

(2019) 06 BOM CK 0053

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 03337 Of 2011

Sachinkumar Vasantryao
Wankhede

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision: June 18, 2019

Acts Referred:

- Constitution Of India, 1950 - Article 19(d), 19(e), 226

Hon'ble Judges: S.S. Shinde, J; Vibha Kankanwadi, J

Bench: Division Bench

Advocate: Mahesh S. Deshmukh, Amol S. Sawant, S.D. Ghayal

Final Decision: Allowed

Judgement

Vibha Kankanwadi, J

01. Rule. Rule made returnable forthwith. By consent, heard finally.

02. Present petition has been filed invoking the extraordinary writ jurisdiction of this court under article 226 of the constitution of india, challenging the

judgment and order passed by the scheduled tribe certificate scrutiny committee, nandurbar region, nandurbar (hereinafter referred to As ""scrutiny

committee""), rejecting the caste (tribe) claim of the petitioner as claimed to be in ""thakur, scheduled tribe"" category, dated 09th/22nd march 2011.

03. The petitioner has come with a case that by birth, he belongs to thakur, scheduled tribe category. He has completed m.b.b.s. course in 1991 from

the seat which was reserved for scheduled tribe category. He completed his m.d. course in 1996 from open category and now he is working with

respondent no.04 as college as lecturer in microbiology since 2001. The petitioner has contended that his family hails from village marpur, taluka sakri, district dhule. He and his relatives as well as other family members follow the customs of thakur, scheduled tribe. He had applied to the chairman of the scheduled tribe certificate scrutiny committee, pune, for verification of his tribe claim. It came to be rejected on 23/03/1993, against which he had preferred appeal before additional commissioner, tribal development department, nashik. That appeal also came to be rejected on 17/11/1993.

Thereafter, he had filed writ petition bearing no. 2916 of 1994 (bombay) [i.e. W.p.no.2154 of 1996 (aurangabad)]. Interim relief was granted by this court, thereby the impugned orders against him came to be stayed during the pendency of the writ petition. He had then appeared for the examination conducted by the maharashtra public service commission. He was selected and appointed as lecturer in microbiology. Since 10th august 2001, he is serving with respondent no.04 as lecturer in microbiology. When said writ petition came up before this court, it came to be disposed of on 05/07/2010, quashing the orders passed by the lower authorities and remitting the matter back to the scrutiny committee for a fresh consideration. It was directed by this court, that the caste scrutiny committee at nandurbar shall consider the claim of the petitioner on its own merits. The petitioner appeared before the committee as respondent no.05 and submitted various documents to support his claim. The petitioner has given list of those documents which he had submitted before the said authority. Thereafter, report from vigilance cell was called. After considering the statement of the father of the petitioner and other documents, it is the contention of the petitioner, that the affinity test has been proved by him. However, he contends that without considering the said aspect, the committee has rejected his claim. He is also contending that his close relatives have been granted validity certificate by the scrutiny committee. Those orders have also not been considered properly and, therefore, a perverse finding has been given by the committee while rejecting his claim. He has, therefore, prayed for setting aside the impugned order and has also prayed for issuing appropriate writ to direct the committee to validate his claim.

04. Heard learned advocate mr. M.s. deshmukh, holding for learned advocate mr. A.s. sawant, for The petitioner. Also heard learned assistant government pleader mr. S.d. ghayal for respondents no.01 to 05.

05. Learned advocate appearing for the petitioner has vehemently submitted that in catena of judgments this court as well as the hon'ble supreme court has laid down that the documents submitted by the claimant are required to be considered independently, so also, if a close relative of the petitioner / claimant has received a validity certificate, then that is also required to be considered. Here, in this case, the cousin uncle of the petitioner has received a validity certificate. His affidavit was filed on record along with the order that was passed by the scrutiny committee. The genealogy was given explaining how the said person is related to the petitioner. Area restriction cannot be imposed upon the petitioner on the ground that persons from his community are not found in the area where ordinarily persons from thakur tribe are found. The latest pronouncements of this court as well as hon'ble supreme court were not taken into consideration by the scrutiny committee and, therefore, the impugned order deserves to be set aside.

06. Learned advocate for the petitioner relied on various judgments; amongst them, important are Prakash s/o. Shrawan deore vs. Scheduled tribe certificate scrutiny committee, nashik & another [writ petition no.02363 of 2013] Wherein this court after taking into consideration various pronouncements of the hon'ble supreme court as well as this court, especially the judgment in jaywant pawar vs. State of maharashtra in special leave to appeal No.2627 of 2010, dated 4th march 2011 and after remand Of the said case, certain observations were made in view of the decision in apoorva d/o. Vinay nichale vs. Divisional caste certificate scrutiny committee & others [2010(6) Mh.l.j. 401] and anand vs. Committee for scrutiny and verification of Tribe claims & others [(2012) 1 scc 113], holding thus :Â it could, thus, be clearly seen that the hon'ble apex court has in unequivocal words held that, with the migrations, modernisation and contact with other communities, the tribal tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. It has been observed that the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a scheduled tribe. It has been

held that the claim of belonging to scheduled tribe cannot be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, method death ceremonies, method of burial of dead bodies, etc. It has been held in clear terms that the pre-independence documents showing the applicant's forefathers belonging to the particular scheduled tribe have more probative value regarding his claim. It would further reveal that when there is doubt regarding the credibility of the document, its veracity has to be tested on the basis of the oral evidence, for which an opportunity has to be afforded to the applicant. It has been held that the affinity test cannot be a sole criteria to reject a claim.

Further, in *Motilal s/o. Namdeo Pawar vs. Scheduled tribe certificate scrutiny committee, Nashik & others* [writ petition no. 07 of 2014] dated 22-12-2017, various pronouncements were considered and this court has observed that, "the reasoning adopted by the committee that even after removal

of area restrictions, it is incumbent upon the committees to find out as to from which place the ancestors of the claimant have migrated is, therefore,

not of much significance." further, in *Madhuri Nitin Jadhav vs. State of Maharashtra & others* [2014(3) Mh.L.J. 900], it has been observed, "the scrutiny

committee is required to consider the relation certificates issued, on which reliance is placed by the applicant / claimant for the same caste certificate /

benefits. It cannot be overlooked and/or denied merely because those were obtained prior to the act and/or without due inquiry and/or passing the

affinity test, unless a case of fraud and/or misrepresentation is made out.

07. Per contra, the learned assistant government pleader appearing for the respondents supported the reasons given by the scrutiny committee,

wherein the committee had also taken note of various pronouncements of the judgments of this court as well as hon'ble apex court and it is submitted

that a well reasoned order has been given.

08. The petitioner had produced, as aforesaid, 34 documents. Out of them, important documents were his school leaving certificate dated 27-06-1972, 14-06-1982, his brother's tribe certificate, school leaving certificate of his

father, tribe certificate issued to his brother dated 05-05-1979,

order passed by nasik committee dated 18/02/2002 in respect of his cousin uncle shri komalsing omkarsing wankhede. It is also to be noted that when he had filed the writ petition earlier i.e. W.p. no. 2154 of 1996, which was decided by division bench of this court on 05/07/2010, a specific observation was made in paragraph no.07, that the petitioner's brother's claim has been validated by the divisional commissioner shall not be ignored by the committee. It was also thereafter stated that it cannot be the whole ground to influence the committee's decision to validate the tribe claim of the petitioner. That means, this court had suggested the committee to look into the orders those were passed by the other committee in respect of near relatives and then come To its own conclusion. Under such circumstance, the committee ought to have given sound reason for discarding the reliance of the petitioner on the tribe validity certificate of his close relative I.e. Cousin uncle. The said claim has been just brushed aside by taking help of decision of this court in certain case.

09. It appears that the committee did not consider as to under which circumstances and taking into consideration relationship involved, the observations were made in respect of claim made on the basis of validity certificate issued to a relative. Merely because some observations are Made, they are not ipso facto taken as binding Unless the facts are similar and the law point is also similar. In the said judgment passed by this court in the earlier round of litigation of the petitioner, no question was involved as regards affinity test or no point was raised in that respect, so also, as regards the area restriction. Now, both these points have been taken up by the committee for consideration which were not called upon. Various documents produced on record in the form of school leaving certificates, affidavit, vigilance report would definitely show that the petitioner had succeeded in the affinity test. When his cousin uncle's tribe certificate was validated by the competent authority i.e. Scrutiny Committee, it will have to be presumed that as regards customs observed in the family, were also considered at that time. Another fact to be noted is that even real brother of the petitioner has been granted a validity certificate by the commissioner, who was then competent authority. It cannot be stated that merely because at that time, procedure

was somewhat different, that decision cannot be used by the petitioner to support his claim. The certificate granted to his brother has not been got cancelled by any adverse party stating that the procedure that was adopted while granting that certificate was wrong.

10. The impugned order passed in this case by the scrutiny committee does not whisper that any certificate has been obtained by either the petitioner himself or his close relatives, was in fact, obtained by fraud or misrepresentation. On the basis of these positive documents, merely on the ground that at some place, further bifurcation to include thakur caste in scheduled tribe, has not been mentioned, the claim of the petitioner cannot be invalidated.

In fact, categorization of ""thakur"" as ""thakur, scheduled tribe"" has come into effect after the constitution was adopted and, therefore, obviously there was no question of having any entry of such caste (tribe) in the pre-constitutional era.

11. As regards the area restriction is concerned, the committee admitted the fact that the area restriction was lifted in 1976 and burden was put on the petitioner to prove that his community originally belong from some other place, then migrated etc. The claim of the petitioner in this respect is

discarded on the ground that the applicant's family was originally resident of malpur, taluka sindkheda, district dhule, which was not a place for thakur,

scheduled tribe. This is, in fact, against pronouncements of this court. The Observations in motilal s/o. Namdeo pawar (supra) would be Helpful

wherein entry no.44 of the scheduled tribe order, as it stood in scheduled tribe order of 1950, was considered and it has been observed, ""we have not

Come across any entry in such pre-constitutional documents also Reflecting the caste as ""thakur, scheduled tribe"", but entry ""thakur"", which is a

recognized scheduled tribe."" in that Case also, the petitioner belong to thakur, scheduled tribe community and almost on similar grounds, his claim was

rejected. In that case also, the bench at principal seat found that the reasonings adopted by the committee were completely fallacious which were put

forth in cases after cases while rejecting the pre-constitutional documents recording caste as ""thakur"" on illusory reason that the entry recorded is not

thakur, scheduled tribe"" but only ""thakur"". Further, as regards area restriction is concerned, it is observed thus :Â

we also observe so in the backdrop of a precious fundamental right conferred on every citizen in the form of article 19(d) and article 19(e) of the constitution of india, namely to move freely throughout the territory of india and right to reside and settle in any part of the territory of india. In any case, imposition by the amendment act (1956), the area restriction could not have curtailed the said fundamental right, guaranteed upon the citizens of the country and in identifying the tribes it was never the intention to deprive them of the said fundamental right and could not restrain the advancement of these tribes.

Therefore, similarly we reject the reasonings given by the committee in this case also while rejecting the claim of the petitioner on the ground of failure on the count of affinity test and area restriction.

12. It will not be out of place to reproduce the Observations in prakash deore's case (supra) in respect of legal position in smt. Monika d/o. Satish

thakur vs. The state of maharashtra & others in writ petition no. 10123 of 2010, dated 04th may 2018 and apoorva nichale's case (supra), wherein this

court has observed thus :Â

13. In so far as the judgment of the division bench in the case of monika (supra) of aurangabad bench of this high court is concerned, with due

respect, we record that we have no other option but to state that the said judgment is per incuriam in law. When the division bench of this court in the

case of apoorva nichale (supra) had taken a view that once the blood relatives of a candidate are declared to be st, then the other blood relatives

cannot be denied the said claim, the division bench has totally erred in rejecting the claim of the petitioner therein in the backdrop of the fact that one

brother and three sisters of the petitioner therein were already granted validity. We have perused the entire judgment. It appears that the judgment of

the division bench in the case of apoorva nichale (supra) was not brought to the notice of the learned judges of the division bench at aurangabad. In

that view of the matter, the view taken in the said judgment will have to be held to be per incuriam, the earlier judgment of the same strength of the

judges in the case of apoorva nichale (supra). It is necessary for us as a student of law to state that, earlier view of the court of the same strength of

judges binds the subsequent benches of the same strength of judges and, if they propose to disagree with the Same, the only option available to them is

to make a request to the hon'ble chief justice for making reference to a larger bench.

Under such circumstance, we are considering the position laid down in apoorva nichale's case (supra) Explained in prakash deore's case (supra).

13. Before parting, it will not be out of place to mention here, that the observations made by this court in the earlier writ petition of the petitioner itself,

so also the strictures passed in prakash deore's case (supra), so also the strictures passed in motilal Pawar's case (supra), further it can be observed

that in Spite of the directions and strictures, yet, the scrutiny committees are finding some or the other novel reasons to reject the caste (tribe) claim of

the claimants. If they consider the documents produced by the claimants, report of the vigilance cell and take a proper and legal approach to read

various pronouncements of this court as well as the hon'ble supreme court, then we may hope that better approach would be taken by the committees

and they would do their job as expected by the constitution of india, the act under which they are established and for the benefit of those persons for

whom they have been established. Para 17 from the judgment of motilal pawar's case (supra) expects the committees to Have positive attitude,

whereas as per prakash deore's case (supra), even directions were given to the chief secretary of the state of maharashtra, not to pay Salary to the

members of the committee and equivalent amount to be deposited as costs. We cannot forget that this court i.e. Including bench at nagpur as well as

the principal seat are flooded with cases of the claimants claiming writs to be issued on the basis of their caste (tribe) claim. With this backdrop, if

proper approach is taken by the committees, then people may not be required to approach this court.

14. With these observations, we conclude that the impugned order dated 9th/22nd march 2011, passed by respondent no.05 Â committee is

unsustainable in law, whereby it had rejected the claim of the petitioner. It deserves to be set aside.

15. In the result, the writ petition is allowed.

(a) the order dated 9th/22nd march 2011, passed by respondent no.05 i.e. Scheduled tribe certificate scrutiny committee, nandurbar region, nandurbar

[exhibit ""f"" to the petition] is hereby quashed and set aside.

(b) respondent no.05 Â scrutiny committee is hereby directed to forthwith issue validity certificate in Favour of the petitioner, as belonging to ""thakur,

scheduled tribe"", at the earliest and in any case, not beyond the period of four weeks from the date of receipt of the order.

(c) rule made absolute in the above terms. In the circumstances of the case, there shall be no order as to costs.