

(2023) 08 BOM CK 0021
In the Bombay High Court
Case No : Writ Petition No. 13390 Of 2021

Chandrashekhar

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Evidence Act, 1872 — Section 79, 80

Citation : (2023) 08 BOM CK 0021

Hon'ble Judges : Mangesh S. Patil, J; Shailesh P. Brahme, J

Bench : Division Bench

Advocate : Mahesh S. Deshmukh, Sushant C. Yeramwar, P. S. Patil

Final Decision : Allowed

Judgement

Shailesh P. Brahme, J

1. Heard the learned Counsel for the respective parties. Rule. With their consent, Rule is made returnable forthwith.
2. The petitioner is challenging the judgment and order dated 01.12.2021 passed by the Scrutiny Committee, invalidating his claim of scheduled tribe "Thakur". In support of his claim, petitioner is relying upon the school record of his relatives, census entries of 1951 and service record of the relatives. The petitioner does not have validity certificate issued to anybody in his family.
3. It is the case of the petitioner that he was issued with caste certificate on 25.06.2020. This certificate was tested by the Scrutiny Committee by resorting to the vigilance enquiry. The petitioner submitted genealogy, school record of himself and his relatives, census record, revenue record and his say to the enquiry report. All these documents are placed on record alongwith Writ Petition. The petitioner is also relying upon the order dated 3. 03.2022 passed by the High Court in Writ Petition No.5349/2019 in the matter of Nikhil Suryakant Padalwar Vs. State of Maharashtra through Secretary, Tribal Development Department and Ors.

4. The Scrutiny Committee recorded following findings against the petitioner.

(i) The school record of the relatives of the petitioner, revealed the caste as 'Thakur', which is not synonymous to "Thakur Schedule tribe". The observations of the High Court in the case of Shilpa Vishnu Thakur are relied upon.

(ii) There is no corroborative evidence on record to show caste 'Thakur' mentioned in the record produced by the petitioner, is "Thakur" scheduled tribe. Caste 'Thakur' is included in various upper castes, which would be distinct from scheduled tribe and a reliance was placed in the matter of Dipika Subhash More Vs. State of Maharashtra in Writ Petition No.1953/2007.

(iii) Considering the information collected during vigilance enquiry, the petitioner and his ancestors were having begging and worship/archship as their occupations, which was incompatible to the tribe claim. Worship/archship would be the occupation of Bhat Thakur, which was distinct from scheduled tribe. The petitioner and his relatives appeared to be non-tribe Thakurs.

(iv) The sale instances collected during the vigilance enquiry dated 03.08.2015, 29.03.2007, 21.05.2004 disclosed that grandfather of the petitioner Baburao Maroti had disclaimed to be members of any tribe, which is contrary to the claim of the petitioner.

(v) The revenue record in the form of Khasrapatrak and Pahanipatra disclosed that the land belonging to the great-grandfather of the petitioner was Inam land, which was normally allotted for rendering services for the village administration. This status is incompatible with the claim of scheduled tribe.

(vi) Though the census report of 1951 disclosed caste as 'Thakur', considering the occupation of the forefathers and in the absence of any material to show migration of ancestors from traditional place of abode, the petitioner did not appear to be a tribal.

(vii) The school record disclosed that the ancestors had taken education way back in the year 1953, which is inconsistent with the information available about the tribal communities as they were residing in the remote and hilly places and were unable to take education.

(viii) The service record of the father and aunt disclosing caste was not the decisive factor. Other documentary evidence in the form of certificates, revenue extract of 8A, Ration Card did not disclose caste.

(ix) The vigilance cell found that the surnames of the relatives of the petitioner were incompatible with the surnames of Thakur Scheduled tribe.

(x) The affinity test was recorded against the petitioner considering the place of residence, surname, occupation, deity, mother-tongue, festivals, customs, tradition etc.

5. The learned Counsel for the petitioner submits that reply was filed to the

report of the vigilance enquiry. According to him, the information collected by the vigilance enquiry, which is reflected from page no. 42 of the compilation in table no.4 in respect of deity during the marriages, meaning of Dhavalarin, Dej, festivals, deity, discloses modern trends. The tribal community would adopt or develop new trends. The affinity test would not be decisive factor and therefore the conclusion of the vigilance officer cannot be accepted.

6. He further submits that the school record of the relatives shows caste 'Thakur', which is a Thakur scheduled tribe and not any upper caste. According to him the information collected during the vigilance enquiry was not properly appreciated. He would submit that the school entries of Rama Maroti, Hanmant Maroti, Babu Maroti, Khasra Patra, census extract and revenue record was of the period 1951 to 1960, which was having greater probative value and should not have been discarded.

7. The learned Counsel would urge that there was cogent material on record to support the tribe claim of the petitioner and still the Scrutiny Committee arbitrarily invalidated the claim. The sale transaction of grandfather dated 03.08.2015 disclaiming the status was not decisive. In remaining two sale deeds, the blood relatives were the purchasers, hence alleged declaration is inconsequential. Reliance is placed on the judgment of High Court in the case of Nikhil Suryakant Padalwar (supra).

8. The learned AGP contested the matter by making submission that there is absolutely no evidence on record to show that the caste of the petitioner and his ancestors was Thakur scheduled tribe. The Scrutiny Committee rightly recorded the findings on the basis of vigilance report and the affinity test. No reliable evidence was before the Scrutiny Committee and therefore the reasonable and possible conclusion was arrived at.

9. We have considered rival submissions of the parties. There is an old entry placed on record at page no.36 in support of the caste claim. It is an extract of 1951 census showing name of great grandfather of the petitioner, Maroti Baba Thakur with caste 'Thakur'. This entry is of the period immediately after the independence. Maroti Baba Thakur is great grand father of the petitioner, which can be ascertained from the genealogy at page no.24. We do not find any reason to doubt this entry. The entry has a greater probative value. The same appears to have been taken in ordinary course of business and has presumptive value under Sections 79, 80 of the Evidence Act.

10. There are entries in the school record of Balaji Baburao Thakur (father), Baburao Maroti Thakur (grandfather), Bhanudas Baburao Thakur and Dilip Baburao Thakur disclosing caste as Thakur. Besides that the extract of service record of father of the petitioner, which is at page no.27, recorded his caste as Hindu Thakur (S.T.).

11. A useful reference can be made to law laid down by the Supreme Court in case of Maharashtra Adavasi Thakur Jamat Swarakshak Samiti vs. State of

Maharashtra & others reported in 2023(2) Mh.L.J.785. Paragraph no.21 of the judgment reads thus :

"21. In the impugned judgment in Civil Appeal No. 2502 of 2022 (Shilpa Vishnu Thakur's case²), the Full Bench of the Bombay High Court has noted that people having the surname "Thakur" belong to both forward castes and various backward castes. Therefore, the Full Bench may be right in saying that in every case, only on the basis of the surname Thakur, it cannot be concluded by the Scrutiny Committee that the applicant belongs to Scheduled Tribe Thakur notified in the Entry 44 of the Maharashtra list. However, we must note that in the case of a person having the surname Thakur, there may be evidence in the form of entry of the name of the caste as a Tribe or Scheduled Tribe in the land records, school or college records or any official records concerning the applicant or his ancestors. Only on the ground that the persons having the surname Thakur may belong to a forward caste as well, it is not necessary that in every case, the Scrutiny Committee should send the case to Vigilance Cell. It all depends on the nature of the documents produced before the Caste Scrutiny Committee and the probative value of the documents. Therefore, whenever a caste claim regarding Thakur Scheduled Tribe is considered, the Caste Scrutiny Committee in every case should not mechanically refer the case to the Vigilance Cell for conducting an enquiry including affinity test. The reference to the Vigilance Cell can be made only if the Scrutiny Committee is not satisfied with the material produced by the applicant."

. An entry of caste recorded in the service book of father of the petitioner is corroborative. The clinching material is in the form of census entry of 1951. Therefore the finding recorded by the Scrutiny Committee in paragraph no.7(ii) of the impugned judgment regarding entry of Thakur in school record is incompatible with Thakur scheduled tribe and family of the petitioner is non-tribal, is unsustainable.

12. So far as the findings about the place of residence of petitioner's father is concerned, area restriction is removed in the year 1976 by presidential order. The entry of Thakur is at serial no.44. Subsequently by an act of 2002, the area restriction is absolutely removed in the State of Maharashtra. Therefore the examination of place of residence of the claimant and that of migration have lost significance. The findings recorded in that regard are illegal.

13. The reasons assigned for discarding the old entry is based upon the conjectures and surmises. The parameters of affinity test are applied to discard the old entry, which does not stand to law and reason. The occupation of the ancestors of the petitioner is totally irrelevant to decide the probative value of the entry.

14. The sale transactions are cited to show that grandfather of the petitioner had disclaimed status in sale deed dated 03.08.2015. Rest of the sale deeds are not useful because forefathers of the petitioners are the purchasers. To appreciate

the statement in the sale deed, judgment and order dated 03.03.2022 passed in Writ Petition No.5349/2019 in the case of Nikhil Suryakant Padalwar Vs. State of Maharashtra and Others is cited. Paragraph No. 9 of the judgment is as follows:

"9. The learned AGP submitted that in the sale deed, which is produced on record at page no.119, it is clearly seen that the grandfather of the Petitioner has relinquished his caste/scheduled tribe status. It is pertinent to note that this sale deed is required to be considered in juxtaposition with the caste validity certificates issued in favour of the above three persons. If so done, in our opinion, it cannot be given much weightage. It is further pertinent to note that the relinquishment of Caste/Tribe status made by one of the blood relatives, by no stretch of imagination could be said to be a ground to reject the validity certificate in respect of the Scheduled Tribe claim of a person, if it is supported by other documents. In this view of the matter, we are not inclined to accept the submissions based on this sale deed."

15. Applying the above referred principles, the statement in the sale deed dated 03.08.2015 is of no help to disallow the claim of the petitioner. There are already documents on record to support the claim.

16. The findings in respect of surname, dialect, mother-tongue, customs, deities, tradition and festivals comprehend the affinity test. It is settled position of law, the affinity test is not litmus test and it has a very limited utility. We therefore disapprove the findings recorded by the Scrutiny Committee in respect of affinity test.

17. For the reasons assigned above, we are of the considered view that the impugned judgment and order passed by the Scrutiny Committee is unsustainable. We, therefore, pass the following order.

ORDER

(i) The writ petition is allowed.

(ii) The judgment and order dated 01.12.2021 passed by the respondent no.2/ Scrutiny Committee, is quashed and set aside.

(iii) The Scrutiny Committee shall issue validity certificate of 'Thakur schedule tribe' to the petitioner forthwith.