

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

WRIT PETITION NO. 6144 OF 2024

Swapnil Madhukar Gangawane,
Age- 31 Years, Occu. Service,
R/o. At post Ambrad, Mogarnewadi,
Tal- Kudal, Dist. Sindhudurg, 416628. ... Petitioner.

V/s.

1. The State Of Maharashtra
Through its Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Schedule Tribe Caste Certificate
Verification Committee,
Kokan Division, Thane.
3. Post Inspector,
Malvan Sub division, Malvan,
Dist- Sindhudurg 416606. ... Respondents.

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Mr. S.S. Panchpor for the Petitioner.

Ms. R.A. Salunkhe, AGP for Respondent Nos.1 to 3.

CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.

DATE : 29 April 2024.

JUDGMENT : (Per Nitin Jamdar, J.)

Rule. Rule returnable forthwith. Taken up for disposal by consent of parties.

2. The Scheduled Tribe Caste Certificate Verification Committee has invalidated the caste certificate issued to the Petitioner as belonging to the Thakar Community. Challenging this order, the Petitioner has filed the present writ petition under Article 226 of the Constitution of India.

3. The Petitioner is working with the Department of Post India as Gramin Dak Sevak Mail Deliverer at Kudal, Sawantwadi, district- Sindhudurg. Respondent No.1 is the State of Maharashtra. Respondent No.2 is the Scheduled Tribe Caste Certificate Verification Committee. Respondent No.3 is the Post Inspector, Malvan Sub-Division, Sindhudurg.

4. The grant of caste certificate and its verification are governed by the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of

Issuance and Verification) of Caste Certificate Act, 2000 (for short "Act of 2000") and the Rules titled as Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (for short "Rules of 2012").

5. Under section 6 of the Act of 2000, the State Government has established Scrutiny Committees for verification of the caste certificates issued by the competent authorities under section 4 of the Act. After obtaining caste certificates from the competent authorities, any person desirous of availing benefits or concession provided to Scheduled Castes, Scheduled Tribes and other reserved categories for any public employment or admission to the educational institute or for any of the benefits under the provisions as specified under section 3 of the Act of 2000, has to make an application to the Scrutiny Committee for verification of the caste certificate.

6. The Petitioner had applied for a caste certificate to the Competent Authority as belonging to the Thakar Scheduled Tribe. The Competent Authority issued a caste certificate to the Petitioner as Thakar Scheduled Tribe on 14 December 2013. The Petitioner joined the services of the Respondent- Department of Post. Respondent No.3- The Post Inspector forwarded the certificate of

the Petitioner to the Scrutiny Committee for verification of the claim of the Petitioner. The Petitioner appeared before the Scrutiny Committee and submitted the documents, that is, an extract of the School Register and School Leaving Certificate of the Petitioner's father, which mentioned his caste as Thakar.

7. Under Rule 12(2) of the Rules of 2012, if the Scrutiny Committee is not satisfied with the documentary evidence produced by the Applicant, the Scrutiny Committee forwards the application to the Vigilance Cell constituted under Rule 10 of the Rules of 2012. The Scrutiny Committee accordingly forwarded the Petitioner's application to the Vigilance Cell. The Vigilance Cell conducted the enquiry contemplated under Rule 12 and submitted the documents. These documents were of Petitioner's father, Madhukar and sisters Vandana, Sushma and Seema. The school record of the Petitioner's father, Madhukar, of the year 1958 showed the entry as Thakar. The entry in the school record of the Petitioner's sisters of 1980, 1981 and 1990 showed the entries as Thakur (Magas) i.e. Backward. The Petitioner's father's birth extract was also placed on record, wherein it is shown that the Petitioner's father was born on 20 June 1950; this also showed the entry as Thakar. The Scrutiny Committee noted these documents. The other documents were also on record showing the entries as Thakar. However, they were recent documents, and commenting that they were recent ones, the Scrutiny Committee proceeded to incorporate stereotyped grounds,

which are found in various orders of the Scrutiny Committee. The fact that the Petitioner's father was born in 1950 and the extract of the birth register showed the entry as Thakar and the school record also showed the entry as Thakar was not considered by the Scrutiny Committee.

8. The first stereotyped reasoning is that the Petitioner's original residence is in Kudal, district Sindhudurg and that this is not the original residence of the Thakar Scheduled Tribe. The Committee then referred to the Encyclopedia of Indian, Tribes, and Castes and reproduced the extracts. These six-page extracts formed the core of the reasoning of the 15-page Scrutiny Committee.

9. It is as far back as the year 2004, that is, two decades ago, that this Court, in the case of *Amol Narayan Wakkar v. State of Maharashtra*¹, had set aside this reasoning, which the Scrutiny Committee adopted. In this case, the petitioners belonged to the Thakar community. All the petitioners therein were from the Sindhudurg (erstwhile Ratnagiri) district. The Scrutiny Committee, relying on certain passages from R.E.Ethoven's "Tribes and Castes of Bombay Presidency" and extract from the Bombay Gazetteer, had held that traits of the Thakar community from the erstwhile Ratnagiri district had not matched with the Thakar Scheduled Tribe and, therefore, they (the petitioners therein) should be treated as

¹ 2005(1) Mh.L.J. 798

Nomadic Tribes. The Division Bench noted the entries in Part-IX of the Second Schedule to the Scheduled Castes Scheduled Tribes Orders (Amendment) Act, 1976 and observed that there is no doubt whatsoever that by virtue of the said parliamentary enactment, a person who is either a Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur Ma Thakar has been declared to belong to a Scheduled Tribe within Article 342 of the Constitution. Thereafter, the Division Bench analyzed the decisions of this Court and the Hon'ble Supreme Court and held as follows:

“16. In view of this established legal position the observations made by the Scrutiny Committee attempting to distinguish “Thakar” of erstwhile Ratnagiri District from “Thakar Scheduled Tribe” are wholly erroneous and have to be discarded from consideration. It is not disputed before us that the petitioners have established that they belong to Thakar community but the Committee on erroneous assumption proceeded to hold that Thakars of erstwhile Ratnagiri District are being different than Thakar Scheduled Tribe as described in Entry 44 of Scheduled Tribe Order. We are unable to appreciate the approach of the learned Members of the Committee in rejecting nearly 200 applications solely on the basis that though the applicants belong to Thakar Community they fall outside Entry 44 of Scheduled Tribe Order. In view of the decisions of the Supreme Court in Milind and Palghat Thandon's cases the Committee has no competence or authority to go into the question whether petitioners belong to Thakar Nomadic Tribe as has been done in this case. Entry 44 of the Schedule to the Presidential Order notifies Thakars without any area restrictions being Scheduled Tribe within the entire State of Maharashtra. The Scrutiny Committee was thus not justified in proceeding with the inquiry on the basis of alleged socio cultural traits and

ethnic linkage to find out whether the petitioners belong to Thakar Scheduled Tribe when admittedly the petitioners belong to Thakar Community. The Scrutiny Committee has also failed to see that some of the applicants were earlier issued caste certificates as belonging to Thakar Nomadic Tribe only due to the stand of the State Government which kept on changing and the notifications which were issued by the State Government from time to time contrary to the constitutional mandate. It appears that initially caste certificates were issued on the basis that the applicants belong to Scheduled Tribe and from 1985 to 2001 again they were considered as Nomadic Tribe. It appears that thereafter the applicants have been again granted caste certificates as belonging to Scheduled Tribe which was in consonance with the constitutional mandate. Therefore, the Scrutiny Committee was not right in holding that the applicants were trying to change their status. The Scheduled Tribe Order has to be read as it is and applied accordingly without any tinkering whatsoever. Therefore the tribe "Thakar" throughout the State has to be treated as Scheduled Tribe."

The Division Bench, with this reasoning, set aside the order of the Scrutiny Committee, holding that the observations of the Scrutiny Committee attempting to distinguish "Thakar" of erstwhile Ratnagiri District (Sindhudurg) from "Thakar Scheduled Tribe" are wholly erroneous. Special Leave Petition filed by the State of Maharashtra against this judgment and order in the case of *Amol Narayan Wakkar* was dismissed by the Hon'ble Supreme Court by order dated 25 August 2005. In the last two decades, the decision in *Amol Narayan Wakkar* has been consistently followed, and orders of the Scrutiny Committee holding that the Thakur community in

Sindhudurg district cannot be considered a Scheduled Tribe have been set aside. However, the Scrutiny Committee again in the year 2024 has taken this ground, which is wholly unsustainable. The Scrutiny Committee has been repeatedly taking the ground in various orders that the Thakur/ Thakar community is not to be found in the Sindhudurg district, and there has been area restriction. In various decisions, this Court has set aside this ground taken by the Scrutiny Committee. However, the Scrutiny Committee repeatedly reproduces this ground and incorporates it in the order. According to us, such conduct on the part of the Scrutiny Committee is contemptuous.

10. The second ground taken by the Scrutiny Committee is that the Petitioner has not been able to demonstrate his affinity to the Thakar Scheduled Tribe. The reliance of the Scrutiny Committee on the affinity test to determine whether the applicant belongs to Thakar as a member of Schedule Tribe (Backward Class) or Thakar and as to how much emphasis can be given to affinity test while deciding the caste claim in respect of Thakur community had came up for consideration of the Bench of three learned Judges of the Hon'ble Supreme Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.*² It is an admitted position that Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, and Ma Thakar are also scheduled tribes and that Thakur is

also in the open category. Therefore, to distinguish between the same, the Scrutiny Committee in the State of Maharashtra would place substantial reliance on ascertaining whether the candidate has shown affinity to the scheduled tribe and even if the document produced by the candidate would show entry of Thakur/Thakar, on the basis of affinity test the Scrutiny Committee would negate the claim. After elaborate discussion, the Supreme Court recorded its conclusion as follows:

“38. Thus, to conclude, we hold that:

(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(b) For the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim; and

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case”.

The above conclusion clearly states that the affinity test cannot be conclusive either way and must be considered along with all other material on record.

11. A perusal of the analysis of the impugned order would show that the Scrutiny Committee has not considered the effect of the documentary evidence with seriousness at all. The Scrutiny Committee, after cursorily mentioning the documents, has primarily relied on the area restriction and the affinity test. Both these grounds are erroneous in law, and, therefore, the Scrutiny Committee will have to focus on examining the documentary evidence from a proper perspective. Since this exercise is not done, the impugned order will have to be set aside, and the matter will have to be remitted back to the Scrutiny Committee for reconsideration of the caste claim in light of the law laid down as referred to above and after considering the totality of the evidence on record.

12. Before parting, we note that in several orders, the Scrutiny Committee is repeatedly reproducing the grounds which are already ruled upon by this Court and yet taking the stand contrary to the law laid down by this Court. Despite repeatedly setting aside such orders, the same grounds are repeatedly used for the orders. We draw the attention of the Scrutiny Committee to the decision of the Supreme Court in the case of *Baradakanta Misra v. Bhimsen Dixit*³ wherein it is observed as under:

“15. The conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will

3 (1973) 1 SCC 446

undermine respect for the law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is, therefore, comprehended by the principles underlying the law of contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly, the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law.”

(emphasis supplied)

The Hon'ble Supreme Court thus has laid down that deliberate defiance to the law laid down by the High Court and the Supreme Court would amount to contempt of court. Therefore, the Scrutiny Committee's repeated defiance to acknowledge the legal position laid down by this Court and the Supreme Court, may make the members of the Scrutiny Committee, the signatories to such orders, liable for action under the contempt jurisdiction.

13. As a result, the impugned order dated 20 March 2024 passed by the Respondent- Scrutiny Committee is quashed and set aside. The caste claim of the Petitioner is restored to the file of the

Scrutiny Committee. The Scrutiny Committee will accordingly issue notice to the Petitioner to remain present on the stipulated date, set a timetable and, subject to earlier time-bound directions and urgent cases, will endeavour to dispose of the caste claim at the earliest. It is open to the Petitioner to apply to the Scrutiny Committee for expeditious disposal of the claim.

14. Rule is made absolute in above terms. Writ petition is disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)