

(2020) 03 Bom CK 0082
In the Bombay High Court
Case No : Civil Writ Petition No. 3197 Of 2019

Chetan Prabhakar Rajwade

APPELLANT

Vs

State Of Maharashtra Thru Secretary, Tribal Development
Dept. And Ors

RESPONDENT

Date of Decision : 17-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 03 Bom CK 0082

Hon'ble Judges : S. S. Shinde, J, V. G. Bisht, J

Bench : Division Bench

Advocate : R. K. Mendadkar, B.V. Samant, Pramod N. Joshi

Final Decision : Partly Allowed / Disposed Of

Judgement

S. S. Shinde, J

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.

2. By this Petition under Article 226 of the Constitution of India petitioner is challenging legality, validity and propriety of the impugned judgment and order dated 13th April, 2018 passed by the Respondent No. 2 - Scheduled Tribe Certificate Scrutiny Committee, Nasik Division, Nasik thereby invalidating the caste claim of the Petitioner as belonging to Thakur, Scheduled Tribe.

3. It is the case of the Petitioner that, Petitioner by birth belongs to Thakur tribe which is recognized as Scheduled Tribe under Constitution (Scheduled Tribes) Order, 1950 as amended from time to time. The petitioner was therefore granted caste certificate dated 09.06.1992 by the competent authority i.e. Tahsildar and Executive Magistrate, Kalvan, Dist. Nasik certifying that the Petitioner belongs to Thakur tribe which is recognized as Scheduled Tribe. Therefore, the petitioner moved the Respondent No. 2 i.e. Committee for verification of his tribe certificate which was granted by the Tahsildar and Executive Magistrate, Kalvan Dist. Nasik

when he was student, on 11.12.2001 and in support of his tribe claim, he has filed several documents of pre-constitution period as well as certificates of validity granted to his blood relatives from paternal side.

4. It is the case of the Petitioner that on the basis of said caste certificate, Petitioner came to be appointed by the Respondent Nos. 3 and 4 under reserved category of Scheduled Tribe and started functioning duties on the post of clerk in the Respondent No. 3. However, for want of approval from the Respondent No. 3 i.e. Education Officer to the appointment of the Petitioner on the post of Clerk under reserved category of scheduled tribe, Petitioner initially paid a sum of Rs. 2,000/- from the date of appointment till October, 2009, a sum of Rs. 3,000/- p.m. from December, 2010 to 03.03.2013, Rs. 4,000/- p.m. from 07.03.2013 to 19.07.2017 and from 12. 10.2017 till date a sum of Rs. 6,000/- p.m. The petitioner on number of occasions approached this Court since the Respondent No. 2 committee failed to comply the order passed by this Court. Therefore, Petitioner was compelled to file contempt proceedings against the Respondent No. 2. However, Respondent No. 2 Committee furnished copy of the enquiry report of vigilance cell to the Petitioner to which the Petitioner filed reply. The Respondent No. 2 Committee by its impugned order dated 13th April, 2018 rejected the caste claim of the Petitioner. Hence, this Writ Petition.

5. Learned counsel appearing for the Petitioner submits that the Respondent No. 2 - Committee has heavily relied upon the school entries in relation to grandfather of the Petitioner from paternal side namely Namdeo Laxman Thakur as on 03.02.1925 showing alleged caste as Bhaat. However, when the forefathers of the Petitioner came to know that said entry has been wrongly taken, immediately thereafter, in Register No. 77 in book no. 8, caste of said grandfather of the Petitioner has been corrected as Hindu Thakur, when the Thakur tribe was not given any constitutional protection. This aspect of the matter has been completely overlooked by the Respondent no. 2 - Committee. He further submits that, Respondent No. 2 - Committee while answering the issue no. 1 has heavily relied upon the documents in relation to maternal side of the Petitioner from para 2 to 7 on page 11 of the impugned order. However, admittedly, those persons are not relatives of the Petitioner from paternal side. The Respondent No. 2 - Committee failed to see and appreciate that the entries therein concerning with Bhaat are not in relation to paternal relatives of the Petitioner and therefore, reasons which are assigned on page nos. 11 and 12 of the impugned order are wholly uncalled for. He further submits that the Respondent No. 2 - Committee has relied upon Government Resolution dated 09th October, 1954 dated 31st July, 1957 but failed to see and appreciate that those circulars and Govt. Resolutions cannot override The Scheduled Castes and Tribes Order (Amendment) Act, 1976 passed by the parliament.

6. Learned counsel further submits that the Respondent No. 2 - Committee has refused to rely upon the documentary evidence of pre-constitution period in relation to forefathers of the Petitioner showing caste Thakur on the ground that

it is not possible to merely rely upon documentary evidence alone. This approach of the Respondent No. 2 - Committee is ex-facie illegal. The Respondent No. 2 - Committee further observed that Thakur, Scheduled Tribe claim could be verified considering traits, characteristics, customs, traditions etc. of the petitioner. However, it has completely lost sight of the Judgment of the Hon'ble Supreme Court in the case of Anand v. Committee of Scrutiny and Verification of Tribe claims, Nagpur 2012 (1) SCC 113. He further submits that the Respondent No. 2 - Committee has relied upon some of the orders passed by this Hon'ble Court in the case of Dipika Subhash More vs. State of Maharashtra Writ Petition No. 1953/2007 decided on 22.03.2007. However, it failed to see and appreciate that the same order has been delivered in factual matrix of the case and in any event before the dictum of the Hon'ble Supreme Court's judgment in the case of Anand (supra). He further submits that the Respondent No. 2 - Committee has relied upon full Bench judgment of this Court in the case of Shilpa Vishnu Thakur v. State of Maharashtra and Anr 2003 (9) Bom. C.R. 497, but deliberately omitted from its consideration the paragraph 40(iii) of the said judgment which mandates that caste claim will have to be decided if candidate has partial affinity and proves partial documentary evidence, the committee has to take overall view of the matter. This aspect of the matter has not been at all considered by the Respondent No. 2 - Committee and therefore, the impugned decision is nothing but arbitrary and uncalled for. He further submits that the Respondent No. 2 - Committee while discarding caste validity certificate issued to blood relatives of the Petitioner from paternal side has relied upon the Apex Court judgment in the case of Raju Ramsing Vasave v. Mahesh Bhivapurkar and Ors 2008 (9) SCC 54 mechanically without considering the very crucial fact that the said judgment supports the case of the petitioner as it is not the case of the Respondent No. 2 - Committee that while granting caste validity certificates to the several relatives of the Petitioner from paternal side, the some vital piece of evidence had been ignored.

7. He further submits that the Respondent No. 2 - Committee while discarding caste validity certificates granted to Rajesh Dharmraj Rajwade, and Rajashree Jagannath Rajwade, the cousins has recorded queer reasoning which cannot be countenanced on the touchstone of adjudicating parameters. Learned counsel submits that, Respondent No. 2 - Committee ought to have seen and appreciated that various certificates of validity came to be granted to several blood relatives of the Petitioner from paternal side namely Tushar, Nilesh, Dharmaraj, Kishor, Sulabha Bhaurao Rajwade. All these persons are admittedly relatives from maternal side. However, without recording any findings of fraud, misrepresentation, suppression of material facts, it is not open to the Respondent No. 2- Committee to discard the evidentiary value of those certificates of validity,. Therefore, the Respondent No. 2 - Committee has committed apparent mistake on the face of record observing that he has to establish his caste claim with reference to Entry No. 44 of the Second Schedule, Part IX appended to the SC/ST (Amendment) Act, 1976.

8. Learned counsel submits that the Respondent No. 2 - Committee has relied upon full bench judgment of this Court in the case of Yogita Anil Sonawane v. State of Maharashtra and Ors Writ Petition No. 6103 of 2010 decided on 15.09.2016 . However, thereafter on 08th March, 2017 the Hon'ble Supreme Court delivered judgment in the case of Jaywant Dilip Pawar (Supra), holding that area restrictions and affinity test are wholly irrelevant. The said judgment is within the special knowledge of the Respondent No. 2 - Committee but for the reasons best known to it, it has not applied its mind and therefore, interference of this Hon'ble Court in the impugned decision of the Respondent No. 2 - Committee is warranted so as to avoid miscarriage of justice to the Petitioner.

9. Learned counsel appearing for the Petitioner invites attention of this Court to the averments in the additional affidavit filed on behalf of the Petitioner and submits that this Court by order dated 04th October, 2017 passed in Writ Petition No. 3453 of 2013 has directed to issue tribe certificate i.e. Thakur in favour of first cousin of the Petitioner namely Yuvraj B. Rajwade. It is further submitted that the Respondent No. 2 - Committee has validated tribe claim of real uncle namely Sanjay Namdeo Rajwade and two first cousins namely Ganesh Sanjay Rajwade and Rahul Sanjay Rajwade and issued tribe validity certificate in their favour on 12th July 2019. It is submitted that since the aforesaid tribe validity certificates are issued in favour of the relatives of the Petitioner on paternal side i.e. real uncle namely Sanjay Namdeo Rajwade and two cousins namely Ganesh Sanjay Rajwade and Rahul Sanjay Rajwade the impugned decision of the Respondent No. 2 - Committee deserves to be set aside thereby directing the Respondent No. 2 - Committee to grant tribe validity certificate in favour of the present petitioner.

10. On the other hand learned Assistant Government Pleader appearing for the Respondent - State invites attention of this Court to the findings recorded by the Respondent No. 2 - Committee and submits that the committee has considered the documents placed on record by the Petitioner and also vigilance cell report and thereafter has rejected the tribe claim of the Petitioner. Therefore, he prays that the Petition may be rejected.

11. We have given careful consideration to the rival submissions of the counsel appearing for the Petitioner and learned AGP appearing for the Respondent - State and learned counsel appearing for Respondent No. 4. With their able assistance we have carefully perused the reasons assigned in the impugned decision of the Committee so also the annexures to the Petition.

12. Upon perusal of the reasons assigned by the Respondent No. 2 - Committee it appears that the various documents submitted by Petitioner in support of his tribe claim wherein in the caste column Hindu, Bhat, Hindu was written and therefore, Respondent No. 2 - Committee has recorded that as far as the caste of the petitioner's forefathers is concerned, same is not recorded as Thakur. The Respondent No. 2 - Committee further observed that the Petitioner has not been able to place on record documentary evidence and also in the affinity test he

could not establish that he belongs to Thakur scheduled tribe appeared at serial no. 44 in the list of scheduled tribes of Maharashtra and accordingly the Committee negated the Tribe claim of the Petitioner.

13. At the relevant time the Petitioner did not place on record validity certificates issued in favour of Sanjay Namdeo Rajwade so also other tribe validity certificates issued in favour of two cousins namely Ganesh Sanjay Rajwade and Rahul Sanjay Rajwade since those are issued on 12th July, 2019. The information about issuance of tribe validity certificates in favour of aforesaid persons in relation of Petitioner from paternal side was not before the Respondent No. 2 - Committee. The issuance of tribe validity certificate in favour of the relatives of the petitioner from paternal side would go to the root of the matter.

14. In that view of the matter, in the peculiar facts and circumstances of this case the impugned order 13th April, 2018 passed by Respondent No. 2 - Scheduled Tribe Certificate Scrutiny Committee, Nasik Division, Nasik invalidating the caste claim of the Petitioner as belonging Thakur Scheduled Tribe is hereby quashed and set aside and the matter is remanded back to Respondent No. 2 - Committee for a de novo consideration in terms of the directions as contained herein below:-

(A) The Tribe claim of the Petitioner as belonging to Thakur Scheduled Tribe, is remanded back to Respondent No. 2 -Committee for a de novo consideration.

(B) On remand, Respondent No. 2 - Committee is directed to decide the claim / case of the Petitioner as expeditiously as possible however, preferably within a period of four months from today by giving opportunities to all the parties.

(C) The parties to appear before Respondent No. 2 - Committee on 31/03/2020. Thereafter the caste claim of the Petitioner shall be adjudicated latest by 31/07/2020.

(D) This Court by order dated 19th March, 2019 directed the Respondents not to take any coercive steps against the Petitioner on the ground of invalidation of the Petitioner's tribe claim shall remain in force / continue to operate till the tribe claim of the Petitioner is adjudicated upon and decided by Respondent No. 2.

(E) The Writ Petition is partly allowed. Rule is accordingly made absolute to the aforesaid extent with parties to bear their respective costs of the Petition. The Writ Petition is accordingly disposed of.