

(2021) 10 BOM CK 0110

In the Bombay High Court

Case No : Civil Writ Petition No.9322 Of 2018

Amey Mahendrasing Thakur

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 21-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 342
Maharashtra Scheduled Castes Scheduled Tribes Denotified Tribes (Vimukta Jatis)
Nomadic Tribes Other Backward Classes And Special Backward Category (Regulation
Of Issuance And Verification Of) Caste Certificate Act, 2000 — Section 2(h)

Citation : (2021) 10 BOM CK 0110

Hon'ble Judges : R.D. Dhanuka, J;Abhay Ahuja, J

Bench : Division Bench

Advocate : R.K. Mendadkar, Tanaji Jadhav, Kavita N. Solunke

Final Decision : Disposed Of

Judgement

Abhay Ahuja, J

1. Rule. Rule made returnable forthwith. Ms. Solunke, the learned AGP for Respondents No.1 to 3-State waives service.

2. By consent of counsel for the parties, Writ Petition is heard finally.

3. By this Writ Petition filed under Article 226 of the Constitution of India, Petitioner is challenging the order dated 10th August, 2018 passed by Respondent No.2-Scheduled Tribe Certificate Scrutiny Committee, Nandurbar, invalidating the caste claim of Petitioner, as belonging to Thakur, Scheduled Tribe.

4. Mr. Mendadkar, the learned counsel for Petitioner submits that Petitioner has submitted various documents including 17 caste validity certificates of Kum. Mrudula Prakash Bhamare, Shri Ashish Prakash Bhamare, Kum Kamini Kantilal Bhamare, Shri Rohan Arvind Bhamare, Shri Harshal Kumar Arvind Bhamare, Shri Shashank Prakash Bhamare, Prakash Hiralal Bhamare, ([petitioner's maternal uncle; certificate issued pursuant to order dated 27th July 2017 in Writ Petition

No. 6972 of 2014 by the Aurangabad Bench of this court (page 56, Exhibit B)), Suvarnalata Gulab Thakur, Bharat Gulabsingh Thakur, Nita Divan Bhamare, Virendra Gulabsingh Thakur, Amol Gulabsingh Thakur, pre-constitutional documents in relation to blood relatives from paternal side as well as school leaving certificates, caste certificates and other documents belonging to Thakur Scheduled Tribe as Exhibit B (Colly.) to the petition. Admittedly, these documents are also referred to on page 20 of the petition as portion of the impugned order. Also the genealogical tree showing common ancestor as "Gobaji" is said to have been submitted. He submits that despite such stark and clinching evidence of caste validity certificates in favour of relatives and pertinently the caste validity certificate dated 29th January, 2001 of Petitioner's real uncle Yogendrasinh Madhukar Thakur, which is at Page 54 of the Petition as well in support of petitioner's claim to Thakur, Scheduled Tribe, Respondent No.2 has invalidated the claim of Petitioner on the ground of failure of affinity test, vigilance cell's report suggesting petitioner's mother's grandfather and petitioner's mother's blood relative as belonging to "Bhat" caste, purportedly known to be non-tribal.

5. On the other hand, Ms. Solunke, the learned AGP for the State vehemently opposes the claims made on behalf of Petitioner and relies upon the affidavit in reply dated 1st October, 2021 filed on behalf of the Respondents.

6. Referring to the affidavit in reply, learned AGP submits that apart from the Scheduled Tribe category in Entry 44 of the Constitution (Scheduled Tribes) Order, 1950 showing the entry of Thakurs, there are Thakurs in Maharashtra, who are in the non-tribal category. In support of this contention, she further submitted that the oldest document in the family of Petitioner is the School Admission Register Extract of Hiralal Namdev Thakur (paternal cousin cousin grandfather of Petitioner) issued by MNC School No.2, Dhule, which is dated 4th March, 1929, wherein the caste is recorded as "Rajput Thakur" and that this record as observed in the impugned order was suppressed by Petitioner and all the validity holders of applicant's family. She further submits that the statement recorded by the Vigilance Cell also indicates that the marriages in the family of Petitioner are solemnised within their own caste and that Petitioner's relatives by marriage, namely, Bhatu Bapu Thakur (petitioner's mother's grandfather) and Arjun Jugaru Thakur (petitioner's mother's blood relative) of the years 1908 and 1910 respectively shows their caste as "Bhat" and that this reflects the affinity of petitioner's family with the Bhat-caste people, who are not tribal. The learned AGP submits that this is simply an attempt by non-tribal communities to get constitutional benefits meant for Scheduled Tribes. She also refers to the Government Circulars dated 9th October, 1954 and 31st July, 1957 to submit that Bhats, Bramhabhat and Thakurs also fall under non-tribal category. She thereby relies upon and supports the impugned order of the Scrutiny Committee in support of her contentions. She also relies upon the following decisions (i) Murlidhar Ramakrishna Gathe vs. State of Maharashtra, 2007 (3) Mh.L.J. 308 and order of Hon'ble Supreme Court dated 27th March 2018 in Civil Appeal No. 7199/2009, (ii) Pournima Suryakant Pawar Vs. State of Maharashtra, (2013) 3

SCC 690, (iii) State of Maharashtra Vs. Ravi Prakash Babulalsingh Parmar, (2007) 1 SCC 80 and (iv) Shilpa Vishnu Thakur Vs. State of Maharashtra, 2009 (3) Mh. L. J. 995. Referring to the Full Bench decision of this Court in the case of Shilpa Vishnu Thakur Vs. State of Maharashtra & Ors.(supra), learned AGP submitted that the 'affinity test' is an integral part of process of verification of tribe claim and the Committee has to apply the said test while examining such claims. She, however, submits that since the said Full Bench decision has been challenged in the Supreme Court with the lead matter bearing Special Leave Petition (Civil) No.24894 of 2009 (Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra & Ors.) and connected 48 matters which are scheduled to be heard before the Apex Court on 16th November, 2021, the hearing of the present matter may be deferred till the outcome of the group matters in the Supreme Court. The learned AGP also submits that the decision in the case of Shubham S. Suryavanshi Vs. State of Maharashtra, 2021 (3) Bom C.R. 671 cited on behalf of Petitioner is clearly distinguishable and not applicable in the case of petitioner.

7. Learned AGP submits that the findings recorded by the Scrutiny Committee in the impugned order have clearly dealt with the traits, characteristics and customs given by Petitioner and after considering the same, the Committee has rejected the claims as Petitioner has failed to establish socio-cultural affinity and ethnic linkage.

8. With respect to the validity certificates of paternal blood relatives relied upon by Petitioner, learned AGP submits that the Committee has rightly concluded that the ratio of those validity holders is not applicable and the same cannot be treated as conclusive proof of the tribe claim of Petitioner.

9. She further submits that the validity certificate in the name of Petitioner's uncle, namely, Yogendra Madhukar Thakur has been issued in the year 2001, but while obtaining those validity orders, Petitioner has suppressed the oldest documentary evidence showing caste entry "Rajput Thakur" of paternal blood relative and also there is documentary evidence showing caste entry of "Bhat" of maternal blood relatives of Petitioner and, therefore, the claim of Petitioner was rightly rejected. She submits that in this view of the matter, Petition ought to be rejected.

10. We have heard Mendadkar, the learned counsel for Petitioner and Ms. Solunke, learned AGP for Respondents No.1 to 3-State and with their able assistance, we have perused the papers and proceedings as well as the original file produced by learned AGP in the matter.

11. This is a case where Petitioner is challenging the rejection of his claim by the Scrutiny Committee, which is based on the caste certificate dated 21st August, 2012 issued by the Deputy Collector, Land Acquisition (MIP), Dhule. After verification of documents submitted by Petitioner, the Scrutiny Committee handed over the case to the Vigilance Cell for school and home inquiry. The

Vigilance Cell submitted its report after which Petitioner was called upon to submit his report and after hearing Petitioner on the issue of cultural and social affinity, the claim of Petitioner to Thakur, Scheduled Tribe was rejected as the Scrutiny Committee concluded that Petitioner and his family members have failed to show cultural and social affinity towards Thakur, Scheduled Tribe.

12. For the sake of convenience, it would be first pertinent to set out the genealogical tree of the petitioner showing common ancestor as Gobaji:-

13. The above genealogical tree is not disputed by the Respondent nor the Caste Scrutiny Committee has found any fault with it. What we observe from the above is that the seventeen caste validity certificate holders all come from the common ancestor Gobaji and are as such the relatives of Petitioner. Shri Yogendrasinh Madhukar Thakur is undisputedly Petitioner's real uncle and holder of caste validity certificate. The definition of "relative" as contained in Section 2 (h) of the the Maharashtra Scheduled Caste, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012, includes a "blood relative" from the paternal side. In our view, coming from the common ancestor Gobaji, Petitioner is coming in the bloodline of a common ancestor and is as such a blood relative with all the 17 caste validity certificate holders including Petitioner's real uncle, Shri Yogendrasinh Madhukar Thakur. This Court in the case of Apoorva Nichale v. Divisional Caste Certificate Scrutiny Committee No.1 & Ors. (2011) (2) Bom C.R. 824) has clearly held that where the caste claim of an applicant has been scrutinized and accepted by a committee validating the caste claim, another committee ought not to refuse the same status to another blood relative who applies for a caste validity certificate. In this context the following paragraphs of Apoorva Nichale (Supra) are quoted as under:

"4. We have considered the matter and we are of the view that the petitioner's caste claim that she belongs to Kanjar Bhat- Nomadic Tribe ought to have been accepted by the Committee merely on the basis that identical caste claim of her sister that she belongs to Kanjar Bhat has been allowed by the Committee, even apart from the Government Resolution. We are of the opinion that the guidelines provided by the said Govt. Resolution are sound and based on sound principles. It would indeed be chaotic otherwise. If the relationship by blood is established or not doubted, and one such relative has been confirmed as belonging to a particular caste, there is no reason why public time or money should be spent in the committee testing the same evidence and making the same conclusion unless of course the Committee finds on the evidence that the validity of the certificate of such relation has been obtained by fraud.

5. The Division Bench of this Court in Mahesh Pralhadrao Lad v. State of Maharashtra) 1, 2009 (Supp) -Bom. C. R. 898 (A. B.): 2009(2) Mh.L.J. 90 has observed that in the absence of any power under the Rules conferred on the Government to issue a Govt. Resolution, the Govt. Resolution cannot be said to be binding on the committee nor the committee in exercise of its jurisdiction is

bound to follow the same. The Division Bench further observed that the Government Resolution may be considered in the context of Rule 12 of the Rules and if the committee while exercising jurisdiction is satisfied that the caste validity certificate issued to a blood relative is genuine then instead of calling the Vigilance Cell Report it may proceed to issue the caste validity certificate. We are in respectful agreement with the view taken by the Division Bench. We would further add that the committee would be entitled to refuse to follow the caste validity certificate granted to a blood relative if it appears to the committee that the earlier caste certificate has been scrutinized by a Committee without jurisdiction or the validity order is obtained by committing fraud on the Committee."

14. Also the decision of this Court in the case of Shubham Suryavanshi (supra) (where one of us R.D.Dhanuka J. was a member) is on the point. Paragraphs 42 to 50 are relevant and are usefully quoted as under. :-

"42. This Court in the case of Apoorva Vinay Nichale (supra) held that where the caste claim of the applicant has been scrutinised and accepted and one committee has given a finding about the validity of the caste, another committee ought not to refuse the same status to a blood relative who applies. (emphasis supplied) In this case, Scrutiny Committee ought to have considered the caste validity certificate issued to other close blood relatives of the petitioner after due enquiry while considering the tribe claim of the petitioner. The impugned order passed by the Scrutiny Committee is in violation of principles of law laid down by this Court in the case of Apoorva Vinay Nichale (supra).

43. The Scrutiny Committee has already issued a caste validity certificate in favour of relatives of the petitioner whose surnames are Pawar, Bhil, Ahire, Sonwane and Vaishva etc. after following due procedure. The Scrutiny Committee thus ought to have issued the caste validity certificate in favour of the petitioner.

44. A perusal of the order passed by the Scrutiny Committee indicates that the Scrutiny Committee has invalidated the tribe claim of the petitioner solely on the ground of Affinity Test. The statement of the grand-father of the petitioner was recorded by the Vigilance Officer who had submitted various information regarding primitive, traits, characteristics and rituals, about the wedding, after birth ceremonies, rituals, followed in tribal community as well as information given about the traditions followed in marriage, funeral and special traits and characteristics relating to which questions were asked to the father of the petitioner.

45. The Scrutiny Committee has totally overlooked the said part of evidence. The Scrutiny Committee has also overlooked the documentary evidence produced by the petitioner showing that after due enquiry, various authorities had already issued caste certificate in favour of the petitioner and the caste validity certificate in favour of various relatives of the petitioner.

46. In our view once a particular community is declared as Scheduled Tribe, then it is to be treated as Scheduled Tribe throughout the State. The Scrutiny Committee could not have bifurcated the Thakur community which is declared as Scheduled Tribe by inserting in serial No.44 in the list of Scheduled Tribe in the State of Maharashtra in 1950 by holding that "Thakur community" in the State of Maharashtra was in existence other than "Thakur Scheduled Tribe" i.e. "Non Tribal-Thakur". This part of the impugned order is ex facie contrary to the Presidential Orders issued in 1950 amended by the Amendment Act, 1976 by which the "Thakur" community was included in Scheduled Tribes.

47. The Hon'ble Supreme Court in the case of State of Maharashtra Vs. Milind Khatware & Ors. (supra) has held that the Scheduled Tribe orders must be read as it is. Since in the First Presidential Order, it is clearly provided that 'Thakur' since 1950 is included in the list of Scheduled Tribes, neither State Government nor Courts or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the Notification issued under Clause 1 of Article 342. In our view, the Scrutiny Committee thus could not have rejected the caste claim of the petitioner by holding that there was different class or group of "Thakur" as "Non-tribal Thakur".

48. The Supreme Court in the case of Jaywant Dilip Pawar Vs. State of Maharashtra & Ors. (supra) has held that the petitioner was required only to establish that she belongs to community mentioned at Sr. No.44 of Part IX of Second Schedule of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. (emphasis supplied) The Scrutiny Committee thus could not have relied upon the provisions of the Bombay Reorganization Act, 1960 while rejecting the caste claim of the petitioner on the ground of area restriction. The view of the Scrutiny Committee is ex facie contrary to the principles of law laid down by the Supreme Court in the case of Jaywant Dilip Pawar (supra).

49. Division Bench of this Court in the case of Sachinkumar Vasantrao Wankhede Vs. State of Maharashtra (supra) has held that 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 preconstitutional era. As regards the area restriction is concerned, the area restriction was lifted in 1976. (emphasis supplied) This Court in the said judgment also adverted to the Division Bench of this Court in the case of Motilal Namdeo Pawar Vs. Scheduled Tribe Certificate Scrutiny Committee & Ors. (supra) and was pleased to set aside the order passed by the Scrutiny Committee and directed the Scrutiny Committee to issue a caste validity certificate i.e. he belongs to Thakur, Scheduled Tribe. The principles of law laid down by the Division Bench of this Court in the case of Sachinkumar Vasantrao Wankhede (supra) squarely applies to the facts of this case

50. Division Bench of this Court in the case of Jaywant Dilip Pawar Vs. State of Maharashtra & Ors. (supra) after adverting to the judgment of the Division Bench of this Court in the case of Apoorva Vinay Nichale (supra) has held that if the

caste claim of the candidate has been held to be belonging to Scheduled Tribe then other close blood relatives cannot be denied the validity certificate. The Scrutiny Committee has decided contrary to the principles laid down by the Division Bench of this Court in the said Judgment."

15. In the facts of this case also, we observe that already there are seventeen caste validity certificates in favour of the blood relatives of Petitioner coming from common ancestor "Gobaji" that have been issued after following due procedure. The Scrutiny Committee ought to have therefore issued the Caste Validity Certificate in favor of the Petitioner.

16. With respect to the submission of the learned AGP referring to the observation of the Scrutiny Committee that by virtue of the School Admission Register Extract of Hiralal Namdev Thakur (paternal cousin cousin grandfather of Petitioner) issued by MNC School No.2, Dhule, which is dated 4th March, 1929, wherein the caste is recorded as "Rajput Thakur" not being in the knowledge of the Scrutiny Committee issuing those validity certificates, Petitioner cannot be issued the Caste Validity Certificate, in our view, this factum cannot by itself come in the way of issuance of the Caste Validity Certificate to the Petitioner as none of those certificates appear to have been cancelled nor any notice in this regard appears to have been issued.

17. The submission of the learned AGP in support of what is contained in the Impugned Order with respect to the affinity test emerging from the Vigilance Cell report that the marriages in the family of Petitioner are solemnised within their own caste and that Petitioner's relatives by marriage, namely, Bhatu Bapu Thakur (Petitioner's mother's grandfather) and Arjun Jugaru Thakur (Petitioner's mother's blood relative) of the year 1908 (03.01.1908) and 1910 (01.04.1910) which respectively records their caste as "Bhat" clearly reflects the affinity of Petitioner's family with the Bhat caste people who are non tribal, in our view is not a proposition or argument which can come in the way of the overwhelming evidence of the seventeen caste validity certificates referred to herein. One instance as remote as Petitioner's mother's grandfather or relative of applicant's mother from paternal side cannot in any way invalidate the Caste Validity Certificates issued at various points in time to the relatives of the Petitioner. In any event in the definition of relative as contained in Rule 2(h) of the Caste Validity Rules, 2012, "maternal relative" appears to be excluded in view of the specific reference to blood relatives from the paternal side. Neither the Scrutiny Committee nor the learned AGP nor the original record produced by her has been able to indicate that because of the two instances of extract of School Admission records that the seventeen caste validity certificate holders would be non tribal Bhats and not Thakur Scheduled Tribe. Learned AGP has also not been able to show any notice for re-opening the cases of the seventeen caste validity certificate holders or that any notices in this regard having been issued to the said validity holders for recalling the validity certificates. In the face of stark, clear evidence of Caste Validity Certificates in favour of various relatives of the

Petitioner, the Scrutiny Committee need not have ventured out to unsuccessfully pick holes with respect to the affinity test. Once there is evidence of relatives having valid caste validity certificates of Thakur Scheduled Tribe, the Scrutiny Committee is bound to grant certificate to Petitioner's claim and could not have denied the same to Petitioner. In our view, once a particular community is declared as Scheduled Tribe, then it is to be treated as Scheduled Tribe throughout the State. The Scrutiny Committee could not have bifurcated the Thakur community which is declared as Scheduled Tribe by inserting in serial No.44 in the list of Scheduled Tribe in the State of Maharashtra in 1950 by holding that "Thakur community" in the State of Maharashtra was in existence other than "Thakur Scheduled Tribe" i.e. "Non Tribal-Thakur". This is ex facie contrary to the Presidential Orders issued in 1950 amended by the Amendment Act, 1976 by which the "Thakur" community was included in Scheduled Tribes. In our view, the Scrutiny Committee thus could not have rejected the caste claim of the petitioner by holding that there was different class or or group of "Thakur" as "Non-tribal Bhat".

17. With respect to learned AGP's reliance on the decisions in the cases Murlidhar Ramkrishna Gathe (supra), Pournima Suryakant Pawar (Supra) and Ravi Pakash Parmar (supra), we observe that the same are clearly distinguishable on facts and not applicable to the case of Petitioner.

17.2. Learned AGP has also placed reliance on the judgment of the Full Bench of this Court in the case of Shilpa Vishnu Thakur (Supra), to canvass petitioner's failure to establish socio-cultural affinity and ethenic linkage. We have no quarrel with the principles laid down by the Full Bench of this Court in the case of Shilpa Vishnu Thakur (supra) with respect to the affinity test. However, in our view, affinity test is not a litmus test. It only assumes significance in the absence of validity certificates in respect of relatives. In this regard paragraph 22 in the case of Anant Katole Vs. the Committee for Scrutiny and Verification of tribe claim, 2011 (6) Mh. L. J. (SC) is usefully quoted as under:

"22. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case of applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the

first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant:

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. (emphasis supplied). Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim"

19. Learned Additional Government Pleader could not distinguish the judgments referred to and relied upon on behalf of the petitioner. There is, therefore, no substance in the submission of the learned Additional Government Pleader.

20. In view of the aforesaid discussion, we are, inclined to allow this Petition. The impugned order dated 10th August, 2018 passed by Respondent No.2-Scheduled Tribe Certificate Scrutiny Committee, Nandurbar is hereby quashed and set aside.

21. The Respondent no.2 -Committee is directed to issue caste validity certificate in favour of the petitioner as "Thakur" Scheduled Tribe within a period of two weeks from the date of communication of this judgment;

22. The respondent no. 4 to accept the caste validity certificate that would be issued by the Scrutiny Committee in favour of the petitioner and to act in furtherance thereof.

23. Rule is made absolute in the above terms.

24. Writ Petition accordingly stands disposed. There shall however be no order as to costs. The original file produced by the learned AGP is returned herewith.

25. Parties to act on an authenticated copy of this judgment.