - Service,	]	
residing At Post. Gadegaon,	]	
Taluka Pandharpur, Dist. Solapur.	]	Petitioner

Vs.

1. State of Maharashtra	]	
through its Secretary,	]	
Tribal Development Department,	]	
Mantralaya, Mumbai – 32.	]	
2. Schedule Caste Certificate Scrutiny	]	
Committee, Pune Division, through	]	
its Member Secretary having its office	]	
at Kapil Tower, C- Wing, 5 th Floor,	]	
Near RTO Office, Dist. Pune.	]	
3. Zilla Parishad, Solapur,	]	
Education Department Primary	]	
Through its Education Officer	]	
(Primary) having its office at	]	
Solapur, Dist. Solapur.	]	
4. Tahsildar & Executive Magistrate	]	
Pandharpur, Dist. Solapur.	]	Respondents

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Mr. R.K. Mendadkar a/w Mr. C.K. Bhangoji, for Petitioner.

Mr. N.K. Rajpurohit, A.G.P, for Respondents No.1, 2 and 4.

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**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 14th MARCH, 2022.

JUDGMENT: [Per G.A. Sanap, J.]

1. In this petition, the challenge is to the order dated 20th July, 2019 passed by respondent No.2- Schedule Caste Certificate Scrutiny Committee Pune Division, (for the sake of brevity hereinafter referred to as “Caste Scrutiny Committee”) whereby, it invalidated the caste certificate dated 3rd October, 1992 being belonging to “Thakar Scheduled Tribe”. The facts are as follows.

2. It is the case of the petitioner that by birth she belongs to “Thakar Tribe”. On production of the necessary documents, the Competent Authority has issued a caste certificate to the petitioner. On the basis of Thakar Scheduled Tribe Caste Certificate, the petitioner was appointed as a “Primary Teacher” at respondent No.3-School with effect from 17th September, 1993 on the post reserved for scheduled tribe category. After joining the employment, caste certificate of the petitioner was forwarded to respondent No.2-Caste Scrutiny Committee for verification on 29th July, 2013. The petitioner submitted the documents before respondent No.2 – Caste Scrutiny Committee to substantiate her tribe claim. Respondent No.2 – Caste Scrutiny Committee directed the vigilance cell inquiry. The vigilance Cell of Police conducted an inquiry and submitted the report. The petitioner on receipt of notice from respondent No.2 – Caste Scrutiny Committee placed on record her detailed statement reiterating her tribe claim and also the explanation in respect of some of the observations made in the vigilance cell report. It is the case of the petitioner that respondent No.2 – Caste Scrutiny Committee has failed to consider

the pre-independence era documents relied on by the petitioner. In the pre-independence era documents, the tribe of ancestors of the petitioner has been recorded as “Thakar”. Respondent No.2 – Caste Scrutiny Committee without giving cogent reasons to discard the pre-independence era documents rejected the tribe claim of the petitioner.

3. Affidavit-in-reply has been filed on behalf of respondent No.2 – Caste Scrutiny Committee. In sum and substance, the deponent has denied the material facts stated by the petitioner. It is contended that respondent No.2 – Caste Scrutiny Committee on the basis of the available material did not find tribe claim of the petitioner acceptable and as such rejected the same. Respondent No.2 – Caste Scrutiny Committee during the course of the inquiry came across number of adverse entries from the School and Revenue record of the blood relatives of the petitioner. In those entries, caste of relatives of the petitioner was recorded as “Hindu Maratha” and “Hindu Thakar”. Self contradictory entries from the record created a doubt in the mind of respondent No.2 – Caste Scrutiny Committee. Report of Vigilance Cell did not support the claim of the petitioner. The documents produced on record were found insufficient by respondent No.2 – Caste Scrutiny Committee to grant the validity certificate of the tribe claim of the petitioner.

4. We have heard Mr. Mendadkar, learned Advocate for the petitioner and Mr. Rajpurohit, learned A.G.P, for Respondents. We have gone through the record and proceeding.

5. Mr. Mendadkar, learned Advocate submitted that the oldest pre-independence entries are of the year 1920 and 1929, to establish that the ancestors of the petitioner belong to “Thakar Tribe/caste” which is recognized as scheduled tribe. In the submission of the learned Advocate for the petitioner, the oldest documents have higher probative value and, therefore, proper weightage ought to have been given to them. It is pointed out that the entries from the Government record of the year 1920 and 1929 are of the blood relatives of the petitioner. The names of those relatives are mentioned in the family tree. Learned Advocate submitted that the contradictory entries from the government record in respect of forefathers of the petitioner could not have been taken into consideration to deny the tribe claim of the petitioner in the background of two documents of the year 1920 and 1929. Learned Advocate submitted that respondent No.2 – Caste Scrutiny Committee has not applied its mind to all the material on record and as such, has come to a wrong conclusion.

6. As against this, learned A.G.P for the respondents submitted that in view of the contradictory entries of the blood relatives of the petitioner, sufficient doubt was created in the mind of the scrutiny committee. The learned A.G.P pointed out that in some of the documents, caste of the relatives of the petitioner has been mentioned as “Hindu Thakar” and in some of the documents, it is mentioned as “Hindu Maratha”. The learned A.G.P submitted that in the documents relating to the father and brother of the petitioner, their caste is mentioned as “Hindu Maratha”. The learned A.G.P has submitted that, therefore, respondent No.2 –

Caste Scrutiny Committee was right in placing reliance on the vigilance cell report and rejecting tribe claim of the petitioner.

7. In order to satisfy ourselves about real state of affairs, we have minutely perused the vigilance cell report, order passed by respondent No.2 – Caste Scrutiny Committee and the documents placed on record by the petitioner. In order to substantiate the tribe claim, the petitioner has mainly relied on the extract from the birth and death register of Village Peth. This entry pertains to the birth of Shanta. Shanta is daughter of Bramhadeo (Barma). This entry is dated 14th November, 1929. According to the petitioner, Shanta is her paternal aunt. In this entry, her caste was recorded as “Thakar”. The next entry is dated 7th July, 1920. It is extract of birth and death register. This entry records death of Ganpati, son of Rama Thakar. According to the petitioner, Ganpati is her cousin grandfather. In this document, his caste was recorded as “Thakar”. It is to be noted that there is hardly any dispute about relation of the petitioner with these two persons. It is, therefore, seen that these are the oldest documents of pre-independence era. In these oldest documents, caste of the blood relatives of the petitioner was recorded as “Thakar”. In our view, these two documents cannot be discarded unless and until there is proper explanation from the respondents and a concrete finding based on the available material at the behest of respondent No.2 – Caste Scrutiny Committee.

8. It is seen that there are other entries which indicate that caste of some of the blood relatives of the petitioner has been mentioned as “Hindu Maratha” and “Hindu Thakar”. It needs to

be stated that caste of father and two brothers of the petitioner has been recorded as “Hindu Maratha”. The petitioner had submitted the family tree before respondent No.2 – Caste Scrutiny Committee. In the family tree, the names of blood relatives have been mentioned. In case of some of the blood relatives, caste mentioned is “Hindu Thakar” and “Hindu Maratha”. However, perusal of those documents would show that the same are subsequent to the documents of 1920 and 1929. The question is, therefore, whether the oldest documents relied upon by the petitioner pertaining to the entries of the blood relatives can be discarded while deciding the claim of the petitioner. It is to be noted that the caste or a particular social status which comes with birth cannot either be changed or relinquished. There cannot be a different caste or tribe of the grandfather, father and son. Son and father would get the caste or social status of grandfather. In our opinion, if there is a conflict in the entries of caste and social status of grandfather on one hand and father and son, on the other hand, the record of the caste and social status of the grandfather would prevail. It is further pertinent to note that in one genetically related family, there cannot be two castes/tribes. Therefore, in order to decide the caste claim of the descendants, the documents of the caste or social status of the ancestors in the family would be of a great importance. It is to be noted that while deciding such matters, the Court has to bear in mind the mindset of the people during pre-independence era and the post independence era. In pre-independence era, backward social status was treated as a stigma. Number of disadvantages had been attached to the backward social status. It is to be noted that, therefore, people

with a backward status had been fed up with the same and the effort was to abandon the same and join the main stream of high strata of the society. It is to be noted that during pre-independence era, since the benefits which are available post independence era were not available, much importance and care was not taken while maintaining the record. Therefore, as a result of the mindset to come out of the backward social status and to join the main stream, the caste or adjectives which were prevalent in the high castes were affixed or prefixed to the original caste or tribe. In our view, this fact needs to be borne in mind while appreciating the contradictory caste or tribe entries of the blood relatives of the person who is claiming backward social status. In post-independence era, the Constitution extended special benefits to the backward class communities. The experience would show that in post-independence era, the people realized the importance of backward social status. Even the persons not belonging to backward social status by affixing or prefixing their original caste or tribe, recognized the backward class to take benefit of the same. It is to be noted that the actual backward class or social status people realized the benefits of the same. In this background, it is to be mentioned that in case of contradictory entries, the oldest entry to support the caste or tribe claim deserves weightage and as such claim cannot be discarded.

9. In the case of **Anand Vs. Committee for scrutiny and verification of Tribe claims and others, (2012)** of Supreme Court **Cases, 113**, the Apex Court has held that genuineness of the caste claim is to be looked into broad perspective rather than mere

verification of documents. It is held that older documents have higher probative value and, therefore, the same must deserve due regard. It is also held that affinity test is relevant and germane to determine the social status of the claimant.

10. In the recent unreported decision of the Apex Court in case of **Veena Ashok Godse @ Veena Hemant Sonawane Vs. State of Maharashtra in Civil Appeal No.19968 of 2017 decided on 29th November, 2017**, it is held that while dealing with the documentary evidence, greater reliance may be placed on pre-independence documents because they furnish higher degree of probative value to the declaration of status of the caste as compared to the post-independence documents. The oldest documents of the blood relatives have to be relied upon. It is further observed that offspring of the forefather belonging to a particular tribe or caste in pre-independence era would not become disentitled to claim that social status or tribe simply because of the mentioning of a different caste or tribe in subsequent record of the relatives. In our view, this proposition squarely applies to the case of the petitioner. In our opinion, two important documents of the year 1920 and 1929 placed on record could not have been rejected in the first place. In order to reject the claim, there ought to have been sufficient evidence to point out that these two documents are either false or not of the blood relatives of the petitioner. In view of this decision, we are of the opinion that the Caste Scrutiny Committee has committed an error in rejecting the tribe claim of the petitioner. We are unable to find convincing reason recorded by the Scrutiny Committee to discard

these two documents. In the teeth of these two documents, subsequent contradictory entries of the caste or tribe of father and brothers of the petitioner cannot be given any weightage. We, therefore, conclude that the petition, therefore, deserves to be allowed. Hence, the following order;

: ORDER :

- (i) The Petition is allowed.
- (ii) The impugned order is hereby quashed and set aside;
- (iii) Respondent No.2 – Caste Scrutiny Committee is directed to issue Tribe Validity Certificate to the Petitioner that the petitioner belongs to “Thakar” Scheduled Tribe within a period of four weeks from the date of receipt of the copy of the order;
- (iv) Respondent No.3 is directed to release pension and other retirement benefits to the Petitioner within two weeks from the date of submission of tribe validity certificate by respondent No.2.
- (v) Rule is made absolute in the above terms. No costs.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]