

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15703 OF 2022

Dattatray Tryambak Bhamare & Anr ...Petitioners
Versus
State of Maharashtra through its Secretary & Ors ...Respondents

Mr RK Mendadkar, with Komal Gaikwad, for the Petitioner.
Mr NC Walimbe, AGP, for the Respondent-State.

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 11th August 2023

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PC:-

1. Rule. Rule made returnable forthwith.
2. The Petitioner challenges an undated order passed by the 2nd Respondent Scheduled Tribe Certificate Scrutiny Committee, Nashik Division invalidating the Petitioners Scheduled Tribe Certificate as belonging to the Thakur Scheduled Tribe. The immediate and most obvious difficulty with the impugned order is that it proceed almost entirely on the question of the affinity test to hold that the Petitioner has not shown sufficient cultural, social affinity to the claimed Scheduled Tribe. That has never been a determinative test. That branch of the law is too well settled to admit of any dispute.

3. What is equally fatal is the failure to consider the various school certificates listed in the table at pages 30 and 31 and the birth certificate at page 31. These are relatives on the paternal side. Reference to relatives on the maternal side are completely immaterial and could not have been taken into account. But of the entire lot of certificates and documents, it seems that there are at least two documents of pre-Constitutional vintage, i.e., 1904 and 1931. The first is of the grandfather and the second is of that grandfather's other son. So far as the grandfather's certificate is concerned, it is addressed by a finding at page 44. This is actually a reference not to the grandfather's birth certificate but to a record regarding the birth of the grandfather's daughter. In this context, it is noted that the basic entry of Marathe was apparently cancelled, scored out or overwritten with another entry of Thakur. The certificate is of 1934 and no attempt seems to have been carried out to examine whether the correction (we hesitate to return a finding of overwriting) was roughly of that period or was considerably more recent. The Committee seems to have immediately jumped to the conclusion that no record of any kind can ever have any kind of correction on it. That is nether logical nor common experience. Records are often rectified. A more thorough investigation is undoubtedly required and it is impossible to accept that over all these pages of apparent analysis no thought has been spread to this aspect of the matter.

4. But, interestingly, of the nine entries that otherwise listed at pages 30 to 31 there is no discussion in this Petition at all as to why they should have been sought totally discarded.

5. Finally, it is to be noted that the certificate that has been disregarded is of the Petitioner's paternal aunt (atya), and those of the grandfather, cousins, father, and two brothers. The two Petitioners before us are Dattatray Tryambak Bhamare and Hemangi Dattatray Bhamare. Hemangi is Dattatray's daughter. It seems that Dattatray's brother's children, Akshay and Manasi, had filed Writ Petition No. 5111 of 2019. We find in that order of 25th July 2019 that interim relief was granted to issue a validity certificate. But what is more important for our purposes is the finding returned in that order that a validity certificate was issued to one Kishor Trymbak Bhamare, obviously *Dattatray's real brother*. The High Court order says that so far as Kishor Trymbak Bhamare is concerned, his certificate of validity is not been cancelled at any time. Even if the Committee believes that *Kishor's* case deserves reconsideration and accordingly the case of Akshay and Manasi, was rejected, there is no ground to refuse the Petition of Dattatray and Hemangi on merits.

6. Accordingly, the Petition succeeds and Rule is made absolute in terms of prayer clauses (a) and (b);

“(a) This Hon'ble Court be pleased to issue Writ of Certiorari and/ or any other Writ, Order or Direction in the nature of Certiorari thereby quashing and setting aside common impugned order dated Ni.2022 passed by the respondent no. 2 committee, with further directions to it to issue validity certificates to the petitioners, in the light of caste validity certificate granted to the three blood relatives by the respondent no. 2 committee itself and pre-Constitutional documents on record.

(b) That this Hon'ble Court be pleased to hold and declare that the petitioners belong to Thakur tribe which is listed at entry no. 44 of the Part IX, Second Schedule appended to the SC/ST Orders (Amendment) Act, 1976 and thus, are entitled to enjoy the benefits of schedule tribe."

7. The Committee will forthwith issue a certificate of validity to the two Petitioners.

8. The urgency is that the 2nd Petitioner is to submit her validity certificate by 16th August 2023. There will be not be a enough time between today and the 16th August in view of the intervening bank holidays. The Committee will issue the certificate of validity by 14th August 2023 and will act upon on production of an authenticated copy of the order. If for any reason the certificate cannot be obtained or uploaded by 16th August 2023, the college in question and all admission authorities will permit an extension of time on the basis of this order for uploading the validity certificate noting that we have directed the issuance of a validity certificate.

(Neela Gokhale, J)

(G. S. Patel, J)

Note: This order is modified as per order dated 22nd March 2024. The corrections are shown as bold, italics and underlined in paragraph 5.