

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

WRIT PETITION NO.15661 OF 2022

1. Pratham Dattatray More
Aged 18 years, Occ: Student

2. Sayli Rajesh More
Aged 21 years Occ: Student
Both Residing at 303, Riddhi Build.,
Javer Nagar, Ganesh Nagar Chowk,
Anand Park Road, Vadgaon Sheri,
Pune-411 014.

... Petitioners

Versus

1. State of Maharashtra through its
Secretary, Tribal Development Dept.
Mantralaya, Mumbai: 400 032

2. Scheduled Tribe Caste Certificate
Scrutiny Committee, Nashik Divisional
having its office at Dist. Nashik.

...Respondents

Mr. R.K. Mendadkar a/w. Ms. Komal Gaikwad & Ms. Priyanka Shaw for the
Petitioner.

Mr. N. C. Walimbe, Addl. G. P a/w. Mr. S. B. Kalel, AGP for Respodnent-State.

**CORAM : A. S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ.**

RESERVED ON : 29TH NOVEMBER 2023

PRONOUNCED ON : 15th DECEMBER 2023

JUDGMENT (Per Firdosh P. Pooniwalla, J.) :

1. Rule. Rule made returnable forthwith. Heard finally by consent of
the parties.

ASHVINI
BAPPASAHEB
KAKDE

Digitally signed by
ASHVINI
BAPPASAHEB KAKDE
Date: 2023.12.21
11:01:28 +0530

2. By the present Petition, the Petitioners seek quashing and setting aside of the impugned Order dated 7th November 2022 passed by Respondent No.2 - Scheduled Tribe Caste Certificate Scrutiny Committee with further directions to issue Certificate of Validity of Caste to the Petitioners.

3. The case of the Petitioners is as follows:-

- a The Petitioners, by birth, belong to the Thakar tribe which is recognised as a Scheduled Tribe under the Constitution (Scheduled Tribes) Order, 1950 ,as amended from time to time. They were granted Caste Certificates as belonging to the Thakar Scheduled Tribe.
- b The Petitioners moved Respondent No.2 on 8th February 2021 and 1st January 2021 respectively for verification of their Caste Certificates and filed with Respondent No.2 various documents in relation to their blood relatives from the paternal side, including pre-Constitutional documents in relation to their forefathers wherein the tribe is duly recorded as Thakar.
- c In support of their applications, they also placed on record Caste Validity Certificates granted to various blood relatives from their paternal side before Respondent No.2, which included Caste Validity Certificates of the respective fathers of both the Petitioners.
- d Despite the aforesaid evidence on record, Respondent No.2 referred

the case of the Petitioners for vigilance enquiry to the Vigilance Cell attached to it. The Vigilance Cell, after conducting an enquiry, submitted its Report to Respondent No.2 on 16th July 2021.

- e The Petitioners thereafter filed a reply to the Vigilance Cell Report and pointed out that they had produced documentary evidence right from the year 1928, which was found to be genuine and correct. The Petitioners also pointed out that they had disclosed full affinity with the Thakar tribe by furnishing information on the point of socio cultural affinity test which included information with regard to the birth and death ceremonies, marriage ceremonies, God-Goddesses worshipped, method of burial of dead bodies, traditional dances and socio cultural rituals. They further pointed out that their blood relatives had been granted Caste Validity Certificates after following due process of law. The Petitioners also relied upon various judgments of this Court in that regard.
- f Respondent No.2- not being satisfied with the first enquiry report and the explanation offered thereto, called for a second enquiry report from its Vigilance Cell. Accordingly, the Vigilance Cell submitted its second Report dated 31st May 2022.
- g The Petitioners filed a detailed reply dated 25th July 2022 to the said Report and submitted that their cases were fully covered by the law laid down by the Hon'ble Supreme Court and by this Court in that regard. Thereafter, Respondent No.2 give a hearing to the Petitioners

wherein it was pointed out, on behalf of the Petitioners, that they were relying upon a series of validity certificates issued to their blood relatives.

- h Despite the same, by the impugned Order dated 7th November 2022, Respondent No.2 rejected the claim of the Petitioners for granting of Caste Validity Certificates and cancelled and confiscated the Caste Certificates of the Petitioners.
- i Being aggrieved by the said impugned Order dated 7th November 2022, the Petitioners filed the present Writ Petition.

4. In the case of *Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 & Ors.*¹, this Court has held that, if relationship by blood is established or not doubted, and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent in the Committee testing the same evidence and making the same conclusion unless the Committee finds on the evidence that the validity certificate of such relation has been obtained by fraud. This Court further held that, when, during the course of an enquiry, the candidate submits a Caste Validity Certificate granted earlier certifying that a blood relationship of the candidate belongs to the same caste as that claimed by the candidate, the Committee may even grant such certificate without calling for a vigilance report. Paragraph Nos.4 and 7 of the said Judgement are relevant and are set out hereunder:-

1 2010(6)MH.L.J. 401

4. We have considered the matter and we are of the view that the petitioner's caste claim that she belongs to Kanjar Bhat- Nomadic Tribe ought to have been accepted by the Committee merely on the basis that identical caste claim of her sister that she belongs to Kanjar Bhat has been allowed by the Committee, even apart from the Government Resolution. We are of the opinion that the guidelines provided by the said Govt. Resolution are sound and based on sound principles. It would indeed be chaotic otherwise. If the relationship by blood is established or not doubted, and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent in the committee testing the same evidence and making the same conclusion unless of course the Committee finds on the evidence that the validity of the certificate of such relation has been obtained by fraud.

7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that earlier caste certificate is tainted by fraud or is granted without jurisdiction, the committee may refuse to follow and may refuse to grant certificate to the applicant before it.

5. Further, paragraph 23 of the Judgement of the Hon'ble Supreme Court, in the case of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra & Ors.***² is also very relevant and is set out hereunder:-

23. In a given case, the Scrutiny Committee may be satisfied that the caste validity certificate relied upon by the applicant has been issued after making a lawful enquiry. But if the Scrutiny Committee is of the view that the applicant has not clearly established that the person to whom caste validity certificate produced on record has been granted is his blood relative, in terms of subrule (2) of Rule 12 of the ST Rules, the Caste Scrutiny Committee will have to refer the case for

² 2023 SCC Online SC 326.

conducting an enquiry through Vigilance Cell. In such a case, the Vigilance Cell can be directed by the Scrutiny Committee to conduct an enquiry limited to the relationship claimed by the applicant with the person in whose favour the caste validity certificate has been issued. If, on the basis of the report of the Vigilance Cell, the Scrutiny Committee is satisfied that the person in whose favour caste validity certificate has been issued is a blood relative of the applicant and lawful enquiry has been conducted before issuing the validity certificate, the Scrutiny Committee will have to issue validity certificate even if the applicant does not satisfy the affinity test. For example, if it is established that the father or grandfather of the applicant has been given a caste validity certificate after holding a lawful enquiry in accordance with law, the Caste Scrutiny Committee cannot hold that the grandfather or father of the applicant, as the case may be, belongs to Scheduled Tribe but the applicant does not belong to Scheduled Tribe. Only if the relationship as pleaded by the applicant is not established, the other evidence produced by the applicant and the result of the affinity test can be taken into consideration by the Scrutiny Committee.

6. From the said judgement of the Hon'ble Supreme Court also it is clear that, if blood relatives, and especially paternal blood relatives like the father or grandfather of the applicant, have been given a Caste Validity Certificate after holding a lawful enquiry in accordance with law, the Caste Scrutiny Committee cannot hold that the father or grandfather of the applicant, as the case may be, belongs to the Scheduled Tribe, but the applicant does not belong to the Scheduled Tribe. Only if the relationship as pleaded by the applicant is not established the other evidence produced by the applicant and the result of the affinity test can be taken into consideration by the Scrutiny Committee.

7. In our view, if the ratio of the aforesaid two judgments is applied to the facts of the present case, then the Petitioners ought to have been granted

Caste Validity Certificates by Respondent No.2. In the present case, it is not in dispute that Caste Validity Certificates have been granted to the father of Petitioner No.1 and the father of Petitioner No.2 and to other blood relatives of the Petitioners by the Scrutiny Committee after making an appropriate inquiry. These Caste Validity Certificates granted to the respective fathers of the Petitioners and to their blood relatives have not been cancelled and are in existence. In these circumstances, applying the ratio of the aforesaid two Judgements to the present case, it will have to be held that both the Petitioners are entitled to Caste Validity Certificates certifying that they belong to Thakar tribe as, otherwise, as held by the Hon'ble Supreme Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra), it would mean that the respective fathers of the Petitioners and their other blood relatives belong to the Thakar Scheduled Tribe and the Petitioners do not belong to the Thakar Scheduled Tribe, which is totally unacceptable. For this reason alone, the Petitioners are entitled to be granted Caste Validity Certificates stating that they belong to the Thakar Scheduled Tribe.

8. Further, a perusal of the impugned Order dated 7th November 2022 shows that the Petitioners have also produced pre-Constitutional documents, namely birth records of their blood relatives of the years 1943, 1941, 1938 and 1928, showing that they belong to the Thakar Scheduled Tribe. It is well settled in law that these pre-Constitutional documents, which were issued at a time when there was no question of any reservation for any Scheduled Caste or Scheduled Tribe, are extremely relevant and have got the highest probative value for the purpose of deciding the caste or tribe of a person or

for granting a Caste Validity Certificate. Paragraph 20 of the Judgement of the Hon'ble Supreme Court, in the case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra) is relevant in that regard and reads as under:-

20. It is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the case to Vigilance Cell. One of the tests is as laid down in the case of Kumari Madhuri Patil. It lays down that the documents of the pre – Constitution period showing the caste of the applicant and their ancestors have got the highest probative value. For example, if an applicant is able to produce authentic and genuine documents of the pre – Constitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations provided to the Tribes included in the ST order. In such a case, a reference to Vigilance Cell is not warranted at all.

9. In our view, for this reason also, Respondent No.2 ought to have granted Caste Validity Certificates to the Petitioners.

10. In the aforesaid circumstances, and for all the reasons given hereinabove, the impugned Order dated 7th November 2022 passed by Respondent No.2 is hereby quashed and set aside and Respondent No.2 is directed to issue to each of the Petitioners a Validity Certificate stating that they belong to the Thakar Scheduled Tribe, within a period of four weeks from the date of receipt of this Order.

11. Rule issued is made absolute in the aforesaid terms.

12. In the facts and circumstances of the case there shall be no order as to costs.

(FIRDOSH P. POONIWALLA., J.)

(A. S. CHANDURKAR J.)