

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15122 OF 2022**

Rohan s/o Digambar Ratool ...Petitioner
Versus
The State of Maharashtra, Department of Tribal
Development & Anr ...Respondents

Mr Sushant Y Jinturkar, for the Petitioner.
Mr VM Mali, AGP, for the State.

**CORAM G.S. Patel &
 S.G. Dige, JJ.**
DATED: 4th January 2023

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1. Heard. Rule. Rule made returnable forthwith. Respondents waive service.

2. The Petitioner's caste certificate and scheduled tribe claim has been invalidated by the 2nd Respondent, the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane. The Petitioner claimed to belong to the Thakar Schedule Tribe. The invalidation order is of 16th November 2022.

3. We believe the case is actually fully covered. The 2nd Respondent inter alia relied on the claim of one Narayan Vinayak

Ratul whose caste claim has also invalidated. As it happens Narayan is the cousin of the Petitioner. Narayan challenged that invalidation before this Court in Writ Petition No. 13551 of 2022.

4. On the very date of the invalidation in the present Petitioner's matter, 16th November 2022, a Division Bench of this Court set aside the invalidation in Narayan Ratul's case. A copy of the Division Bench order is from pages 104 to 108.

5. The Petitioner relied on precisely the same documents. The vigilance does not note a single contra entry. The submission being made is that since Thakar is no longer recognised as a valid Nomadic Tribe or NT, it cannot automatically default without the necessary legislative action to being a Schedule Tribe. This contention has been raised before and negatived. Indeed, it has been negatived more than once. Whether or not the committee proposes to challenge the Division Bench order in Narayan's case is not our concern. It has to be shown to us that there is an order of the Supreme Court or of a Larger Bench that reverses the view that has already been taken. We say this because there is a body of law already established which considers this position. Specifically, we make reference to the decision of a Division Bench of this Court in a judgment as long as 16th April 2018 in *Dilip Mahadeo Mhaske v State of Maharashtra & Ors.*¹ The claim there was again for the Thakar, Schedule Tribe or ST. Paragraph 4 of *Dilip Mhaske's* judgment is at pages 74 to 79 of the paper book read thus:

¹ Writ Petition No 1158 of 2018, decided on 16th April 2018.

“4. In the petition, the petitioner has offered an explanation as to the issuance of such a document and recording of the caste as “Hindu Magaslela”. It can be seen that earlier point of time “Thakar” community was recognised as Nomadic Tribe. However, in view of coming into force the Scheduled Tribe 1950 Order, it came to be included in the S.T. Category. The Government of Maharashtra had issued a communication on 30th August 1979 to the President Gokul Prkalp Prathisthan, Kudal directing that the caste Thakar is included in S.T. category and all Thakars from Ratnagiri district be treated as Thakar S.T. The said communication is placed on record by the petitioner. However, it is pertinent to note that the Director of Education had issued a communication as long back as on 22nd May 1968 wherein it had directed that while taking entry in relation to caste and religion at the time of admission of the student, there is no need to mention the caste in the school admission register. It was also directed that, if any such type of entries are recorded, those should be removed and only religion and remark as to whether belongs to Backward Class or not should be written so that the students should take benefit of Education. In the light of the said circular dated 22nd May 1968 and a Circular issued on 28th October 1969, the entry in respect of Vitthal Soma Masake came to be corrected to read as “Hindu Magasvargiya”. The Committee has also relied upon the said entry which is a solitary one in ignorance of all the pre-constitutional documents reflecting the caste of the ancestors and the close blood relatives of the petitioner as “Hindu Thakar”. The Committee has also referred to the fact that the petitioner has also obtained a certificate as belonging to N.T. and he has concealed the information that he has obtained such certificate.

However, in this connection, learned Counsel for the petitioner has specifically invited attention of this Court to the judgments of this Court in W.P.No.6048 of 2004 where the court has dealt with a G.R. whereby “Thakar” community was notified as N.T. But this Court by its judgment has specifically observed that the said caste was wrongly recognised as N.T. and since in the light of change in policy of the State Government the caste Thakar was already placed at Entry No.44 of Scheduled Tribe Order, the said entry of being Nomadic Tribe was found to be erroneous. In the light of the aforesaid fact there was no fault on the part of petitioner in obtaining a certificate of belonging to N.T. since the State Government itself had recognised the caste Thakar as N.T. for a period of time.”

(Emphasis added)

6. The emphasized portion shows that the very argument that is now sought to be canvassed before us was repelled by this Court as far as back in 2018. It is pointless therefore to submit that it is only on 16th November 2022 that for the first time in the Petitioner’s cousin’s i.e. Narayan’s case the Court took such a view. That view is now four years old and in that time has not been unsettled by any judgment shown to us today.

7. In the result the Petition succeeds. Rule is made absolute. The impugned order is quashed and set aside. The committee is to issue a validity certificate to the Petitioner of the Thakar Schedule Tribe immediately and on priority basis. This is required for submission by the Petitioner for a pharmacy course at the Indrayani Shikshan Prasarak Mandal Shri Pushpasen Sawant College of

Pharmacy, Kudal. That college will allow the Petitioner the necessary additional time on being presented with an authenticated copy of this order. The 2nd Respondent committee is to issue the necessary validity certificate no later than by Monday, 9th January 2023. The Petitioner must personally collect on that date and must submit it to the pharmacy college at Kudal no later than by 12th January 2023.

8. We also note the well-settled decision of this Court in *Apoorva Vinay Nichale v Divisional Caste Scrutiny Committee & Ors*,² in addition to other similar decisions.³

(S.G. Dige, J)

(G. S. Patel, J)

² 2010 SCC OnLine Bom 1053 : (2010) 6 Mah LJ 401.

³ *Amruta Vijay More v State of Maharashtra & Ors* decided in IA No. 3 of 2011 in Civil Appeal No. 7230 of 2011 and *Anita Atmaram Gaikwad v State of Maharashtra & Ors* in Special Leave to Appeal (Civil) No. 23081 of 2010 decided on 16th April 2013.