

(2014) 02 BOM CK 0150

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 3522 of 2009

Kumari Sweta Suresh Thakur

APPELLANT

Vs

The State of Maharashtra, The
Scheduled Tribe Certificate
Scrutiny Committee, The
Director of Technical Education
and Amrutvahini College of
Engineering

RESPONDENT

Date of Decision: Feb. 21, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2014) 3 ABR 92 : (2014) 5 ALLMR 215 : (2015) 1 BomCR 130 : (2014) 6 MhLj 119

Hon'ble Judges: S.C. Dharmadhikari, J; Ravindra V. Ghuge, J

Bench: Division Bench

Advocate: A.S. Golegaonkar, for the Appellant; K.G. Patil, Addl. GP for Respondents 1 and 3, Shri P.S. Patil for Respondent 2, Shri R.L. Kute, h/f Shri V.R. Dhorde for Respondent 4, for the Respondent

Final Decision: Allowed

Judgement

Ravindra V. Ghuge, J.

Rule. Rule made returnable forthwith. Heard by consent of the parties. By this writ petition under Article 226 of the Constitution of India, the petitioner is challenging the order dated 16.1.2009 passed by Respondent No. 2 Scrutiny Committee invalidating the tribe claim of the Petitioner towards Thakur-Scheduled Tribe (Entry No. 44).

2. Shri Golegaonkar, learned Advocate for the Petitioner-Ku. Sweta d/o Suresh Thakur submits that the Petitioner was admitted to the B.G.P. Sahyadri Jr. College, Sangamner, when her claim was referred to Respondent No. 2 Committee by the said College. By order dated 16.1.2009, which is impugned in this petition, her claim

that she belonged to "Thakur-Scheduled Tribe", was rejected.

3. The petitioner contends that on the basis of the marks secured in the MHT-CET 2006 examination, pursuant to the petitioner passing her XII standard examination held in March 2006, she secured admission in Respondent No. 4 College, Amrut Wahini College of Engineering, affiliated to the University of Pune. She was allowed to take provisional admission in the 1st Year Computer Engineering after submitting an undertaking. She was initially declined admission since her Tribe Validity Certificate was not attached to her application form for admission. She, therefore, filed Writ Petition No. 7293 of 2006. By order dated 31.10.2006, passed by this Court, she was given the provisional admission.

4. The petitioner submits that she had filed her Caste Certificate dated 15.5.2000 issued by the Competent authority along with her School record, consisting of the School Leaving Certificate. It is admitted that in her entire School record, her caste is recorded as "Hindu Thakur".

5. The petitioner submits that in support of her caste claim, the Caste Certificate of her father dated 6.4.1987, Certificate issued by the Head Master Dada Choudhari Marathi Shala dated 23.2.1998, copy of the first page extract of his Service Book, copy of the order dated 28.7.2003 passed by this Court in Writ Petition No. 5360 of 2002 and the copy of the Validity Certificate (of her father), issued in Case No. TRI/TCSC/ANG-SERV-65-99-WP-5360-02/188 were submitted to Respondent No. 2 Committee. It is noteworthy that this Court, by order dated 28.7.2003 in Writ Petition No. 5360 of 2002, issued directions to the Scrutiny Committee of Tribe Claims to issue a Validity Certificate to the father of the petitioner namely, Suresh Waman Thakur.

6. The petitioner further submits that as a part of old record, she submitted the caste certificate dated 31.12.1976 issued to her grandfather Waman Tana Thakur, his School Leaving Certificate, first page extract of Service Book, Certificate issued by Personal Assistant to the Director, Backward Class Welfare, State of Bombay, Pune, dated 18.9.1952 and the Bonafide Certificate dated 4.6.2008 issued by the Head Master S.G. Vidyalaya, Kopargaon.

7. The petitioner further submitted that she had also submitted the 7/12 extract of her maternal grand-father Maharu Sadu Thakur, land Gut No. 365 of village Godkhel, Taluka Jamner, District Jalgaon which was allotted to him as a tribal land and registered as such in the right of records column.

8. She also placed on record a copy of the judgment and order dated 19.1.1994 passed by this Court in Writ Petition No. 231 of 1994, vide which the Thakur-Scheduled Tribe claim of her real aunt i.e. real sister of her father Mandakini Waman Thakur was held to be valid.

9. She also had placed on record the judgment and order dated 29.9.1995 passed by this Court in Writ Petition No. 4079 of 1995, vide which the claim of the petitioner's real uncle Arun Waman Thakur towards "Thakur-Scheduled Tribe" was held to be valid.

10. In addition thereto, she submitted the Tribe Validity Certificates of her close blood relatives, namely, Prakash Yeshwant Chavan and Dheeraj Balasaheb Thakur. Affidavit of Dheeraj Balasaheb Thakur showing relationship with the petitioner was also filed before the Committee.

11. We have heard the learned Advocates for the respective sides and with their assistance, gone through the entire petition paper book. None of the respondents have filed their affidavit in reply.

12. Suresh Waman Thakur, father of the petitioner, had filed his affidavit dated 18.11.2004, in support of the petitioner's claim, which is at page No. 79 of the petition paper book. Tanaji Thakur (Tana Thakur) is shown to be the great grand-father of the petitioner, Waman Tana Thakur as the grand-father, Arun Waman Thakur as real uncle, Suresh Waman Thakur as the father and the petitioner as the applicant, in the said affidavit.

13. The Vigilance Report dated 14.6.2006 is at page No. 100 of the petition paper book. The said committee, based on the answers given by the petitioner, have concluded that the affinity test of the petitioner in relation to "Thakur-Scheduled Tribe" fails since the information given by her is not consistent with the traits of Thakur-Scheduled Tribe community.

14. The father of the petitioner submitted his detailed reply dated 20.12.2008 to Respondent No. 2 Committee making an effort to establish the affinity towards "Thakur Scheduled Tribe" and has stressed on the Validity Certificates issued to himself, the real uncle and the real aunt (sister of the petitioner's father) of the petitioner.

15. We have gone through the impugned order, which is at page No. 42 of the petition paper book. The Committee clearly appears to have failed in noting the genealogy mentioned by the petitioner in support of her application, in as much as, the fact that this Court by its judgment has validated the claim of the real uncle of the petitioner namely Arun Waman Thakur, validated the claim of the father of the petitioner Suresh Waman Thakur and validated the claim of the real aunt (father's sister) namely Mandakini Waman Thakur.

16. The observations of the Scrutiny Committee in the impugned order need to be quoted here in below:-

a. The information regarding traits, characteristics, customs, traditions, surnames of the relatives, dialect etc. given by the applicant is not consistent with "Thakur-Scheduled Tribe" Community. The applicant's relatives surname like

Salunke, Gaikwad, Jagtap, Mahale, Shankpal, Chavan etc. are not found in "Thakur-Scheduled Tribe" Community.

b. This sudden spurt, can reasonably be explained that persons who did not belong to "Thakur-Scheduled Tribe" because they also bore a surname "Thakur" made false claims as belonging to "Thakur-Scheduled Tribe" though they did not belong to Thakur Scheduled Tribe. We are clearly of the opinion that the omission by the petitioner in not claiming that he belonged to Thakur Scheduled Tribe in his school records, would be a very strong factor against the petitioner.

c. Therefore, considering the above facts, merely mentioning the caste status as "Thakur" in the school record, does not mean that the person belong to "Thakur-Scheduled Tribe" Community. Therefore, the school record in respect of applicant, his father and grand father cannot be considered as conclusive proof to determine applicant's tribe claim as belonging to "Thakur-Scheduled Tribe".

d. Moreover, in the said service book, the ordinary place of residence of the applicant's grandfather is clearly recorded as "at Shirasgaon P.T. Chalisgaon East Khandesh". From this entry also, it clearly reveals that the ordinary place of the applicant's family is Shirasgaon, Tal. Chalisgaon, Dist. Jalgaon, which was never scheduled for the "Thakur-Scheduled Tribe" community, prior to removal of area restrictions.

e. The document listed at Sr. No. 10 is the service book record in respect of applicant's father. In this service record, the caste of the applicant's father is mentioned as "Hindu (Thakur) S.T.". So far as this caste entry is concerned, the word "Hindu (Thakur)" is written with different ink and different handwriting and the word S.T. is written with different ink and different handwriting. It clearly shows that in the service record of applicant's father, the original caste entry is only "Hindu (Thakur)" and later on the word S.T. is added.

f. The documents listed at Sr. No. 6, 7, 15, 18, 19, 20 and 21 are the certificate of validities, order of Hon"ble of High Court in respect of applicant's father and relatives.

g. The applicant's father is unknown about Padkai System The applicant's father is unknown about Hirwa Dev and Kaz System.

h. In fact, the applicant failed to establish her affinity and ethnic linkage towards "Thakur-Scheduled Tribe" Community, appeared at Sr. No. 44.

[We failed to note that when the petitioner is a lady, 20 years old at the relevant time, is referred to as a male applicant by the Committee in its impugned report at several places.]

17. As such, in our view, by adverting to certain documents pertaining to the father of the petitioner and by merely reciting several paragraphs of various judgments

delivered by the Hon"ble Apex court and this Court, the Committee has clearly misdirected itself. So also, the detailed explanation submitted by the father of the petitioner dated 20.12.2008 also appears to have been overlooked by the Committee in its enthusiasm of simply referring to paragraph after paragraph from various reported judgments.

18. As has been held by this Court in Writ Petition No. 2882/2011 between Ravindra Baliram Suryawanshi and another Vs. State of Maharashtra, decided on 6.2.2014 that, "when the certificates of validity have been issued by the competent scrutiny committee, then the same could have been relied upon and successfully by the present petitioners. There is nothing on record to indicate that these persons have obtained the caste certificates or the validity certificates in a dubious or suspicious manner. There is no finding of fraud rendered by the Scrutiny Committee in the impugned order." Nevertheless, this Court has dismissed the petition filed by Ravindra Baliram Suryawanshi on other counts.

19. In the case of Kiran S/o Thaksen Tayade Vs. the State of Maharashtra and others, W.P. No. 7097/2007, decided on 4.2.2014, this Court noted that, the petitioner had heavily relied upon the caste validity certificate issued to his real brother Yogesh Thaksen Tayade and his another real brother Kishor Thaksen Tayade.

20. While allowing the petition and by remitting the matter to the Scrutiny Committee for a fresh finding, this Court observed that, "the committee was fully aware that these two certificates have been relied upon. It is held the applicant/claimant could not satisfy the committee whether he is aware of the customs, practices and traits of the community. The petitioner has failed to bring forward such material. According to the Committee, merely because such certificates have been issued, does not mean that the petitioner is entitled to the validity certificate in his favour..... However, what has been observed by the Division Bench [reference is made to the case of [Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1, The Director, Medican Education and Research, Govt. of Maharashtra, CET Cell, The Dean, Govt. Medical College and Hospital and The Registrar, Maharashtra University of Health Sciences](#), and relying on the judgments rendered by the Hon"ble Supreme Court is that, the Committee cannot discard such validity certificates issued in the case of near relatives, merely because, it has another view or another opinion. The Division Bench has expressed and in its clear terms that the Committee, which has expressed a doubt about the validity of the caste certificates of the claimant and describe the reliance on the other documents, as a mistake in the order, should not render such view because a different view on the same subject would not entitle the Committee dealing with a subsequent caste claim to reject it. The committee has to render a finding that earlier certificate is obtained by fraud or that the Committee finds that the materials, which are now produced before the subsequent Committee, were unavailable. In other words, if some of the members of the same family have been

issued a caste validity certificate, while others have not been, then, the Committee should render a proper finding and which would then falsify the claims laid before it."

21. In the instant case, we do not find any such conclusion, having been arrived at by the Committee in the impugned order. It is equally noteworthy that this Court had granted validity of the Tribe Claim to the father of the petitioner, real uncle and her real aunt. These judgments delivered by this Court, validating the claims of close blood relatives of the petitioner, could not have been overlooked and brushed aside by the Committee. While we find some discussion in the impugned report, traceable to our judgments upholding the claims of the petitioner's close blood relatives, we do not find any discussion, much less proper reasoning as to why the Committee did not deem it fit and proper to understand the judgments in proper perspective and the reasons adduced by this Court in granting validity certificates to the 3 close blood relatives of the petitioner. Instead of embarking on this exercise, the committee has devoted a major part of its impugned report in reciting paragraph after paragraph of several judgments of the Hon'ble Apex Court and this Court in order to draw a conclusion against the claim of the petitioner.

22. In the light of the above, and in view of the directions that we intend to issue here in below, we have not adverted to the various case laws submitted by the respective sides before us. We have considered those judgments of the Hon'ble Apex Court and this Court, which we have found to be germane to the facts of this case and the order that we propose to pass.

23. In the above stated circumstances, and on this short point alone, the petition deserves to succeed. The impugned order is, therefore, quashed and set aside and the petition is allowed on the following terms:-

a. The Committee, in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Class and Special Backward Category (Regulation of Issuance and Verification of) (Caste Certificate Act, 2000) (Maharashtra Act No. XXIII of 2001) and rules framed thereunder in the year 2003 and also the subsequent rules, shall reconsider the claim of the petitioner.

b. While deciding the claim of the petitioner, the Committee by following the rules must afford an opportunity of hearing to the petitioner.

c. The Committee shall take into consideration the report of Vigilance Cell and the 3 judgments of this Court, validating the Tribe Claims of the 3 close blood relatives of the petitioner.

d. The Committee should note that this Court has not observed anything in support of the claim of the petitioner and the said claim shall be decided in accordance with Law and on its own merits, without being influenced by any observations in this

order.

The writ petition is, therefore, allowed and rule is made absolute in the above terms with no order as to costs.