



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12282 / 2024

ISHA SATISH KADAM

VERSUS

THE STATE OF MAHARASHTRA

THROUGH ITS SECRETARY AND OTHERS

...

Advocate for the Petitioner : Mr. Mr. S. R. Barlinge

AGP for Respondent/State : Mr. V. M. Kagane

...

CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.

RESERVED ON : 27th NOVEMBER 2024

PRONOUNCED ON : 14th DECEMBER 2024^{7th}

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JUDGMENT (Per Shailesh P. Brahme, J.) :

. Rule.

2. Rule is made returnable forthwith. Heard the matter finally with the consent of the parties.

3. This petition is directed against the judgment and order dated 30.10.2024 passed by Respondent No. 2/Scrutiny Committee invalidating tribe certificate of the petitioner of Scheduled tribe '*Thakar*'. She is allotted a seat in a CAP

Round 1 for B. Pharmacy and for confirmation of the admission, validity certificate is essential.

4. The petitioner is relying on validity certificate of her mother as well as tribe certificate and school record of her father. Amongst the various school entries of her blood relatives, more emphasis has been given to entries of her cousin uncle Suresh, Ramdas, cousin grandfather Vijaykumar and cousin uncle Babasaheb.

5. Learned Counsel Mr. S.R. Barlinge submits that there are number of school entries supporting the tribe claim of the petitioner. There is no contrary record. The old entry of Manik Joguba Kadam of 1953 disclosing 'Hindu' is not a contrary one. He would further submit that there is no convincing vigilance report on record that entry of Vijaykumar is tampered. He would advert our attention to the observation based on the census record holding that begging was not the traditional occupation of *Thakar*.

6. It is further submitted that the committee has arrived at perverse finding in discarding the school record and validity

of her mother. The affinity test cannot be treated to be conclusive one. It is submitted that impugned judgment is unsustainable.

7. Per contra, learned AGP has advanced submissions in support of the impugned judgment. The original papers of petitioner's claim is placed on record. It is submitted that there is no pre-constitutional record to corroborate petitioner's tribe claim. Neither is there any validity issued to the blood relatives of the petitioner. The oldest entry of Manik of 1953 is 'Hindu'. The next old record of 1963 of Vijaykumar is reported to be tampered. In the absence of reliable material on record, recourse has to be taken to the affinity test which is recorded against the petitioner. It is further submitted that the committee has taken reasonable and plausible view which calls for no interference.

8. Having considered the rival submissions of the parties, we find that there is neither pre independence record nor is there any validity issued to the paternal side relatives of the petitioner. The school record of Manik of 1953, is the oldest but it only shows 'Hindu'. Hindu, being religion, can not be treated to be contrary entry.

9. The school record of Vijaykumar of 1964 is castigated to be manipulated. Vijaykumar Asraji Kadam is the cousin grandfather of the petitioner. During vigilance his school record was reported to be tampered as the word Thakar was found to have been scribed in different ink and handwriting. We are shown the disputed entry of Vijaykumar. There is no coloured photocopy of the entry in question. We do not find any statement of headmaster of the concerned school reporting the manipulation. No proper vigilance was conducted in that regard. The observation in respect of entry are not supported by any material. The entry cannot be discarded.

10. We have gone through the number of entries of the school record of the paternal side relatives of the petitioner. We find that there is no contrary record. Entry of Vijaykumar of 1964 appears to be oldest one. Even the revenue record is also not contrary to the tribe claim.

11. The census record of 1951 is pitted against the petitioner which refers the occupation as begging. On the basis of the census record, the finding has been recorded by the

Committee that petitioner was belonging to Bhat Thakar and not scheduled tribe Thakar. The census record has no probative value in view of Section 15 of Census Act of 1951. The findings of the committee in that regard are perverse.

12. For rejecting tribe claim the place of residence of the petitioner and her forefathers is considered. In view of judgment of Supreme Court in the matter of Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.; (1994) 1 SCC 359, the place of residence is not decisive factor.

13. The petitioner has relied on the validity issued to her mother Suman Dattatraya Narwade. Her father also claims to be belonging to the same tribe. It was not intercaste marriage. The petitioner cannot succeed solely relying on her mother's validity. We have, therefore, considered other relevant material. The school record of the relatives of the petitioner is not incompatible. Despite enquiry by the vigilance cell nothing adverse was found.

14. The affinity test is recorded against the petitioner. It is

not litmus test and decisive. When other material is produced by the petitioner to support tribe claim, affinity test is inconsequential.

15. The upshot of above analysis is that impugned judgment and order is not sustainable. We therefore pass following order :

ORDER

- i) The impugned judgment and order is quashed and set aside.
- ii) Respondent/Scrutiny Committee shall issue tribe certificate of 'Thakar' to the petitioner forthwith.
- iii) Rule is made absolute in above terms.

**SHAILESH P. BRAHME
JUDGE**

**S. G. MEHARE
JUDGE**

V.S.J.