

(2024) 01 BOM CK 0083
In the Bombay High Court
Case No : Writ Petition No. 12574 Of 2019

Chaitanya

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 03-01-2024

Acts Referred:

Citation : (2024) 01 BOM CK 0083

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

Bench : Division Bench

Advocate : S.C.Yeramwar, S.K. Shirse, A.P. Nikam?

Final Decision : Allowed

Judgement

S.G. Chapalgaonkar, J

1. Rule. Rule made returnable forthwith. With consent of the parties, heard finally at the stage of admission.

2. The petitioner impugns the order dated 04.10.2019 passed by the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, thereby invalidating the tribe claim of the petitioner for "Thakur" Scheduled Tribe. The contention of the petitioner is that the Competent Authority issued a caste certificate dated 15.09.2015 certifying him to be belonging to "Thakur" scheduled tribe. The petitioner got admission to B. Pharm Course with Rajesh Bhaiyya Tope College of B. Pharmacy, in the year 2016-17 from scheduled tribe category. He submitted an undertaking to submit the caste validity. The tribe claim of the petitioner was forwarded to respondent No. 2 Committee for verification along with documentary evidence, which contains School record of the petitioner, School record of the petitioner's father, School record of the petitioner's grand-father, School record of the petitioner's cousin grand-father and the certificate of validity issued in favour of the real paternal uncle i.e. Ajai Adhar Deore dated 07.10.2005. Affidavit in Nanuma No.-F showing genealogy of the family also tendered. The vigilance Officer conducted an inquiry and submitted his report to

the Committee dated 08.05.2019. On service of such report on the petitioner he filed reply dated 05.06.2019 before the Committee. However, the Committee invalidated the tribe claim of the petitioner vide the impugned order observing that the petitioner failed to support his claim by documentary evidence and during affinity test towards the "Thakur" community. It is further observed that the place of residence of the petitioner is beyond the tribe area.

3. Mr. Yeramwar, learned Advocate appearing for the petitioner would submit that the Committee failed to appreciate the evidence on record in its proper perspective and wrongly relied upon the observations in the vigilance report. He would submit that the area restriction or affinity test has been wrongly considered as a basis for rejection of the caste claim, contrary to the law laid down by this Court, in Prakash Shrawan Deore Vs. Tribe Certificate Scrutiny Committee, Nashik and Another, Writ Petition No. 2363 of 2013 decided on 22.02.2019.

4. Mr. Yeramwar, would further submit that the real uncle of the petitioner has been granted certificate of validity by the Schedule Tribe Scrutiny Committee, Aurangabad. Hence there is no reason to discard the claim of the petitioner.

5. Per Contra, the learned AGP appearing for respondent Nos. 1 & 2 supported the impugned order and submitted that the report of the vigilance Cell does not support the claim of the petitioner. The family members of the petitioner have been admitted in the Schools since per-independence period, which is contrary to the character of the "Thakur" Schedule Tribe. He would submit that the validation of the tribe claim of the petitioner's uncle is of no significance since his validity is granted without obtaining the report of affinity test.

6. Having considered the submissions advanced it is apparent that the petitioner has submitted affidavit in Form No-F demonstrating the genealogy of his family. There is no dispute regarding the correctness of the same, which can be given here for ready reference.

7. The aforesaid genealogy would depict that Mr. Ajai Adhar Deore is real uncle of the applicant who has been granted the certificate of validity by the Committee at Aurangabad on 07.10.2005 for "Thakur" as scheduled tribe. It is not disputed before us that the aforesaid certificate is valid and no proceeding for revocation or cancellation of it has been initiated at any point of time.

8. A perusal of the reasoning adopted by the Committee while ignoring certificate of validity issued in favour of the petitioner's uncle Ajai dhar Deore depicts that the Committee was still of view that report of affinity test was not obtained before issuing the validity. It is further observed that if the validity is obtained by the blood relative by suppression of material facts or by exercise of fraud, it cannot be relied upon to extend the benefit to the applicant. Pertinently, there is nothing on record to indicate that the certificate of validity has been fraudulently obtained by the uncle of the petitioner or it was granted by committee ignoring provisions of Act, 2000 or Rules framed thereunder. Now it is settled position of

law that the affinity test is not mandatory in each and every case if the caste claim can be otherwise established. In that view of the matter this Court holds that certificate of validity granted to petitioner's uncle can be accepted as valid probative evidence while determining caste claim of the petitioner.

9. The Committee has further observed that vigilance report indicate that persons from the society of the petitioner are bearing Surname as "Bhat". Pertinently, there is no clarification in impugned order as to how those persons are related to the petitioner. Even vigilance report is bereft to explain relationship of petitioner with persons named in the report.

10. The petitioner has produced documents right from the year 1950, particularly the School Leaving Certificate of grand-father and School Leaving Certificate of cousin grand-father of the year 1952 and 1959, depicting the caste as "Thakur". There is no contra-evidence to hold that such entries are un-reliable. Therefore, merely because the original place of residence of the petitioner and ancestors is beyond the geographical area of Thakur-Tribe, the claim of the petitioner cannot be discarded. In view of the aforesaid observations, the impugned order cannot be sustained. The caste claim of the petitioner deserves to be allowed. Hence the following order :

ORDER

i) The Writ Petition is allowed.

ii) The order dated 04.10.2019 passed by the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad Division, Aurangabad invalidating the petitioner's claim for "Thakur" Scheduled Tribe is hereby quashed and set aside.

iii) The claim of the petitioner as he belongs to "Thakur" Scheduled Tribe is allowed.

iv) Respondent No. 2, Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, is hereby directed to issue certificate of validity for "Thakur" Scheduled Tribe in favour of the petitioner within a period of three months from date of this order.

v) Rule is made absolute.