

(2011) 10 BOM CK 0156
In the Bombay High Court
Case No : Writ Petition No. 2717 of 2011

Gopal Yadav

APPELLANT

Vs

Scheduled Tribe Certificate Scrutiny Committee, Nagpur
Division and others

RESPONDENT

Date of Decision : 11-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 4 ALLMR 685 : (2012) 2 MhLj 466

Hon'ble Judges : S.A. Bobde, J;M.N. Gilani, J

Bench : Division Bench

Advocate : A.S. Kilor, for the Appellant; S.W. Deshpande for respondent No. 1 and D.P. Thakre, AGP for respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Gilani, J.—Rule. Heard finally by consent of the parties. The petitioner has filed this petition under Article 226 of the Constitution of India challenging the order dated 25-2-2011 passed by the Scheduled Tribe Certificate Scrutiny Committee, Nagpur Division, Nagpur-respondent No. 1 herein (in short "first respondent committee") thereby invalidating his caste claim as Thakur, Scheduled Tribe. The petitioner joined state police as Sub-Inspector on 28-2-1983. The appointment was against the post reserved for Scheduled Tribe. At the relevant time, the caste certificates of the petitioner were used to be verified by the Tribal Research and Training Institute. The petitioner appeared before the Tribal Research and Training Institute, Pune along with the original documents to substantiate his claim that he belongs to the caste Thakur, Scheduled Tribe. On 9-6-1983 his caste claim was invalidated. Therefore, the petitioner approached this court in Writ Petition No. 1607/1983. This Court on 11-6-1990 held that the opportunity of being heard was not given to the petitioner and therefore, the matter was remanded back to the first respondent for decision afresh. In the year 1992, the first respondent committee came to be

constituted at Nagpur for the Vidarbha Region and accordingly the case of the petitioner was transferred to the said Committee. The petitioner submitted as many as 12 documents mainly of pre-independence period. On 30-12-2009 the petitioner appeared before the Committee. However, the first respondent committee thought it fit to call second vigilance report which was submitted on 4-5-2010. According to the petitioner, there are number of flaws and irregularities in this report. The petitioner also cast aspersions on the conduct of the members of the first respondent committee for the reasons like special questionnaire was prepared and for calling the report of the Vigilance Cell for the second time while first report was already available on record. It is the case of the petitioner that the first respondent committee did not give an opportunity to controvert the findings recorded in the vigilance report. The clarification which he had sought from the first respondent committee relating to the procedure adopted by them, was never furnished by them. It is further averred that the various relevant documents even of the period ranging from 1915 to 1963 were discarded by the respondent No. 1 while invalidating his caste claim. Instead of taking the inquiry with the relations with paternal side inquiry with the relations on maternal side and from his in-laws was conducted which resulted in miscarriage of justice. He, has therefore, prayed for issuing appropriate writ, order or directions in the nature of mandamus to quash and set aside the order dated 25-2-2011 passed by the respondent No. 1 and declare that the he belongs to caste Thakur-Scheduled Tribe.

2. The counter is filed on behalf of the respondent No. 1 denying the claim of the petitioner. The case of the respondent No. 1. in a nutshell, is that after this Court remanded the case back to them for disposal afresh, the petitioner was asked to furnish the documents on which he was placing reliance. This was done in January. 1992. The petitioner did not comply with the order and after lapse of 16 years i.e. on 21-1-2008 submitted some documents. Thereafter the vigilance cell report was called for. The hearing was given to the petitioner. The first respondent committee noticed that the earlier information supplied by the petitioner to the committee was at great variance with the information supplied subsequently. They also noted that the petitioner had an occasion to work with the Vigilance Cell of the first respondent committee during the period from 1-7-2003 to 11-5-2007. On the basis of the knowledge gained by him about traits, characters, customs, ethnic linkage etc. of the Scheduled Tribe-Thakur Community, he filled in the questionnaire. The respondent No. 1 also disputed the conduct of the petitioner in working with the Vigilance Cell particularly when his own caste claim was pending for consideration. The first respondent committee further averred that the place or origin of the petitioner was found to be in Madhya Pradesh and not in the Nashik district of Maharashtra. It is their case that after examining the pros and cons of the material, they found that the petitioner does not belong to the caste Thakur, Scheduled Tribe.

3. The first respondent committee entrusted second enquiry to Vigilance Cell. The Vigilance Cell collected the various documents and on the basis of the

documents made following observations which weighed with the first respondent committee in deciding the caste claim of the petitioner. This find place in para 3 of the report of the committee

Sr. No.

Name

Relation with the applicant.

Castes

Date of admission

1.

Anita Rajkumar Yadav

Wife

Ahir

30-4-1981

2.

Sadhana ChandrabhanjiBeghele

Wife of applicant's real brother Ramesh

Gaoli

5-7-1974

3.

Sadhana ChandrabhanjiBeghele

Wife of applicant's real brother Ramesh

Gopal

19-6-1978

4.

Asha Hajarilal Yadav

Real Sister

Yadav

13-7-1966

5.

Asha Hajarilal Yadav

Real Sister

Yadav

26-5-1971

6.

Kachri Hajari

Real elder sister

Thakur Kshatriya

3-6-1961

4. To draw inference from the aforesaid observations the Committee relied upon "People of India. Maharashtra, part One Volume XXX" Edited by K. S. Singh. The other observation is that the caste Ahir is a sub-group of Gaoli. The Gaoli group i.e. caste of cowherds are territorially divided into four sub-groups (1) Nanda, (2) Yadav. (3) Ahir and (4) Lingayat. In Maharashtra the caste Gaoji, Yadav. Ahir are recognized as State Economically Backward Classes and Gopal is recognized as Nomadic Tribe. The Committee further observed that the caste Ahir. Gaoli, Yadav and Gopal are recognized as State Economically Backward Classes in Madhya Pradesh. Learned counsel appearing for the respondent placed for our perusal original file containing the vigilance report and statement of the witnesses recorded during the inquiry. The petitioner in his statement dated 18-10-2008 made statement that inter-caste marriages are not permissible in his community however, his father performed inter caste marriage. His mother belong to caste Yadav. One Ramesh Yadav, who is the elder brother of the petitioner, informed during vigilance inquiry that his forefathers were residing at Kamptee and were conducting lime shop. He married a woman belonging to his caste. Her Surname is Baghele. His elder sister Kachri had married Shashikumar Yadav which is also a marriage within the caste. According to him the petitioner married Anita Rajkumar Yadav R/o Tiroda which is also a marriage within the caste. The statement of Ramesh Hajarilal Yadav, brother of the petitioner, shows that he is conducting lime shop which is his ancestral business. His all relations are in Seoni (Madhya Pradesh). His grandmother and grandfather reside in Seoni and his elder sister resides in Durg with her husband Sushilkumar Shashikumar Yadav. In Maharashtra habitat of his relations is confined to Nagpur and Ramtek. The statement of Kachri alias Kamlabai Yadav shows that her marriage was within her caste. Her grandfather originally belonged to Kanpur (U.P.). This fact she had learnt from her father. One Mohan Yadav R/o Seoni made statement to the effect that the sister of his father by name "Yashodabai" Hajarilal is the mother of the petitioner. This marriage was within the caste. He further stated that they belong to caste Ahir which is recognized as State Backward Classes in Madhya Pradesh. He further stated that the marriages of all sons and daughters of Yashodabai have been performed within caste. In their caste Ahir there are surnames like Baghele, Ghate, Yadav, Gop, Nasre etc. The Vigilance Squad also recorded

statement of others like Chandrabhan, father in law of brother of the petitioner, who claims himself as belonging to caste Ahir. According to him, they originally belonged to Uttar Pradesh and Madhya Pradesh and after they were migrated, they were known as "Thakur". The Vigilance Squad could also lay hand on the school registrar of Kachri, elder sister of the petitioner. In that her caste is recorded as "Thakur Kshatriya". In para 18 of the order the Committee has extensively reproduced the information supplied by the petitioner firstly in the year 1983 and thereafter in the year 2009 to demonstrate how the information on the material particulars is at variance.

5. During inquiry the Committee found that the information filled in by the petitioner in the questionnaire supplied to him on 2-4-1983 is at great variance with the information which is subsequently furnished in the year 2009. In the earlier information he had stated that the origin of his forefathers is at Kamptee, Nagpur and his relations are residing in Durg (Madhya Pradesh). He did not whisper anything about his forefathers residing at Igatpuri, District Nashik. During vigilance inquiry the claim of the petitioner, that his forefathers at any point of time resided in a village of Tahsil Igatpuri, District Nashik, was found to be wrong. It is pertinent to note that the information filled in by the petitioner on the first occasion (1983) in the "Interview Card" (questionnaire) many columns were left blank. The clinching information is that his forefathers' business is shown as conducting small lime store. Against the column "original place of the candidates father and grandfather" information supplied is nil. In the column about migration of father or grandfather also no information was filled in. The place of residence of his relations is shown as Durg. In the column of traditional name of Hamlet the information is nil. Against the column harvesting season information given is nil. It is further mentioned that if match (bride or bridegroom) belonging to caste Bhat, Rajput or Kshatriya is found then marriage is settled. The Committee, and rightly so, found all these information supplied earlier in total variance with the information supplied subsequently i.e. in the year 2009. This seems to be for the reason that in the earlier report (Annexure-II), the Director of Triable Research and Training Institute Pune had made observations that the Thakur Schedule Tribes are mostly located in the range of Sahyandri hills in Nashik, Thane, Raigarh, Pune and Ahmadnagar districts.

6. The school leaving certificate of the elder sister of petitioner by name Kachri Hajarilal collected by the Vigilance Cell which is of the year 1961 reveal that she belongs to caste Thakur Kshatriya. The Vigilance Cell could also lay hand on the declaration made by Hajarilal to the effect that he belongs to caste Thakur Kshatriya. This evidence weighed with the Committee, and rightly so, in negating the caste claim of the petitioner. The other sister by name Asha Hajarilal when admitted to the school her caste was shown as Yadav. Then the Committee relied upon the other statements of the relations to record the findings that the forefathers of the petitioners migrated from Uttar Pradesh and Madhya Pradesh and because of that only they were known as Thakur. However, their caste was Yadav and in them there are surnames like Baghele, Ahir, Yadav

etc. While drawing this inference the Committee has rightly relied upon the statement of Kachribai, sister of the petitioner.

7. The next evidence considered by the Committee is regarding change in the name of the petitioner. The petitioner got his name changed from Gopal Hajarilal Thakur to Gopal Hajarilal Yadav. This is evident from the letter dated 16-8-1979 written by Assistant Registrar Nagpur University to the Principal S.K.P. College, Kamptee where the petitioner was studying. Such conduct of the petitioner in calling himself as "Yadav" in spite of Thakur which was originally recorded in his school/college record speaks volumes against him.

8. It is the contention of the petitioner that the Committee committed serious error in drawing adverse inference against the petitioner that the caste of Asha, sister of the petitioner, is shown as "Yadav". According to the petitioner this was supplied by the younger brother of the petitioners when he was just ten years old. The petitioner does not deny that the caste "Yadav" was recorded in the school register on the basis of the information supplied by his younger brother. It is the case of the petitioner that his younger brother had committed mistake in mentioning the caste of his mother instead of his father. This contention at the very first blush appears artificial. The statements of number of relations which came to be recorded during Vigilance inquiry reveal that the family of the petitioner belongs to caste Yadav and in their community surnames like Ahir, Gaoli, Yadav and Gopal are prevailing. The next contention of the petitioner that the inquiry made by the Vigilance Cell was concluded by verifying the caste of the relations on maternal side is also without substance and dehors the record. It is further contended by the petitioner that special questionnaire was prepared by the Committee which shows the prejudicial attitude of the Members of the Committee towards the petitioner. In para 18 (c) the Committee observed that during the period from 1-7-2003 to 11-5-2007 the petitioner was working as Police Inspector in the Vigilance Cell of the said Committee and had an occasion to conduct number of vigilance inquiries in various tribe claims including Thakur Tribe claims. In this background, there is nothing wrong if the Committee decided, to add or modify the existing questionnaire. After all the object behind seeking information by supplying questionnaire is to ascertain the facts.

9. The petitioner also cast aspersions on the members of the Committee by pleading that they had adopted indifferent approach while deciding the caste of the petitioner. According to him, he had asked for clarifications from the members of the Committee under Right to Information Act. His main objection is why different procedure was adopted in his case. On perusal of the record it appears that the allegations of the petitioner are not well founded. In fact, he was the petitioner who after being asked to appear before the Committee in the year 1992, avoided to appear and furnish the documents. He on his own never took any steps to get his caste claim decided during the period 1992 to 2009. This is so, particularly during the period when he was attached to Vigilance Cell i.e. from 1-7-2003 to 11-5-2007. Therefore, the petitioner's raising a doubt

about the fairness of the Members of the Committee deserve no consideration.

10. After having gone through the report of the Committee and the documents relied upon by them, we are of the considered view that this is not the case that there was "no evidence or other material" to justify decision impugned in the petition. It is also not demonstrated that the first respondent committee misdirected itself in fact or in law. Thus, there being no jurisdictional error in arriving at the decision impugned, we find no merit in the petition.

11. Before we part with this judgment, we are constrained to record our displeasure about the inordinate and unexplained time consumed in deciding the caste claim of the petitioner. The issue was cropped up in the year 1983 when the petitioner joined as Sub-Inspector in Maharashtra State Police Force. His caste claim was invalidated on 9-6-1983. Against this order, he filed writ petition before this Court. On 11-6-1990 this Court set aside the order of the Committee and remanded back the matter to the Committee at Pune. In the year 1992, the Committee was constituted at Nagpur and hence the case of the petitioner was transferred to Nagpur. On 14-1-1992 the Committee requested the petitioner to appear before them for hearing with original documents. The date fixed was 14-2-1992. Thereafter neither the petitioner appeared nor the Committee summoned him or proceeded ex parte. The height of negligence is also on the part of the establishment to which the petitioner was attached. It was known to the department that the caste claim of the petitioner was once invalidated and the dispute is still pending. It was, therefore, expected of them to see that the caste claim of the petitioner is expeditiously decided since the validity of the appointment of the petitioner was based on such a decision. We find from the report of the first respondent Committee that the petitioner was deputed to work on the Vigilance Cell of the Committee and for substantial period he was there. It is not understood as to how the department deputed the officer to work in the Vigilance Cell of the first respondent committee when the caste claim of such officer was itself pending adjudication before such Committee. The petitioner in his wisdom could have himself rescued from such job. Thus this case exhibits gross negligence and gross omission and not inadvertent on the part of the Committee, petitioner and the Police Department in protracting the issue of deciding the caste claim of the petitioner. It was expected of the department to take up the issue with the higher authorities when the first respondent committee was not adjudicating the caste claim of the petitioner. Such inordinate delay particularly in the matter of such nature has wide repercussions like causing substantial hardship to or substantially prejudice the rights of any person or would be detrimental to good administration. We hope that the Chief Secretary of the Government of Maharashtra would personally look into the matter and see that those who are found responsible for such a gross inaction and omission are made accountable and further shall take remedial measures to avoid recurrence of such instances.

12. For the foregoing reasons the petition is liable to be dismissed. The same is

accordingly dismissed. Rule discharged with no order as to costs. The Registrar (Judicial) shall bring these observations to the notice of the Chief Secretary of the Government of Maharashtra.

At this stage, Mr. Kilor learned counsel for the petitioner, prays for continuation of interim order. Hence interim relief granted vide order dated 16th June, 2011 to continue for a period of 8 weeks from today and the same will cease to operate automatically on expiry of said period.