

Shiv

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

WRIT PETITION NO.17 OF 2017

Prachi Dilip Thakur
Aged 24 years, residing at
Shakuntala Row House,
Kathegalli, Dwarka,
District Nashik ... Petitioner

Versus

1. State of Maharashtra
Through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai-400 032 ...

2. Scheduled Tribe Certificate
Scrutiny Committee, Nashik
Division, Nashik
Adivasi Vikas Bhavan,
Old Agra Road, Nashik
District Nashik ...

3. The Sub Divisional Officer
Malegaon Sub Division,
Malegaon,
District Nashik ... Respondents

Mr. R.K. Mendadkar for the Petitioner.
Mr. V.M. Mali AGP for the Respondent-State.

**CORAM : S. V. GANGAPURWALA &
S. M. MODAK, JJ.**

DATE : 14TH JULY, 2022

P.C. :

1. Heard learned Advocate for the Petitioner and learned AGP for the Respondent-State.
2. Rule. Rule made returnable forthwith by consent of parties.
3. Learned AGP waives service on behalf of the Respondent-State.
4. The Petitioner has obtained the Scheduled Tribe certificate as belonging to “Thakur Schedule Tribe” being Entry No.44 of the Constitution (Scheduled Tribes) Order, 1950 from the Sub Divisional Officer, Malegaon, District Nashik. She secured admission in H.P.T. Arts/R.Y.K. Science College, Nashik. Her tribe certificate was sent for verification. The Scheduled Tribe Certificate Scrutiny Committee, Nashik as per the order dated 18th September 2012 has refused to grant validity. The said decision is challenged before us.
5. Primarily, the Committee has taken that decision for the reason that the documents filed by her does not support her claim. She relied upon the school records of her grant-father Jagtap Hari Namdeo and the birth extract of her cousin grand-father Trimbak Tanaji Parvat(para 5.1 of the impugned order). According to the Committee merely mentioning the caste as “Thakur” is not sufficient. The Committee further mentioned that the Petitioner and her forefathers were not the residents of scheduled districts as mentioned in the Constitution Schedule Tribes Order, 1950.

Whereas according to the Petitioner the area restriction is already removed.

6. According to the learned Advocate for the Petitioner, the documents relied upon by the Petitioner belongs to pre-constitution era and as such it has got evidenciary value. He also submitted that during that period the issue of reservation was not in force and mere mentioning of the caste as “Hindu-Thakur” does not dis-entitle him from validity. According to him at that time reservation for the Scheduled tribe was not in force and the persons used to mention their caste without any prefixes whether it is Scheduled Caste or Scheduled Tribe. Whereas the learned AGP supported decision of the Committee and according to him the validity has been rightly refused.

7. With the assistance of both sides we have perused the record made available. It is true that there are no contra entries referred in the impugned order which suggest that the Petitioner belongs to caste/tribe other than “Thakur”.

8. Learned AGP relied upon the judgment in ***State of Maharashtra Vs. Ravi Prakash Babulal Singh Parmar*** reported in ***(2007) 1 SCC 80***. The Hon’ble Supreme Court has observed that the Committee can certainly inquire as to whether fraud is played while obtaining the certificate. It is further observed that apart from documentary evidence even the oral evidence can be adduced wherever necessary.

9. Learned AGP relied upon the judgment in *Murlidhar Ramkrishna Gathe Vs. State of Maharashtra and Others* reported in *(2007) 3 Mh. L. J. 308* and the order of the Hon'ble Supreme Court confirming the decision wherein it is observed that the burden to prove that a person belongs to the scheduled tribe lies heavily on the person seeking certificate.

10. There cannot be any dispute about proposition laid down in the judgments referred above. We are inclined to set aside the impugned order for the reason that the documents are pre-constitutional documents and there are no contra material collected during vigilance. There is no grievance that these are fraudulent documents. It is also true that as per amendment carried out in the Constitutional Schedule Tribe Order, 1950, the area restriction is removed. The Committee has taken restrictive meaning of effect of removal of area restriction. It is only for election purpose. It is not correct. Hence the Petition deserves to be allowed and we pass the following order :

- (a) The Petition is allowed.
- (b) The Committee is directed to issue validity certificate to the Petitioner as a member belonging to "Thakur Schedule Tribe" expeditiously and preferably within six weeks.

11. Rule is accordingly discharged. No costs.

(S. M. MODAK, J.)

(S. V. GANGAPURWALA, J.)