

(2017) 06 BOM CK 0178
In the Bombay High Court
Case No : 7534 of 2012

Jitendra s/o Bhalchandra Salunke

APPELLANT

Vs

The State of Maharashtra Its Secretary, Tribal Development
Department, & Ors.

RESPONDENT

Date of Decision : 20-06-2017

Acts Referred:

Constitution of India, Article 226, Article 342, Article 341 - Power of High Courts to Issue certain writs - Scheduled Tribes - Scheduled Castes

Citation : (2017) 06 BOM CK 0178

Hon'ble Judges : S.C. Dharmadhikari, Mangesh S. Patil

Bench : DIVISON BENCH

Advocate : A.S.Golegaonkar, M.A.Golegaonkar, Koralkar Arun H., P.S.Patil, Yogesh Bolkar, A.B.Girase

Judgement

1. Rule.
2. The Respondents waive service. By consent, Rule is made returnable forthwith.
3. This Writ Petition under Article 226 of the Constitution of India challenges the order dated 30.07.2012 passed by the Committee for Scrutiny and Verification of Tribe Claims, Nandurbar, Respondent No.2 to this petition.
4. The present petition was instituted in this Court in September, 2012. On 10.09.2012, this Court while issuing notice passed the following order:
" 1. Heard. Issue notice to respondents returnable on 08.10.2012. AGP waives service of notice for respondents 1 and 3 and Mr.Tope, standing counsel waives service of notice for respondent No.2.
2. Till the next date, no adverse order be passed against the petitioner on account of non production of validity certificate."
5. We have to set out very few facts to appreciate the arguments of the Petitioner.

6. The Petitioner claims that he belongs to "Thakur" Scheduled Tribe. That is duly notified and recognized as such. The First Respondent is the State of Maharashtra through its Department of Tribal Development and which has set up Respondent No.2 Committee styled as "The Committee for Scrutiny and Verification of Tribe Claims". The Third Respondent is the competent authority within whose area of operation, the Petitioner resides and therefore, has issued the Caste/ Tribe Certificate in favour of the Petitioner. The other Respondents are the North Maharashtra University, Jalgaon and the Principal of an Educational Institution. However, we are not concerned with them any further as no reliefs are claimed by the Petitioner against these Respondents.

7. The caste/ tribe certificate dated 12.11.1999 based on which the Petitioner was seeking to pursue an educational degree course, came to be forwarded to Respondent No.2/ Scrutiny Committee. Along with the same, the Petitioner claims to have forwarded 56 documents to support the claim that he belongs to Thakur Scheduled Tribe. According to the Petitioner, some of these were Tribe Validity Certificates issued in favour of the Petitioner's relatives including his father Bhalchandra Baburao Salunke on 21.07.2005. There is a Certificate of Validity issued by the Nashik Scrutiny Committee in favour of the Petitioner's real paternal uncle Pramod Baburao Salunke. The said Pramod had to file a writ petition in this Court being Writ Petition No.2278/1996. Pramod challenged the order of the Scrutiny Committee dated 24.03.1995 denying him the Tribe Validity Certificate. This Writ Petition was allowed on 17.03.2004. As a result of which, Pramod obtained the Tribe Validity Certificate. Then, there is reliance placed upon another Certificate of Validity issued on 15.02.2003 by the Scrutiny Committee at Nashik in favour of the Petitioner's real paternal uncle, namely, Manohar Baburao Salunke. The Petitioner filed affidavits of these persons as also genealogy and family tree. The Petitioner also relies upon the Certificates of Validity issued way back on 24.02.1993 in favour of his paternal cousin aunt, Ranjana Rambhau Thakur and dated 05.07.1997 and 20.01.2005 in favour of other paternal cousin brothers Dipak Jayraj Thakur and Pankaj Shrikant Salunke.

8. The Petitioner claims that he also forwarded other documents and styled as "First Page of Service Book" issued to his grandfather, namely, Babu Gaba Thakur. Against relevant column (caste), it is mentioned as "Thakur" in the said service book. It is stated that these are very old entries and pertaining to the years 1928, 1939 and 1945. Fortunately, the Petitioner claims that his grandfather is alive and he filed his affidavit. Then, the Petitioner claims that entries as far as the caste column in the school records of his father and others would indicate that they are belonging to "Thakur" Scheduled Tribe.

9. The Petitioner further claims that each of these documents are produced before the Vigilance Cell which was directed to hold an inquiry and investigation after the Petitioner's tribe certificate was forwarded for scrutiny and verification to Respondent No.2 Committee. The Vigilance Cell Officials visited the village concerned. They interviewed these persons. They have recorded that each of

these persons are familiar with the traits, characteristics, rituals, customs and practices in the Thakur Scheduled Tribe. While it is true that the Vigilance Cell's report submitted to the Scrutiny Committee on 11.04.2006 and any opinion of the Research Officer dated 01.06.2011 are not binding, but probative value of documents referred therein could not have been ignored. It is in these circumstances that the Petitioner relies upon the direction of this Court to expedite the scrutiny and verification of the claim. He would submit that if his claim was not genuine and bonafide, this Court would not have directed the Scrutiny Committee to expedite the process.

10. In these circumstances the Petitioner's Advocate Shri Golegaonkar would submit that the Scrutiny Committee framed five points. Five points framed by the Scrutiny Committee read as under:

Sr. No. Issues Answer

1 Whether the tribe claim of the Applicant is proved by way of documentary evidence? No.

2 Whether the tribe claim of the Applicant is proved by way of affinity test? No.

3 Whether the removal of area restriction by Act No.108 of 1976 enables the Thakur Community to claim the status of Thakur scheduled tribe? No.

4 Whether the applicant is entitled to scheduled tribe as per current legal position? No.

5 Whether the validity certificate issued to applicant's second cousin precludes the committee to decide his claim on merit? No.

11. Shri Golegaonkar would submit that on each of these points, the Scrutiny Committee rendered a finding in the negative. There is absolutely no discussion much less, cogent and satisfactory reasoning by which the Scrutiny Committee discards and brushes aside the voluminous documentary evidence. He criticizes the observations in the Scrutiny Committee's order and particularly on points 1 and 2. Shri Golegaonkar would submit that every document produced by the Petitioner describes his relatives' caste/ tribe as "Thakur" Scheduled Tribe.

12. Shri Golegaonkar would submit that the tribe was referred in the Constitutional provision as also in the notification issued by the Governor only after Articles 341 and 342 are inserted in the Constitution of India. Prior thereto, no tribe or caste was described as "Scheduled" as no schedule was prepared. In such circumstances he would submit that the order of the Scrutiny Committee is perverse and vitiated by total non application of mind. The Scrutiny Committee's reasoning cannot be sustained. Then, the criticism is that for discarding the certificates of validity, the Scrutiny Committee has only expressed a view that same are not conclusive and decisive. Relying upon the judgment of the Honourable Supreme Court in the case of Madhuri Patil v/s Additional Commissioner, 1994 (6) SCC 241, it is mechanically recorded that the certificates

of validity cannot be taken into consideration once it is found that the reports and records made available before the Scrutiny Committee at Nashik itself were questionable and doubtful. The Scrutiny Committee at Nashik has reasoned that in view of the High Court's orders, it has no choice or alternative, but to issue the certificates of validity. Therefore, the judgments, orders and certificates of validity issued in these cases cannot be relied upon, is the conclusion of the Scrutiny Committee in this case. Even this approach is criticized and mainly because it is contrary to several judgments and orders of this Court. Shri Golegaonkar tenders a compilation of such orders and judgments.

13. Pertinently, we do not find any denial of any factual assertion made in this petition.

14. The learned AGP, however, would submit that the Scrutiny Committee in the peculiar fact situation is placed in a difficult situation. Suppose there are directions by this Court to issue the certificates of validity to all only on the ground that in their family the father, brother and sister such certificates have been issued earlier, then, the Scrutiny Committee cannot scrutinize any claim at all. Eventually, the claims have to be verified and scrutinized and each case must be decided independently. It is possible that in a family, somebody has misrepresented and misled the Scrutiny Committee and obtained the caste validity certificate. That does not mean that in all matters such certificates of validity have to be held as conclusive evidence. It is in these circumstances a deeper probe and scrutiny is made and that is why this Court should not be critical of the Scrutiny Committee's approach in this case. Secondly, the Petitioner has failed in the sociocultural affinity test. That is a valid and lawful guide. Such test is held because in the orders of the Scrutiny Committee at Nashik and heavily relied upon in this case, that Committee was helpless and observed that none of the traits and characteristics of "Thakur" Scheduled Tribe match with the description and explanation given by the Petitioner's paternal cousin Pramod.

15. It is in these circumstances that the learned AGP would submit that the Scrutiny Committee has rightly discarded these documents. By its independent scrutiny, investigation and verification, it has held on all points against the Petitioner. These are pure findings of fact. No legal issue is involved and therefore, this Court should not interfere in its writ jurisdiction in such orders as that would mean this Court is a further appellate court. Once there is no perversity or error of law apparent on the face of record, then, this Court should not interfere with the impugned order in its writ jurisdiction and consequently, the petition be dismissed.

16. We have found from the record that the Petitioner produced the certificate of validity issued to his father Bhalchandra by the Scrutiny Committee at Nashik. The certificate of validity is dated 21.07.2005. Pertinently, the tribe certificate of the Petitioner's father was issued on 22.08.1973 by the Executive Magistrate, Dhule. That certificate was holding the field. It is common ground that when

Bhalchandra's claim was being scrutinized and verified, a thorough inquiry was made by the Scrutiny Committee at Nashik. That is apparent from the communication addressed to the concerned Police Officials. The Vigilance Cell was set up even at that time. One Mr.V.M.Nikam attached to the said Vigilance Cell and Police Officer addressed a communication to the Deputy Director (Research) of Nashik Scrutiny Committee. He gave reference to not only earlier certificates of validity, but pointed out that not only Bhalchandra, but Bhalchandra's younger brother (Manohar) claimed the certificate of validity. His real younger brother Manohar Baburao Thakur was issued the certificate of validity on 15.02.2003 by the Nashik Scrutiny Committee. Bhalchandra produced a certified true copy of such certificate of validity issued to Manohar Baburao Thakur and even established relationship with him. Then, one paternal cousin Dipak Thakur was issued the certificate of validity on 05.07.1997 by the Scrutiny Committee at Nashik.

17. Additionally, Petitioner's father (Bhalchandra) filed an affidavit on the stamp paper dated 12.07.2011 in which he not only explained the circumstances in which the certificate of validity was issued to him by the Nashik Scrutiny Committee, but pointed out as to how other persons including Manohar are related to him. He has placed genealogy and family tree before the Scrutiny Committee. Thereafter, the certificate of validity issued to Pramod on 17.03.2004 was relied upon. Pertinently, Pramod possesses the caste certificate issued by the Tahasildar, Nandurbar on 24.11.1978. He obtained the certificate of validity by virtue of an order passed by this Court. It is stated that this Court's order was binding on the Scrutiny Committee and that is why it was compelled to issue the certificate of validity in favour of Pramod. This finding of the Scrutiny Committee and in the present order impugned before us belies the factual position. Pramod was denied the certificate of validity on 24.03.1995. The Scrutiny Committee at Nashik doubted the genuineness and bonafides of his claim in rejecting the certificate of validity. Pramod was compelled to file a writ petition in this Court being Writ Petition No.2278/1996. It was decided on 06.10.2003. The order passed by this Court in that Writ Petition reads as under:

" The Petitioner's caste claim was invalidated by the Respondent No.2 Committee by order dated 24.03.1995 as belong to Thakur Scheduled Tribe and the said order is under challenge in this petition. While granting Rule, interim relief in term of prayer clause (d) was ordered by this Court on 22.08.1995 and as a result thereof, the impugned decision came to be stayed. However, in spite of the notice having been served on the petitioner and the petition being transferred to this Bench, none appeared on 17th July 2003 and therefore, the petitioner came to be dismissed in default. By allowing Civil Application St.No.28027 of 2003, petition has been restored today.

2. A perusal of the impugned decision shows that the Respondent No.2 Committee recorded a specific finding that the petitioner belongs to the Thakur Caste (purely nontribal group) and the said caste having various subcastes and

categories is not to be equated or mistaken for Thakur community (including Ka and Ma categories). In the view of the Committee, unless a person belonging to Thakur Caste shows himself to be belonging either to Ka and Ma Thakur subgroups, he would not be entitled for being called as Thakur Scheduled Tribe. In recording this opinion, the Committee appeared to be aware of the fact that the Government of Maharashtra has declared Thakur caste (purely non tribal group) as other OBC.

3. In view of our reasoning in Writ Petition No.2128 of 1996, the view taken by the Committee is unsustainable and once the Committee has recorded a finding that the petitioner belongs to the Thakur caste, it is not permissible further to hold that he does not belong to Thakur Scheduled Tribe. We will have to, therefore, allow the petition.

4. In the result, the petition is allowed and the impugned decision dated 24.08.1995 is hereby quashed and set aside. The Respondent No.2 Committee at Nashik is directed to issue Caste Validity Certificate in favour of the Petitioner certifying that he belongs to the Thakur Scheduled Tribe as expeditiously as possible and preferably within a period of six weeks. Rule made absolute accordingly with no order as to costs."

18. We do not see how this order and which not only binds the Scrutiny Committee in Pramod's case, but equally the present Scrutiny Committee, could have been ignored. Pertinently, this Court criticized the approach of the Scrutiny Committee at Nashik in insisting on absolute proof. It also referred to the fact that the certificate of validity was issued to Manohar and in issuing that certificate of validity dated 15.02.2003, the Scrutiny Committee at Nashik observed thus:

" Shri Manohar Baburao Thakur has applied for recruitment in Government Service against the seat reserved for the Scheduled Tribe claiming himself as belonging to Thakur, Scheduled Tribe. As per the instructions contained in Government Resolutions quoted in the preamble at Sr.Nos.(1) to (4) above, his case vide the letter quoted in the preamble at Sr.No.(5) above referred to the Scrutiny Committee for verification of his tribe claim.

Whereas after gone through the documents, facts and replies given by the applicant and considering the various orders passed by the Hon"ble High Court of Judicature at Mumbai in W.P. No.2746/1998, 5454/1998, 856/1998, the Caste Certificate of Shri Manohar Baburao Thakur as belonging to Thakur, Scheduled Tribe bearing No.Nil dated 31.12.1992 issued by the Executive Magistrate, Sindkheda, District Dhule is held valid.

This decision is applicable in this case only."

19. The documents relied on in Manohar's case were on record. There are certificates of validity issued to other close relatives and from the paternal side including one Ranjana Thakur. All these certificates of validity were obtained after

a prolonged legal battle. They were not obtained or granted for the asking. They were not issued as a matter of course or mechanically and in a stereotype manner. There were orders of this Court in each of these cases and they reminded the Scrutiny Committee of its duty in law. We do not see any reason for discarding and brushing aside such binding orders as the Scrutiny Committees nor the Government challenged them at any stage. In our opinion, such certificates of validity issued more than a decade back in favour of these close relatives of the Petitioner could not have been brushed aside.

20. The Scrutiny Committees constituted under the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No. XXIII of 2001) (for short "the Act"), somehow feel obliged to scrutinize and verify each and every claim independently and on merits even if the same is laid by a member of the very family in whose case certificates of validity issued to father, son, daughter, real cousins and uncles from the paternal side are expressly relied upon by the claimant-applicant. These certificates are not set aside but holding the field. True it is that there could be cases where genuine and bonafide tribals are deprived of the benefits because vocal amongst them, who are educated or literate, grab them by resorting to illegal and corrupt means. It could be that some bogus and dubious claims are granted and certificates awarded with connivance and involvement of even public officials. Further, true it is that such persons commit a grave and heinous crime. However, we have never seen the Scrutiny Committees, when questioning such certificates going further and deeper into the matter. It is not enough to merely question or doubt the documents. If the contents of such documents have to be demolished, then, legally known means are available. The Committee ought to go through the entire records including available anthropological data. There are studies and research papers which would indicate the area where the tribe was predominantly found and in a part of the State. If a person is not originally from this part of the State, but by taking advantage of similarity of names, surnames or some traits, characteristics, customs and practices, passes himself as a scheduled tribe member and grabs benefits and concessions by obtaining these certificates, then, we would expect the Scrutiny Committees not to stop only by recording a general and vague finding. Particulars of fraud perpetrated, details and from the data available including the perpetrators, etc. have to be revealed. The documents can be discarded if the Scrutiny Committee was bold enough to forward them to the experts including handwriting experts and made inquiries and investigation about the manner of their issuance in great details. Nothing of this has ever been done by any Scrutiny Committee though it is fully empowered by law to do so.

21. We find rarely Scrutiny Committees going and launching criminal prosecution and bringing the guilty to book. Even if the State launches criminal prosecution or private parties do so, still we do not find that the Scrutiny Committees"

rendering their assistance by appearing as witnesses at the trial of such cases. Thus, the Committees should educate the tribals about their rights through researchers and experts. Tribals ought to be made aware by awareness campaigns being organized with the help of District Legal Services Authority operating at district or even at Talula level. Legal literacy campaigns so as to awaken the tribals and making them aware of the fact that those who cannot be termed as tribals at all, have grabbed all the benefits meant for them. We have never seen any active campaign of this nature. Then, to say that every certificate of validity produced cannot be accepted mechanically and scrutiny will have to be held on merits in each claim laid by members of the family and it must be decided independently, is not supportable at all. Such a finding then cannot be sustained.

22. We have found from the impugned order that the Scrutiny Committee framed points for it's consideration. One of the point was, whether, these certificates of validity issued to the Petitioner's father and other relatives preclude the Scrutiny Committee to decide the claim on merits.

23. There is no such prohibition as is entertained by the Scrutiny Committee. That cannot be a proposition and as broadly laid down by any judgments. The Scrutiny Committee is not precluded from holding necessary verification and scrutiny and deciding the claim on merits if it finds that the certificate of validity and certified true copy of which is produced, is not valid piece of evidence and that is not reliable and trustworthy as the same is obtained by perpetrating a fraud or misrepresenting the Committees. Hence, the framing of point itself indicates as to how the Scrutiny Committee has not applied it's mind to legal principles. The Scrutiny Committee was aware that the Petitioner has given reply to the opinions in the report of the Vigilance Cell in writing. The Scrutiny Committee was informed that all certificates of validity are legally admissible evidence. These have, therefore, high probative value. However, the Scrutiny Committee feels that when inquiries are not held in the manner set out by the Act, then, such certificates of validity have no probative value. The letter of the Tribal Research Cell, which is relied upon by the Petitioner has, therefore, no evidentiary value.

24. We are sorry to say that this is not a correct understanding of the matter. In the present case, the Scrutiny Committee was aware that there are judicial orders pursuant to which certificates of validity have been issued to the Petitioner's close relatives. Manohar, Ranjana, Pramod, all of them fought a long legal battle and for decades together. Relying upon their orders and passed by the competent courts, the certificate of validity was issued to the Petitioner's father. It is unfortunate that the Scrutiny Committee shows disrespect to this Court's orders. The Scrutiny Committee disregards and brushes aside not only the orders, but observations and conclusions therein though most of the orders are passed after the Act was brought into effect. The Committee relies on convenient observations and paragraphs from the said judgments which are

picked up and read completely out of context by the Scrutiny Committee. When you read judgments and orders not in their entirety and as a whole, in the backdrop of the facts, circumstances and material brought on record, then, you are bound to fall into a grave legal error. This is apparent from paragraphs after paragraphs of the discussion by the Scrutiny Committee on the issue or Point No.5.

25. If the Scrutiny Committees are but a substitute for competent civil courts, then, they ought to be aware that no civil court would have discarded such valid piece of evidence unless it was established and proved that same was tainted by fraud and vitiated by gross misrepresentation. If the Scrutiny Committees are obliged to go into such details as are warranted by the Act, then, we do not find any application of mind from that angle. It is a casual and lighthearted approach of all the Scrutiny Committees, which we have noticed and the present Committee is no exception. It reproduces paragraphs after paragraphs from some orders and comes to a conclusion that the Nashik Scrutiny Committee has reluctantly issued the certificate of validity to the Petitioner's father. True it is that there are some findings in the Nashik Scrutiny Committee's order, however, the Nashik Scrutiny Committee order very clearly says that in Writ Petition No.3153/1996 (Sunil Murlidhar Thakur vs. State of Maharashtra), this Court in its judgment recorded that it is undisputed that the Committee in that case recorded a finding that the Petitioner belongs to Thakur, but it proceeded on an erroneous assumption to hold that Thakur community is different than Thakur Scheduled Tribe. In the light of this court's decision in the case of Chandrakant Bajirao Shinde vs. State of Maharashtra, the Scrutiny Committee was not justified in verifying the claim on the basis of sociocultural test, affinity test and ethnic linkage to find out whether, the Petitioner belongs to Thakur Scheduled Tribe, when admittedly, the documents produced on record show in unequivocal terms that the caste was Thakur Scheduled Tribe. The present Scrutiny Committee in the impugned order did not even apply its mind to such a judgment of this Court. These judgments cannot be construed or interpreted like statutes for sustaining the approach of any Scrutiny Committee or upholding it. It is rather unfortunate that some words which have been employed throughout are coined by the Scrutiny Committees and those incharge of the Tribal Welfare Development. It is not a creation of the courts. The courts are obliged to find out whether, the reasoning is sound and based on judicial principles and reflects application of mind and awareness to the facts. No Committee much less any Scrutiny Committee or an Authority exercising judicial powers should feel that it is compelled to obey and respect a judgment of this Court. That it is bound to do. It is its constitutional obligation and duty as every judgment and order of this Court binds it. Hence, we observe that Pramod got benefits of the judgment of this Court and there was no necessity of any independent discussion on his claim, but falling in the same error which the Nashik Committee committed in passing orders denying the certificate of validity to Pramod, the Committee at Nandurbar issued the impugned order. A stray observation in Pankaj's case and

made by that Committee has been heavily relied upon. If Pankaj misled the Committee, according to Respondent No.2/ Nandurbar Committee which passed the order in this case, then, that was not enough. The Petitioner was relying not only on Pankaj's order. The Committee at Nashik issued the certificates of validity to Manohar, Pramod, Ranjana and the Petitioner's father. All of them cannot be and are not guilty of fraud or misrepresentation. These persons and noted above succeeded in proving their claims even prior to Pankaj and may be Pankaj obtained an advantage wrongfully by relying on them. However, Pankaj's order and passed by the Scrutiny Committee at Nashik was not enough to come to a conclusion that there is a fraud perpetrated by the present Petitioner. That the present Petitioner misrepresented and grossly, is also not a conclusion capable of being recorded. To be precise, neither of these conclusions are recorded in the impugned order. There are no findings, much less based on some reasons and cogent material, of a fraud. In such circumstances no amount of reference to the judgments and orders of this Court and picking up stray observations therefrom, to conveniently record a negative finding, would enable us to sustain the impugned order.

26. We do not think we should scrutinize the findings on other issues as we have noticed patent non application of mind, perversity and a gross error of law apparent on the face of the record. Once the finding on issue No.5 can be termed as such and conclusion is wholly perverse, then, the entire order of the Scrutiny Committee is unsustainable and cannot be upheld in law.

27. For the above reasons, this Writ Petition succeeds. Rule is made absolute in terms of prayer clauses (A) and (B), which read thus:

"(A) This Writ Petition may kindly be allowed and kindly be hold and declare that the petitioner belongs to "Thakur" Schedule Tribe and direct the scrutiny committee to issue the caste validity certificate within 4 weeks by issuing appropriate writ, order or directives, as the case may be.

(B) The impugned order dated 30.07.2012 passed by the respondent No.2 Scrutiny Committee invalidated the tribe claim of the petitioner of Thakur, Schedule Tribe, may kindly be quashed and set aside by issuing writ of mandamus or any other appropriate writ."

28. The Scrutiny Committee is now directed to issue the Certificate of Validity to the Petitioner within a period of FOUR WEEKS from the date of receipt of a copy of this order. Ordinarily, we would be justified in imposing heavy costs and to be paid personally by the members of the Scrutiny Committee for causing undue embarrassment and harassing the Petitioner and his family, but we refrain from doing so in the present case only because of the persuasion of the learned AGP. Hence, no order as to costs.

29. All the pending Civil Applications are disposed of.