

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6610 OF 2015**

**Umesh Budhaji Thakar
Vs.
State of Maharashtra & Ors**

**..Petitioner
..Respondents**

**Mr. R. K. Mendadkar a/w Ms P. A. Shaw and Mr. T. V. Jadhav for the
Petitioner
Mrs. R. M. Shinde AGP for the Respondent State**

**CORAM :R. M. SAVANT, &
NITIN W. SAMBRE, JJ
DATE : 9th OCTOBER, 2018**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 23-3-2015 passed by the Scheduled Tribe Certificate Scrutiny Committee (for short STCS Committee), by which order the Petitioner's claim as belonging to Thakar Schedule Tribe came to be rejected.

2 The Petitioner was granted a caste certificate as belonging to Thakar Scheduled Tribe on 26-4-2002. On the basis of the said caste certificate the Petitioner came to be appointed in the Respondent No.3 in a post reserved for the Scheduled Tribe. In terms of the procedure the Petitioner's caste certificate was forwarded to the Respondent No.2 committee for seeking validity in view of the fact that the Petitioner was appointed in the post meant for Scheduled Tribe. Before the STCS Committee the Petitioner

relied upon a number of documents amongst which was the school leaving certificate in respect of the Petitioner's uncle one Ganpat Mahadev Thakur wherein in the column of caste it is mentioned as Hindu-Thakur and the date of admission in school is shown as 27-10-1948. The original copy of the extract of Village Form No.14 in respect of the Petitioner's uncle Ganpat Mahadev Thakur issued by the Tahsildar Kudal wherein the caste is recorded as Thakar, the date of birth is shown as 4-12-1939. The said documents have been referred to by us in view of the fact that the said documents can be said to be the pre-Constitution documents whose efficacy in terms of the law laid down stands on a different footing than the post constitution documents.

3 It is required to be noted that on the basis of the material before it the STCS committee had by order dated 10-6-2013 had invalidated the certificate of the Petitioner as belonging to Thakar-Scheduled Tribe. The said order came to be challenged by the Petitioner by way of Writ Petition No.8757 of 2013. The said Writ Petition came to be allowed by a Division Bench of this Court A.V.Mohta (as His Lordship then was) and A.A.Sayed JJ., by order dated 28-2-2014 and the matter came to be remanded back to the STCS committee for a denovo consideration of the Petitioner's claim. The said remand was ordered on account of non consideration of documents and evidence and wrong application of law by the Scrutiny Committee on affinity test/issue. In doing so the Division Bench referred to and relied upon its own judgment in

Writ Petition No.7343 of 2013 in the matter of Madhuri Nitin Jadhav Vs. State of Maharashtra & Ors. It is on remand that the instant judgment and order dated 23-3-2015 came to be passed by the STCS committee.

The Learned Counsel appearing for the Petitioner Mr. Mendadkar at the outset would contend that the directions as contained in the said order dated 28-2-2014 passed in Writ Petition No.8757 of 2013 has not been followed by the STCS committee in passing the order dated 23-3-2015. The said contention was based on the fact that the pre-Constitution documents which we have adverted to in the earlier part of this order have not been given due weightage and that the STCS committee has once again wrongly placed reliance on the affinity test to reject the tribe claim of the Petitioner. In view of the said submission of the Learned Counsel for the Petitioner we proceeded to consider whether the mandate of the order dated 28-2-2014 passed by the Division Bench in the said Writ Petition No.8757 of 2013 has been complied with by the STCS committee or not. On such consideration we find that the STCS committee has considered the documents which have been produced by the Petitioner as also considered whether the Petitioner satisfies the affinity test in so far as the Scheduled Tribe-Thakar is concerned.

4 In so far as the documents are concerned, the STCS committee in paragraph 9 of its order has referred to the documents which the Petitioner has placed reliance in support of his claim of belonging to Thakar-Scheduled

Tribe. The documents on which the Petitioner has laid much store has been specifically dealt with in the said paragraph 9. On such consideration the STCS committee has come to the conclusion that the said documents disclose different caste entries in the school records of the applicant's relatives. The STCS committee has observed that only because of the entry as Thakar cannot result in an automatic validation of the tribe claim. The STCS committee has thereafter observed that the caste Thakar and Scheduled Tribe Thakar are altogether different entities and they have no ethnic linkage with each other. The STCS committee has lastly observed that the Thakars from the Sindhudurg district (erstwhile Ratnagiri district) were included in the list of Nomadic Tribes for the State of Maharashtra till the year 2004. The STCS committee thereafter has referred to the documents relating to the revenue entries in Form No.8 and the 7/12 extract which according to the STCS committee do not contain the caste details and are therefore not supportive of the tribe claim of the Applicant. The STCS committee has gone on to observe that the Petitioner has not been able to said as to on what basis the caste certificate as belonging to Thakar-Scheduled Tribe was issued to him. This is in so far as the documents are concerned.

5 Now coming to the Vigilance enquiry the Vigilance Officer produced the documents /copies of extracts of School Admission, General registers pertaining to Applicant and its paternal relatives. It is on perual of

such entries that the STCS committee has observed that there are conflicting caste entries in the school record of the Applicant and his paternal relatives making it difficult to come to a logical conclusion in the matter. The STCS committee thereafter has referred to the information given by the Applicant in Form E which is as regards trade, characteristics, surname, customs etc. of the Thakar's to which the Petitioner's claim belong to. The STCS committee has referred to the places of residence of the Applicant's family, surnames of the Applicant relatives, Traditional occupations of the community , the names of God-Goddess worshiped by the community, festivals, the main dance of their community. The said information was compared by the STCS committee with the information furnished by the representative of the association during the course of the hearing on 7-3-2015 and the STCS committee on such comparison came to a conclusion that there was a discrepancy in what the Petitioner has stated and the information provided by the association of the Petitioner's community. The STCS committee thereafter has referred to the books written by scholars which has been referred to in the impugned order. The STCS committee observed that in view of the fact that there are Thakar Nomadic Tribe, Thakar in the OBC and now since the removal of the Thakar from NT and OBC they are to be treated as open caste. It is on account of similarity in nomenclature that the affinity test has to be applied. The STCS committee was of the view that considering the trade, character, customs, traditional occupations etc, the Thakar from Sindhudurg do not fulfill the

aforesaid criteria. The STCS committee observed that considering the entire evidence and the information that came before the STCS committee and in the light of the various pronouncements of this court as well as the Apex Court, the explanation and the submission of the Petitioner could not be accepted.

6 As indicated above we have heard the Learned Counsel for the Petitioner, we have also gone through the order passed by the STCS committee. On perusal of the said order we find that the STCS committee has in some detail considered the caste claim of the Petitioner both by considering the documents produced by the Petitioner as well as by applying the affinity test. In our view, the STCS committee can be said to have followed the mandate of the Division Bench of this Court as directed by order dated 28-2-2014 passed in Writ Petition No.8757 of 2013. We do not find any illegality or infirmity in the order passed by the STCS committee for us to exercise our writ jurisdiction. The Writ Petition is accordingly dismissed.

[NITIN W. SAMBRE, J]

[R.M.SAVANT, J]

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