
(2017) 2 AIRBomR 580 : (2017) 2 ALLMR 590 : (2017) 3 MhLJ 502

BOMBAY HIGH COURT

Case No: Writ Petition No. 1553 Of 2017

Jayram Vishram
Gangawane

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: Feb. 10, 2017

Acts Referred:

Maharashtra Scheduled Castes, 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 - Section 6

Citation: (2017) 2 AIRBomR 580 : (2017) 2 ALLMR 590 : (2017) 3 MhLJ 502

Hon'ble Judges: S.C. Dharmadhikari and B.P.Colabawalla, JJ.

Bench: Division Bench

Advocate: Mr. R.K. Mendadkar, Advocate, for the Petitioner; Mr. P.G. Sawant, AGP, for the State

Final Decision: Allowed

Judgement

S.C. Dharmadhikari, J.â€”Rule. Respondents waive service. By consent, rule made returnable forthwith.

2. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner challenges an order dated 7th January, 2017 whereby the

Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane has invalidated his tribe claim.

3. The Petitioner has on the basis of a tribe certificate issued to him by the Competent Authority, sought an employment and opportunity to serve

Food Corporation of India. The Food Corporation of India, through its Assistant General Manager (personnel) is impleaded as a Respondent,

because that authority employed the Petitioner on 13th January, 1976. The Petitioner retired on superannuation on 31st July, 2014.

4. The Petitioner was appointed as a Peon in this Respondent No.4 Corporation in open category. The Petitioner says that his service record was

blemishless and that is why he was promoted to the post of Assistant Grade-III on 15th December, 1979 again in open category. Thereafter, he

was promoted to the post of Assistant Grade-II on 9th February, 2001. This was against an open post.

5. However, his promotion to Assistant Grade-I was under a reserved category and that promotion order is dated 3rd November, 2008. The

Petitioner then was promoted to the post of Manager (Depot) on 8th November, 2012 and retired on attaining the age of superannuation on 31st

July, 2014. However and curiously, the 4th Respondent Corporation withheld his Provident Fund, Gratuity, Leave Encashment etc for non-

furnishing of a caste validity certificate.

6. It is upon a reference made by 4th Respondent Corporation to the 2nd Respondent Committee for verification of his tribe certificate and claim

of belonging to Thakar Scheduled Tribe that the Petitioner appeared before the Committee. During the course of the proceedings, he relied upon

the Tribe Validity Certificates issued to his relatives from the paternal side. The Tribe Validity Certificate issued to his nephew and niece (who are

the sons and daughter of his real brothers and from a common ancestor) were relied upon. However, the Committee has discarded that and made

its own enquiry and arrived at a conclusion that those claiming to be Thakars and residing in Sindhudurg District have never been able to

substantiate and prove their claim as belonging to the Schedule Tribe. They tried to grab and obtain the benefits for such scheduled tribe by

producing caste certificates but have no proof of their affinity nor have they any materials to establish and prove that they are aware of the traits,

practices, customs, rituals etc of Thakar Community. They have also not been able to satisfy the Committee on the points framed by it for its

consideration.

7. Mr. Mendadkar, learned counsel appearing for the Petitioner has raised one contention and based on which we called upon him to file an

additional affidavit. Mr Mendadkar's contention is that once in the family, the relatives from the paternal side have been issued a caste/Tribe validity

certificate way back on 11th June, 2002 and 28th February, 2003, then, the Petitioner's claim could not have been rejected discarding this strong

and reliable piece of evidence. This evidence is unimpeachable for the simple reason that neither any steps have been taken by the Competent

Authority to challenge the correctness of this Tribe Validity Certificate issued to the blood relatives nor the Committee in the present case has

come to a conclusion that they are vitiated by fraud or misrepresentation. In such circumstances relying upon an order passed by this Court in Writ

Petition No.12805 of 2016 decided on 11th January, 2017, Mr. Mendadkar would submit that this Writ Petition should succeed.

8. The said order dated 11th January, 2017 reads as under:-

1) We have heard both sides. We have perused the entire record including the affidavit filed in reply. In paragraph 10 of this affidavit in reply the

Committee seeks to justify its conclusion in the impugned order in the following words :

10. "I humbly say and submit that the petitioner is mainly relying upon the earlier validity certificates issued to her paternal side relatives. In this

respect I humbly say and submit that the validity certificate on which the petitioner has given most reliance are pertaining to the year 2001 to 2005.

In this respect the Committee has also deeply studied the files of the said validity certificate holders. Considering the entire material from the files of

the said validity certificate holders, the Committee has rightly concluded that the said validity certificates are issued on the basis of the legal position

prevailing at that time after the decision of the Hon'ble High Court in Writ Petition No. 1961/1991 (Pandurang Rangnath Chavan). Further I

humbly say and submit that the above said legal position has been changed after the decision of the Hon'ble Apex Court in Raviprakash

Babulalsing Parmar's case. Hence, I humbly say and submit that the Committee has rightly invalidated the tribe claim of the petitioner by

considering her case on the point of documentary evidence, oral evidence, cultural affinity, affinity towards area etc. The Committee has rightly

shown inability to apply the ratio of the earlier validity certificates in the instant case. The Committee has also rightly observed in its impugned

order that the Committee is ready to reconsider the cases of the earlier validity certificates holders in the light of the latest legal position, if the

Hon'ble High Court permits to do so and/or directs to do so.

2) On a perusal of this paragraph, we enquired from Mr Yadav, learned A.G.P. as to how in law the Committee could come to a conclusion that

paternal relatives are either distant and not immediate, or the certificates of validity issued in their favour cannot be relied upon in the absence of a

complete and proper enquiry by the very Committee. Mr Yadav found it difficult to justify this stand. He fairly submitted that the certificates of

validity issued to the relatives of the petitioner from the paternal side is an undisputed fact. These certificates are relevant piece of evidence and can

be relied upon. They can be ignored and brushed aside only when there is a proven and established fraud or misrepresentation. It is only when

such is the conclusion reached that these certificates of validity lose their evidentiary value and not otherwise. Once this legal position is conceded,

we do not see how the impugned order can be sustained. It is accordingly quashed and set aside. 3) In the presence of the Member of the

Committee, Mr Yadav assures the Court that within one week from today a certificate of validity will be issued to the petitioner by the said

Committee. We direct accordingly. 4) Post this matter for reporting compliance on 18th January, 2017.

9. Mr. Sawant appearing on behalf of the Committee as also the State supported the order by contending that the Committee found that one of the

oldest documents and relied upon during the course of the proceedings pertaining to the predecessor of the Petitioner would denote that there is a

reference to his religion but minus the Tribe. No certificate or document produced shows that the ancestor or the predecessor belongs to the

scheduled tribe. Therefore, he would submit that the Committee's order deserves to be upheld.

10. After perusing this Petition and all the Annexures thereto, on the earlier occasion i.e. on 8th February, 2017, we had passed the following

order:-

After some argument, we called upon Mr. Mendadkar to produce a genealogy and family tree so that we can verify the claim of the Petitioner

made before us that the two Caste Validity certificates issued in favour of Geeta Parshuram Gangavane and Aashish Atmaram Gangavane can be

relied upon as they are niece and nephew respectively, of the petitioner. Mr. Mendadkar seeks time to comply with the same. Stand over to

10.02.2017.

11. Pursuant to our earlier order, Mr. Mendadkar has tendered the additional affidavit today which is taken on record. We find that there is no

denial or dispute about the genuineness of the genealogy and family tree. The family tree, a copy of which is annexed to the additional affidavit, is

stated to be the part of the record of the Scrutiny Committee. Rather it is urged that this is a document found in the compilation and the report of

the Vigilance Cell. The Committee has not expressed any opinion as far as the contents of this genealogy / family tree. That shows that there was a

common ancestor Vishram Atmaram Gangavane. He had five sons viz. Jayram who is the present Petitioner, Atmaram, Eknath, Parshuram and

Navasa. The son of Atmaram namely Aashish was issued the Tribe Validity Certificate certifying him to be belonging to the Thakar Scheduled

Tribe on 11th June, 2002. Thereafter, brother of the Petitioner, namely, Parshuram Vishram Gangavane and daughter Geeta were issued the Tribe

Validity Certificates. The Tribe Scrutiny Committee in the impugned order has referred to these documents. One finds a reference to the same at

page 20 of the paper book. Thus, Geeta Parshuram Gangavane's validity certificate was before the Committee. The attested copy of this

certificate was produced and the Committee opines that Geeta is indeed Petitioner's niece. Similarly, in respect of his nephew Ashish Atmaram

Gangavane, the attested copy was produced, which is dated 28th February, 2003. Thus, the relationship is not in dispute. There are several other

documents which are referred to by the Committee. The Committee does not dispute that each one of the members of the Petitioner's family was

resident of Sindhudurg District. However, despite this evidence, the Committee found it fit to refer the matter to the Vigilance Cell for conducting

school, home and other enquiry. A report was submitted by the Vigilance Cell on 14th February, 2011. That contains the statement of the

Petitioner wherein he furnished information regarding the traits, characteristics, customs and traditions of the community. Then the Committee found

that the school admission general register extract in respect of the Petitioner's real brothers and father shows that the name of the Thakar

Scheduled tribe is not mentioned therein. However, what the Petitioner relied upon was the date of admission of Vishram Atmaram Bavalekar,

who is stated to be residing in the same District and in his case the entry in the caste column is ""Hindu Bavalekar (Thakar)"". The relationship with

the Petitioner is shown to be that of father. Thus, in the case of Petitioner's father, the date of admission to the school is 11th May, 1921 and he

had in his record of admission to a school, stated as above. Yet, the Committee thought it fit to hold a very detailed enquiry. The Committee found

that in the past and even now, it has some doubts, namely, that Thakars of Sindhudurg District are routinely claiming to be belonging to the same

scheduled tribe. However, in their case, the Committee finds that there are certain important distinguishing features. These are enlisted in the

Committee's order at paragraph 7 running pages 26 and 27. After framing of these points, the Committee renders its findings on each of these

points. We find that this exercise was wholly unnecessary and irrelevant to the present case. Why this committee proceeds on these lines and for

that matter every Scrutiny Committee is obvious. The Committee places itself as an adversary of the Claimant / Applicant. It proceeds on the

footing that when it is empowered to hold scrutiny and verification into the caste claim in terms of the Maharashtra Act 23 of 2001, it must insist on

such absolute proof as can be deduced from its findings on these seven points. The Committee feels that anybody who does not have material with

him and to satisfy even generally about these seven points, then, his claim is doubtful. The Committee tries to impress upon the Court in every

single matter that it is doing a perfect job and by relying upon anthropological data, it discovers the traits, characteristics, customs, rituals of the

particular tribe or community and relying upon such historical material in its possession it renders a general finding. Pertinently, the Committee

overlooks the fact that it is a caste certificate which is referred and that requires a scrutiny and verification of the claim of the Applicant or holder

thereof. Therefore, this Applicant when he relies upon the Caste Validity Certificates issued to his family members and close relatives from the

paternal side, then, it is the bounden duty of the Committee to consider the bonafides of such a Claimant / Applicant. In the instant case the

Committee is aware that there are judgments rendered by this Court and which would enable it to scrutinize and verify the claim even if there are

such caste validity certificates already issued. However, what the Committee conveniently overlooked in this case is the legal principle that it

derives this jurisdiction and authority to go behind such Caste Validity Certificate of a close relative from paternal side and question it when there is

material before it to come to a definite conclusion that the Claimant / Applicant therein has misled the Committee. A fraud is practised and

perpetrated by suppressing the relevant and material facts or rather misrepresenting the Committee in the past. Therefore, it can discard such piece

of evidence and insist upon proof independent of such caste validity certificate issued to the relatives on the paternal side. These are the salutary

legal principles enunciated in several judgments of this Court.

12. In the detailed order passed in this case, Mr. Sawant was unable to point out any finding of the above nature save and except some general

and sweeping observations. That the Claimants are residing in a particular District and in that District the Claimants must show that they have

availed of the benefits and specifically meant for the tribe is something that has prevailed upon the Committee and compelled it to question the

Petitioner's claim. In that regard without indicating as to how judicial precedents relied upon have an application to the facts and circumstances

before it, the Committee reproduces paragraphs after paragraphs of this Court's judgment and equally that of a Supreme Court judgment. We do

not think that we are required to be educated at-least on law. The Committees hereafter should stop this business of mechanically reproducing

paragraphs after paragraphs of the judgments of this Court as if to bring to this Court's notice that when its orders are challenged this is how the

Committee proceeded. The Committee need not repeatedly and routinely exhibits its awareness and knowledge of Judgments of this Court and

that of the Supreme Court. We know how judicial precedents have to be applied and when relied upon, how their application has to be

considered to certain given facts and circumstances. In every matter we have been careful to say that we are not laying down a general principle or

rule. In the facts and circumstances of those cases, we had merely impressed upon such Committee that they must hold the enquiry in tune with the

mandate of the Act. The guiding principles have been enlisted in the judgment of the Hon'ble Supreme Court which are followed and applied by

us. We need not be therefore informed of what is the position in law. The Committees would do well in future in not elaborating these principles all

over again. In the present case in the lengthy order the Committee finds that though the Petitioner was selected and appointed in open category but

having gained promotions, the caste certificate was forwarded for its scrutiny and verification. Yet, in the impugned order the Committee observes

in paragraph 16 as under:-

16. During the course of personal hearing, the applicant has submitted before the Committee that he was selected in the services of FCI as open

category candidate. Later on, in the year 2001, the applicant has obtained the tribe certificate as belonging to Thakar, Scheduled Tribe and

submitted the same to the organization where he is working. Therefore, the Committee is of the considered view that when the applicant was

selected as a open category candidate and not against the post reserved for the Scheduled Tribe, there is no purpose in insisting him to produce

the Validity Certificate by his organization.

13. We are surprised as to how the Committee thought that it was not necessary for Respondent No.4-Corporation to insist on a caste validity

certificate. Respondent No.4 promoted the Petitioner and appointed him as Assistant Grade-I against a reserved seat. Hence, the reference to the

Committee and that is how the burden was squarely on the Petitioner to prove that he belongs to Thakar Scheduled Tribe. If that was not

necessary, the proceedings should have been disposed off on this short ground alone. The entire discussion then was unnecessary and uncalled for.

However, then the Committee questions the competence of the authority issuing the caste / tribe certificate. It holds that the permanent place of

resident of the Petitioner is Pinguli, Taluka Kudal, Dist. Sindhudurg. That is neither from the scheduled area nor from the restricted area of Thakar

Scheduled Tribe before removal of area restrictions. The material in the form of an enquiry report, the Research Officer's remarks show and

reveal that this community and which claims to be Thakar Scheduled Tribe residing in Sindhudurg District does not have the proof of the affinity

with this Scheduled Tribe. The Committee observes in paragraph 17 that the Research Officer's remarks would show that the cultural affinity as

stated in the report does not tally or is not associated with that of genuine Thakar Scheduled Tribe. We have referred to these observations at

some length only because we apprehend that the Committee would rely on the same in its future endeavours. In future, if such cases are brought

for scrutiny and verification and relying upon the Caste / Tribe Certificate issued by the Competent Authority in Sindhudurg District, the Committee

would proceed on the lines indicated in paragraph 17. Paragraph 17 reads thus:-

17. Considering the above said latest decision of the Hon"ble Full Bench of the Hon"ble High Court and considering the factual position that the

applicant's permanent place of residence i.e. Pinguli, Tal. Kudal, Dist. Sindhudurg, is neither from the Scheduled Area nor from the restricted area

of Thakar, Scheduled Tribe before the Removal of Area Restrictions. The cultural affinity came through the enquiry report having Research

Officer's remarks that the same is not associated with that of genuine Thakar, Scheduled Tribe and applicant's selection as open category

candidate (and not against the post reserved for Scheduled Tribe), this Committee is of the considered view that the applicant does not belong to

Thakar, Scheduled Tribe. The applicant has also failed to submit unequivocal documentary evidence in support of his claim as most of them

depicts their caste as Magas, Magaslela, Bavalekar, etc. Mere submitting of the validity certificates of the relatives will not be sufficient, considering

the change in the legal position. All the written and oral submissions made by the applicant have been considered by this Committee, but the same

could not holds the field and support the tribe claim of the applicant in the light of the above said details discussions. Hence, the following order is

passed by this Committee

ORDER

After considering the entire evidence on record, prevailing legal position, crucial affinity test and affinity towards restricted area, we, the Members

of the Scrutiny Committee unanimously have come to the conclusion that the claim of the applicant, as belonging to Thakar, Scheduled Tribe is not

established and proved. Hence, the claim of the applicant is held INVALID. Therefore, the Caste Certificate issued to Shri Jayram Vishram

Gangawane, by the Deputy Collector Alies Resident Deputy Collector, Sindhudurg, bearing No.MSC/ST/SR.No./80/2001 dated 7/9/2001 is

hereby cancelled and confiscated.

14. Our judicial conscience is shocked when the Committee makes a casual, light hearted and cavalier remark that mere submitting of the validity

certificate from the relatives will not be sufficient considering the change in the legal position. What is the change in the legal position is not clear and

has not been explained by the Committee. The Committee feels that it must hold a test of affinity and the Petitioner must pass the same. He has to

invariably be successful in such affinity test, even if he has in his possession the proof of caste Validity Certificates issued to his close relatives from

the paternal side. We are, therefore, of the opinion that the general observations in the impugned order need to be quashed specifically and the

Committee be directed not to make such sweeping remarks or observations unless there is concrete proof and supporting material. The non-

submission of unequivocal documentary evidence in support of the Petitioner's claim is another finding which is clearly perverse. The Committee

could not have recorded this finding when the caste validity certificates issued to the nephew and niece of the Petitioner were produced before it.

Thus, the Committee feels the caste is Magas, Magaslela Bavalekar and that is no proof. We do not see how in the year 1921 or thereabouts the

authorities like a Principal or Headmaster of the school or a Revenue Official could have thought of entering a remark against the Caste / Tribe

Column as ""Hindu Thakar Scheduled Tribe"". The Constitution of India is dated 26th January, 1950. In pre-constitutional documents, therefore,

there can never be any reference and as insisted by the Committee. Further, the Scheduled Tribe and Scheduled Caste Orders are a product of

the amendment to the Constitution of India made in 1976. There is a further amendment and which removes the restrictions as far as the area. All

these are recent amendments and developments. Relying on them, the genuineness of the contents of such old documents can hardly be

questioned. Once again we clarify that we are not laying down any general rule or principle but we definitely find fault with the Committee's

approach as adopted in this case. That is why we are making a very strong and harsh comment that the Committee thinks that it is an adversary

and it must go on demolishing every claim. Every person before it tries to snatch the benefits meant for genuine tribals and therefore the Committee

must be strict in its approach, is the general trend and emerging from the Committee's orders. We do not see why such impressions and which are

entertained on some general perceptions, should colour the Committee's vision and its approach. In every case possibly with such pre-determined

notions and a pre-judged mind the Committees have been performing their job. It is time they give up all this and come to the ground. Then alone

they would not place themselves in the position of an adversary. If they feel that the proceedings are only adversarial and therefore they are

justified not only in questioning the claim of the Applicant before it but even orders of this Court, then, that is really unfortunate. We have been

finding that when the Committees' orders are quashed and set aside by this Court, the Committees are feeling aggrieved more than even the

Claimants and Applicants whose claims are rejected by this Court by upholding the order of the Committee. It is the Committee and not the State

of Maharashtra or the employer which approaches a Higher Court. While we do not have any authority, power or jurisdiction to question the

approach of the Committee in filing Appeals nor can we doubt the mandate of the Constitution of India and which allows the Hon'ble Supreme

Court of India to entertain any of their requests or proceedings but surely this is a disturbing trend. In the facts of the present case, therefore, we

are fully justified in making these observations. The Committee has no material before it to question the validity certificates of the relatives of the

Petitioner on the paternal side. Save and except a general remark at page 14 of the impugned order and reference to various Judgments of this

Court but without indicating how the Committee was misled in issuing these certificates, who misled it or who misrepresented or perpetrated a

fraud on the Committee. No material is placed on record even before us. Therefore, mere reference to earlier orders of this Court in distinct factual

backdrop is of no assistance to the Respondents.

15. Once we have come to the conclusion that the order of the Committee is wholly perverse and vitiated by an error of law apparent on the face

of record, it cannot be sustained. Hence the following order:-

1. As a result of the above discussion, the Writ Petition is allowed. The impugned order dated 7th January, 2017 is quashed and set aside. Within

two weeks from today, the Committee shall issue a certificate of validity to the Petitioner.

2. Within four weeks from producing this caste validity certificate, Respondent No.4 - Food Corporation of India shall release all the benefits due

to the Petitioner on his retirement after attaining the age of superannuation.

3. Rule is made absolute in these terms. No order as to costs.