

(2019) 10 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 4650 Of 2015

Abhimanyu Dattu Thakar

APPELLANT

Vs

State Of Maharashtra & Ors

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Citation : (2019) 10 BOM CK 0011

Hon'ble Judges : Pradeep Nandrajog, CJ; Bharati Dangre, J

Bench : Division Bench

Advocate : R.K. Mendadkar, M.M. Pabale

Final Decision : Allowed

Judgement

Bharati Dangre, J

1. Rule. Rule returnable forthwith. Heard finally by consent of the parties.
2. The present Writ Petition is one amongst several Writ Petitions where the Scrutiny Committee constituted to verify the tribe claim, has invalidated the claim in utter ignorance of the settled position of law and we may say in defiance of the directions issued by the Apex court as well as this Court in the petitions relating to Thakar, a Scheduled Tribe recognized under the Scheduled Tribe Order, 1950.
3. The petitioner who was issued a caste certificate on 22nd June 1981 came to be appointed as a peon in the office of respondent No.3, Executive Engineer, Maharashtra Electricity Distribution Co. Ltd, District Sindhudurg. On appointment of the petitioner on reserved post for Scheduled Tribe category, his caste certificate came to be forwarded to the Respondent No.2 Committee for verification. The petitioner staked his claim before the Committee by producing several documents. The claim of the petitioner was made over to the Vigilance Cell which examined the documents produced by the petitioner and confirmed the genuineness of the documents produced by him. During the course of

inquiry, the Vigilance Cell Report brought on record a caste entry in respect of cousin grand father of the petitioner i.e. Ganu Kusha Thakar and it recorded the statement of the cousin uncle of the petitioner as regards the traits, characteristics, traditions and customs of the people belonging to the said tribe. The petitioner was supplied with the copy of the Vigilance Cell Report and was also afforded an opportunity to deal with the same. The petitioner filed his response and was called for hearing before the Committee on 12th February 2013. The Committee in ignorance of the stand of the petitioner, invalidated the claim of the petitioner by passing an order on 23rd May 2013 which constrained the petitioner to approach this Court by filing Writ Petition No.8756 of 2013. The Division Bench of this Court on 28th February 2014, was pleased to set aside the order passed by the Respondent No.2 Committee and remitted the matter back with direction to reconsider its decision in light of the Division Bench judgment of this court in case of Madhuri Nitin Jadhav Vs. State of Maharashtra 2014(4) BCR 752.

4. On remand from this Court, the petitioner appeared before the Committee on 18th April 2014 and also filed written notes of arguments. He was afforded an opportunity of hearing and the Committee closed the case of the petitioner for Orders on 7th March 2015. The claim of the petitioner came to be rejected by the Committee on 23rd March 2015 and his certificate as belonging to Thakar Scheduled Tribe came to be confiscated by the impugned orders.

With the assistance of Shri R.K. Mendadkar, learned counsel for the petitioner, we have perused the impugned order. The said order makes reference to the documents relied upon by the petitioner which included a School Leaving Certificate in respect of the applicant's relative Ganu Kusha Thakar issued by the Higher Grade, Head Master, Zilla Parishad School, Harkul, wherein the caste is recorded as Hindu Thakar and the date of admission in school is recorded as 1st April 1935. The Committee extracted the traits, characteristics, place of origin, surnames of relatives from the applicant and recorded the same in its order. It also ascertained certain rituals/customs peculiar to the caste of the petitioner and enumerated the entire information collated by it in its order. In its usual stride, it focuses on the aspect of Thakar community of Sindhurg district vis-à-vis Thakars/Thakurs from Sahyadri regions of Maharashtra and by posing certain irrelevant question which have already been put to rest, in catena of judgments of this Court has attempted to once again create a cloud of suspicion on the aspect of 'Area Restriction'. It then records some rhetoric on the Area Restriction since prior to 1976, i.e. removal of area restriction by Act of 1976 and this unnecessary discussion forms the basis for the rejection of the claim of the petitioner. Pertinent to note that the same approach is adopted by the Committee in respect of affinity issue and without any discussion on the documents produced by the petitioner and in particular, the pre-constitutional documents, the claim of the petitioner has been rejected.

5. The Committee has overlooked the directives issued to it while remanding the

matter and without examining the claim of the petitioner in the backdrop of the documentary evidence produced before it has gone on its pre-conceived notions which it is accustomed to record in all the orders where it rejects the claim of the petitioners and in particular belonging to Thakar/Thakur, Scheduled Tribe. The Committee in ignorance of the fact that The Constitution (Scheduled Tribes) Order 1950 which restricted the Thakur Tribes in certain districts of the State has failed to take note of the Amendment Act 108 of 1976 enacted on 18th September 1976 by which the area restriction introduced by the Act of 1956 was done away with. We need not deliberate the issue of area restriction further since the Apex Court in case of Jaywant Dilip. Pawar Vs. State of Maharashtra, 2018 5 All M.R. 975 has held that the area restriction stands removed by the Scheduled Caste and Scheduled Tribe orders (Amendment Act 1976) and therefore, on that count, without evaluating the other circumstances, claim of the Thakar/Thakur Scheduled Tribe cannot be rejected.

As far as the affinity aspect is concerned, we may refer to the decision of the Supreme Court in Anant Katole Vs. Committee for Scrutiny & Verification of Tribe Claims, 2012 (1). SCC 113, wherein it has been held that affinity test cannot be regarded as a litmus test for establishing the link of the applicant with the Scheduled Tribe and it can only be used to corroborate the documentary evidence. The Committee has failed to give any weightage to the oldest documents in favour of the petitioner which clearly record the caste of his blood relation as Thakar. Since the said document is of pre-constitutional period, it carries the high probative value and no reason is put forth by the Committee to discard the entry of the caste of the ancestors of the petitioner recorded in the said documents. In such circumstances, the order passed by the Caste Scrutiny Committee cannot be sustained in law and is quashed and set aside.

6. It is declared that the petitioner having established his claim is declared as Thakar Scheduled Tribe at Entry No.44 in The Constitution (Scheduled Tribes Order 1950) and is accordingly entitled for the benefits flowing from the said social status.

7. Writ Petition is made absolute in terms of prayer clause (a).