

(2023) 11 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 8513 Of 2022, Civil Application No.11055, 11843,
11844 Of 2022

Dhananjay

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 09-11-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 —
Rule 12(2), 12(7)
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section
9(d)

Citation : (2023) 11 BOM CK 0006

Hon'ble Judges : Ravindra V. Ghuge, J;Y.G. Khobragade, J

Bench : Division Bench

Advocate : S.C. Yeramwar, A.V. Deshmukh, U.M. Bondar

Final Decision : Partly Allowed

Judgement

Y.G. Khobragade, J

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The present petition under Article 226 of the Constitution of India is directed against the Order dated 07.01.2019 passed by the Respondent No.2-Scheduled Tribe Certificate Scrutiny Committee, Nandurbar thereby invalidating tribe claim of the Petitioner being a Thakur, Scheduled Tribe.
3. It is the contention of the Petitioner that by birth he belongs to Thakur, Scheduled Tribe, which is recognized as a Scheduled Tribe under Constitution (Scheduled Tribes) Order, 1950. He was granted caste certificate by the Executive Magistrate, Shindhkheda, Dist. Dhule on 23.07.1981. On the basis of said caste certificate, he came was appointed to the post of Junior Engineer on 19.03.1986 with the Respondent No.3-Zilla Parishad, Nashik. After joining

service, he was promoted time to time. Lastly, on 01.04.1992, he was promoted to the post of Sectional Engineer under the "Time Bound Promotion Scheme" as per the GR issued by the Respondent No.1-State Government. While in service he applied with the Respondent No.2-Scrutiny Committee for verification of his caste claim "Thakur Scheduled Tribe". In order to substantiate his caste claim he has produced following documents with the committee:

(a) School leaving certificate of the petitioner showing duly recorded caste as Thakur.

(b) Primary School Admission Register Extract in relation to petitioner showing caste duly recorded as Thakur.

(c) Primary school admission register extract in relation to father of the petitioner showing his social status as Thakur as on 29-6- 1942.

(d) School leaving certificate of father of the petitioner showing date of admission in the school as 29th June, 1942.

(e) Service Book Extract in relation to father of the petitioner showing that he has been duly accepted, treated and continued as Thakur, scheduled tribe.

(f) Judgment and order dated 14-3-1988 in relation to father of the petitioner rendered by the Additional Commissioner, Nashik Division, Nashik adjudicating father of the petitioner as belonging to Thakur, scheduled tribe.

(g) Birth extract in Village Form No.14 in relation to Dasharath Zuguru Thakur, the grandfather of the petitioner from paternal side, who was born on 2-10-1911 and his social status was described as Thakur.

(h) Primary school admission register extract in relation to grandfather of the petitioner from paternal side namely Dasharath Zuguru Thakur showing his caste duly recorded as Thakur as on 1-10-1927

(i) Caste Validity Certificate dated 26-8-2002 issued to Subhash Dashrath Bagul, the real uncle of the petitioner from paternal side.

(j) Affidavit dated 23-6-2006 executed by Subhash Dashrath Bagul, the real uncle of the petitioner from paternal side thereby furnishing genealogy tree of his family etc.

4. On 07.01.2019, the Respondent-Scrutiny Committee passed the impugned order and invalidated the caste claim of the Petitioner holding that on verification of documents, affinity test as well as vigilance cell report, the the Petitioner failed to prove that he belongs to Thakur Scheduled Tribe.

5. The learned advocate appearing for the Petitioner canvassed that the Petitioner produced pre-constitutional era documents which are in Cursive script (Modi script) as well as on the paternal side of Petitioner there are 16 blood relatives who possess caste validity certificates being Thakur Scheduled Tribe. However, the Respondent No.2 illegally, arbitrarily invalidated the caste claim of

the Petitioner.

6. In support of these submissions the learned advocate for the Petitioner placed reliance on Shweta Balaji Isankar Vs. The State of Maharashtra and others; 2018 SCC OnLine Bom 10363, Apporva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others; 2010 (6) Mh. L.J. 401 and Maharashtra Adivasi Thakur Jamat Swarakshak Samiti Vs. State of Maharashtra and others, 2023(2) Mh.L.J. 785.

7. Per contra, the learned AGP vehemently supported the findings recorded by the Respondent No.2-Scrutiny Committee and submitted that though the Petitioner produced various documents. However, the school record does not describe Thakur caste. As per the documents in respect of paternal side blood relatives i.e. Deochand Bhagwan, Bhatu Bapu, Arjun Zugaru, Babulal Bhagwan, Vedu Malji, Bhimsingh Bhagwan discloses that their caste 'Bhat, 'Brahmabhat' and the Petitioner claimed that he belongs to Thakur Scheduled Tribe. So also, the Petitioner and his family members have not shown any racial and customary correlation with Thakur Scheduled Tribe and not affiliated with genuine Thakur Scheduled Tribe. Therefore, the learned AGP submitted that the findings recorded by the Respondent No.2-Scrutiny Committee are just and proper, hence prayed for dismissal of the petition.

8. It is needless to say that the Petitioner produced his family tree at page no.87. As per the family tree nine paternal side blood relatives of the Petitioner's i.e. Prashant Shantilal Bagul, Anand Shaligram Thakur, Mrunalini Shaligram Thakur, Shantilal Shankar Bagul, Venimadhav Shaligram Thakur, Keshavnath Gorakhnath Thakur, Shrikant Somnath Bagul, Himat Ananda Thakur and Chintan Himmatsing Thakur, all have been granted validity certificates by Respondent No.2-Scrutiny Committee. The Respondent No.2-Scrutiny Committee has not denied the fact of issuance of Thakur Scheduled Tribe validity certificates in favour of paternal side blood relatives of the Petitioner. Therefore, considering the above and keeping in view the law laid down in Apoorva Vinay Nichale cited (supra), the Petitioner can be granted a validity certificate.

9. In Mah. Adivasi Thakur Jamat Swarakshan Samiti cited (supra), the Hon'ble Supreme Court in paragraph 22, 23 and 24 has held as under:

"22. We can also contemplate one more scenario which is found in many cases. These are the cases where the applicant relies upon caste validity certificates issued to his blood relatives. Obviously. such a validity certificate has to be issued either by the Scrutiny Committee constituted in terms of the directions issued in Kumari Madhuri Patil's case (AIR 1995 SC 94) or constituted under the Rules framed under the 2000 Act. In such a case, firstly, the Scrutiny Committee must ascertain whether the certificate is genuine. Secondly, the Scrutiny Committee will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him has been issued is his blood relative. For that purpose, the applicant must establish his precise and

exact relationship with the person to whom the validity certificate has been granted. Moreover, an enquiry will have to be made by the Scrutiny Committee whether the validity certificate has been granted to the blood relative of the applicant by the concerned Scrutiny Committee after holding due enquiry and following due procedure. Therefore, if the Scrutiny Committee has issued a validity certificate contemplated in terms of I the decision in the case of Kumari Madhuri Patill, the examination will be whether the enquiry contemplated by the said decision has been held. If the certificate relied upon is issued after coming into force of the 2000 Act, the Scrutiny Committee will have to ascertain whether the concerned Scrutiny Committee had followed the procedure laid down therein as well as in the ST Rules or the SC Rules, as the case may be. For this verification, the Scrutiny Committee can exercise powers conferred on it by Section 9(d) by requisitioning the record of the concerned Caste Scrutiny Committee, which has issued the validity certificate to the blood relative of the applicant. If the record has been destroyed, the Scrutiny Committee can ascertain whether a due enquiry has been held on the basis of the decision of the Caste Scrutiny Committee by which caste validity has been granted to the blood relative of the applicant. If it is established that the validity certificate has been granted without holding a proper inquiry or without recording reasons, obviously, the caste scrutiny committee cannot validate the caste certificate only on the basis of such validity certificate of the blood relative.

23. In a given case, the Scrutiny Committee may be satisfied that the caste validity certificate relied upon by the applicant has been issued after making a lawful enquiry. But if the Scrutiny Committee is of the view that the applicant has not clearly established that the person to whom caste validity certificate produced on record has been granted is his blood relative, in terms of sub- rule (2) of Rule 12 of the ST Rules, the Caste Scrutiny Committee will have to refer the case for conducting an enquiry through Vigilance Cell. In such a case, the Vigilance Cell can be directed by the Scrutiny Committee to conduct an enquiry limited to the relationship claimed by the applicant with the person in whose favour the caste validity certificate has been issued. If, on the basis of the report of the Vigilance Cell, the Scrutiny Committee is satisfied that the person in whose favour caste validity certificate has been issued is a blood relative of the applicant and lawful enquiry has been conducted before issuing the validity certificate, the Scrutiny Committee will have to issue validity certificate even if the applicant does not satisfy the affinity test. For example, if it is established that the father or grandfather of the applicant has been given a caste validity certificate after holding a lawful enquiry in accordance with law, the Caste Scrutiny Committee cannot hold that the grandfather or father of the applicant, as the case may be, belongs to Scheduled Tribe but the applicant does not belong to Scheduled Tribe. Only if the relationship as pleaded by the applicant is not established, the other evidence produced by the applicant and the result of the affinity test can be taken into consideration by the Scrutiny Committee.

24. As provided in sub-rule (7) of Rule 12 of the ST Rules, the Vigilance Cell's

report is not conclusive. If on the basis of the report of the Vigilance Cell and other evidence on record, the Scrutiny Committee comes to a conclusion that the caste claim is genuine, a caste validity certificate can be issued. Only on the ground that the report of vigilance cell is in favour of the applicant, validity certificate cannot be mechanically granted without application of mind. If the report of the Vigilance Cell is against the applicant, his caste claim cannot be rejected only on the basis of the report of the Vigilance Cell without providing a copy of the report to the applicant and without giving him an opportunity of being heard on the report. After giving an opportunity to the applicant to make submissions on the report, the Scrutiny Committee may reject the caste claim. In a given case, the Scrutiny Committee can also record a finding that the caste claim is genuine. It all depends on the facts of each case."

10. Therefore in the above backdrop, and considering the case of the present Petitioner and more particularly the law laid down in the above cited case law, the impugned order is liable to be quashed and set aside. Accordingly, we proceed to pass the following order:

ORDER:

I. The Writ Petition is partly allowed.

II. The impugned order is hereby quashed and set aside.

III. Respondent No.2 is hereby directed to issue caste validity certificate in favour of the Petitioner belonging to the Thakur Scheduled Tribe category.

IV. Since the Petitioner superannuated during pendency of this petition on 30.09.2023 and his caste claim is upheld by this Court, therefore, the Respondent-Employer is hereby directed to initiate necessary steps for releasing the pensionary benefits in favour of the Petitioner.

V. Rule is made partly absolute in the above terms.

VI. In so far as Civil Application No.11844/2022 is concerned, the Petitioner has prayed for addition of Respondent No.5 as Party Respondent on the ground that he has been deprived from promotional benefits and insisted upon him to produce the caste validity certificate, during the pendency of present petition he superannuated on 30.09.2023. Therefore, the Civil Application does not survive and is disposed off.

VII. The Petitioner also filed Civil Application No.11843/2022 wherein he prayed for issuance of direction against the Respondents to consider promotional benefits without insisting for production of caste validity certificate, so also he has filed Civil Application No.11055/2023 seeking pensionary benefits without insisting for submission of caste validity certificate. In view of disposal of Writ Petition, both these civil applications do not survive and are also disposed off.

VIII. Needless to say that, if any of the validity holders, who are the foundation of the claim of the present Petitioner, suffer re-opening of their case and an

invalidation, the consequences suffered by such candidate would also be-fall upon the present Petitioner.