

(2019) 10 BOM CK 0009
In the Bombay High Court
Case No : Writ Petition No. 4696 Of 2015

Manisha Thakar

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Citation : (2019) 10 BOM CK 0009

Hon'ble Judges : Pradeep Nandrajog, CJ; Bharati Dangre, J

Bench : Division Bench

Advocate : Sushant C. Yeramwar, M.M. Pabale

Final Decision : Disposed Of

Judgement

Bharati Dangre, J

1. Rule. Rule returnable forthwith. Heard by consent of the parties.
2. In the second round of litigation, the petitioner claiming to be a Scheduled Tribe Thakar has approached this Court praying for quashing and setting aside the impugned order dated 23rd March 2015 passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane, invalidating his claim.
3. The petitioner obtained a caste certificate on 12th October 2001 from the competent authority which declared that he belongs to Thakar (Sr.No.44) of the Constitution (Scheduled Tribe's Order 1950).

The petitioner, relying on the said certificate came to be recruited as a Shikshan Sevak in the school run by the Zilla Parishad, Sindhudurg, Respondent No.3 and came to be posted in the school of Respondent No.4 where he is presently working. The appointment of the petitioner was on a post of Shikshan Sevak reserved for Scheduled Tribe. Pending verification of the claim, the appointment order was issued to the petitioner and his claim was made over to the Respondent No.2 Committee by the Respondent No.4 which resulted into the impugned order being passed on 23rd March 2015, which is a subject matter of

the present petition.

4. In support of his claim, apart from the caste certificate issued by the Sub-Divisional Officer (Revenue) Kankavli, where the caste of the petitioner is recorded as Thakar, she placed reliance on several documents which included her School Leaving Certificates recording her caste as Hindu Thakar. She also relied on a School Leaving Certificate in respect of her father Dinkar Vyankar Thakar issued by the Head Master, Primary School, Shivdav, Tambawadi, Kankavli, District Sindhudurg, where the caste is recorded as 'Other Hindu' and date of admission is 30th October 1944. The caste certificate issued in favour of uncle, cousin brother, cousin sister were also placed before the Committee in support of her claim. A pre-constitutional document in form of a School Leaving Certificate in respect of the applicant's cousin grand father Ganu Kusha Thakar issued by the Higher Grade, Head Master, Zilla Parishad School, Harkul, Br. Taluka Kankavli, District Sindhudurg bearing Register No.131 where the caste is recorded as Hindu Thakar and date of admission being 1st April 1935 was also placed before the Committee in support of her claim. An affidavit sworn by the father of the petitioner before the Executive Magistrate, Kankavli highlighting the genealogy was also relied upon.

5. The Scrutiny Committee had before it an order passed by the High Court in Writ Petition No.9922/2013 dated 26th December 2014 where the Committee was directed to reconsider every aspect of the claim by affording opportunity to all the parties and liberty was also given to the petitioner to file additional evidence, oral as well as documentary, before the Committee. Pursuant to the said order, the petitioner was called for personal hearing on 7th July 2014 and she was subjected to questionnaire so as to ascertain her affinity towards Thakar Scheduled Tribe. The questionnaire covered the questions relating to the traditional occupations, customs, ceremonies, surnames of relatives etc. The petitioner was again heard by the Committee on 9th March 2015 and in support of her claim, she was permitted to bring in the representatives of the Sindhudurg Zilla Thakar Samaj for hearing and the representatives of the said association furnished information in relation to tradition, characteristics, place of origin, surnames of members of community and their customs.

6. The Committee referred to the documentary evidence relied on the petitioner and made an exhaustive reference to the place of residence of the petitioner and also ventured into ascertaining the affinity of the petitioner towards the Thakar, a Scheduled Tribe. As regards the place of residence, the Committee highlighted in great detail the history/background of the Thakars of Sindhudurg district of which the applicant is a Member and it then makes a reference to the Constitution (Scheduled Tribe Order 1950) which included only Thakur community initially. It then made a reference to the Amendment Order 1956 by which the Thakur or Thakar including Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar were included in the Scheduled Tribe Order by imposing area restriction by extending the recognition of the said community in 25 Tahsils of 5 districts of

Maharashtra. The Committee also make a reference to the Scheduled Caste and Scheduled Tribe (Amendment Act 1976) which removed the area restriction and accepts that at entry no.44 being Thakur, Thakar, Ka-Thakur, Ka-Thakar, Ma-Thakur and Ma-Thakar is made applicable in the whole State of Maharashtra. However, the Committee then makes a reference to a Government Resolution dated 21st November 1961 when the Thakar community was included in the list of Nomadic Tribes at Entry 22 which came to be deleted by a subsequent resolution dated 2nd June 2004. This is taken as a basis for determination of the claim of the petitioner and the Committee records that Thakar community from Sindhudurg district was covered in the list of Nomadic Tribe till the year 2004 and not into Scheduled Tribes as this particular group of Thakars in Sindhudurg district were not included in the list of Scheduled Tribes of Maharashtra by any parliamentary enactment. The Committee has then reasoned the rejection of the claim of the petitioner on the ground that in the State of Maharashtra, Thakurs are in the Scheduled Tribe, Thakars are in Nomadic Tribes and and Thakurs are found to be in OBC category and most crucially after removal of Thakar from Nomadic Tribe and OBC, now those Thakars are to be treated as open category and cannot take recourse to the nomenclature 'Thakar'. The Committee also do not agree on the point of affinity and after reproducing certain portions from the judgment of the Apex Court, it includes that the act of taking benefit of the nomenclature of Thakars is a wholesale fraud of the facilities and concessions meant for genuine Scheduled Tribes in the State of Maharashtra. Without commenting and individually dealing with the claim of the petitioner, with this observation of wholesale fraud , the committee proceeds to invalidate the claim of the petitioner by the impugned order.

7. The Committee, in its order include an exhaustive write up on the Thakur community which it colated from the various books including Re-EnThoven "Tribes and Caste of Bombay" Scheduled Tribes by K.S. Singh, two Marathi books and also Encyclopedic profile of Indian Tribes. It also makes reference to the Gazetteer of India, Maharashtra State, Thane district.

8. In a brief manner, it refers to the documents relied upon by the petitioner and take note of the fact that in the said documents, the caste is recorded as "Other Hindu" and 'Hindu Thakar' and therefore, there are two different caste entries in the record of the applicant's forefathers and none of the documents as observed by the Committee mentioned the caste as "Thakar - Scheduled Tribe". It makes a reference to the Vigilance Cell report which has brought on record the entries of Hindu Thakar and it then deduce a conclusion that caste Thakar and Scheduled Tribe Thakar are altogether distinct and they have no ethnic linkage with each other. There is no discussion about the pre-constitutional document and it is comprehended in the discussion of other documents where the caste is recorded as 'Hindu Thakar'.

9. Through an additional affidavit, the petitioner has placed on record a copy of Vigilance Cell Report. The Vigilance Cell makes a reference to the document of

one Dinkar Vyankar Thakar and Ushaji Vyankat Thakar, the former being the father of the petitioner and the latter being her uncle and the caste entry in the school admission register being recorded as "Other Hindu" and 'Hindu Thakar' respectively. The Vigilance Cell record the statement of the father of the petitioner during the home inquiry and it affirms that on verification of the school register of Ushaji Vyankat Thakar, the caste is recorded as "Hindu Thakar" and there is no interpolation in the said document. It also records that Manisha Dinkar Thakar, Sachin Sitaram Thakar and Nitin Sitaram Thakar belong to the same lineage. The Vigilance Cell also conducted an inquiry from the Zilla Parishad Primary School in respect of the documents of the father and uncle where the date in entry in the Primary School is recorded as 30th October 1944 and 5th March 1949. It verified the original school record where the caste is recorded as "Other Hindu" and "Hindu Thakar". No significance is attributed to these documents which are of the pre-constitutional era and must be accorded great probative value.

10. The entry as "Other Hindu" is explained by the petitioner by stating that in the caste column, only the religion came to be recorded in case of her father, whereas in case of her uncle, the caste is recorded as "Hindu Thakar". This is an entry of 5th March 1949 when the caste 'Thakar' did not receive a recognition under the Scheduled Tribes Order, 1950. It cannot be expected that in contemplation that the caste is going to receive a recognition as a Scheduled Tribe, the entry is recorded. The Committee do not deal with the said entry at all and merely brushes it aside on the ground that it is recorded as "Hindu Thakar". The genealogy tree clearly reflect that Kushaji Vyankat Thakar is the uncle of the petitioner. During the pendency of the petition, a certificate of validity is issued in favour of the cousin of the petitioner, i.e. Sachidanand Pandurang Thakar dated 28th March 2019 issued by the respondent Scrutiny Committee.

11. The subsequent developments of issuance of a validity certificate in favour of the real cousin of the petitioner is another point in favour of the petitioner since in light of the decision of this Court in case of Apoorva d/o Vinay Nichale Vs . Divisional Caste Certificate Scrutiny Committee No.1, 2010(6) Mh.L.J, 401, when a validity is granted in favour of a near blood relation, the Committees are not justified in rejecting the claim of the claimant in absence of any fraud being alleged. The Committee has erred in rejecting the claim of the petitioner only on the ground that though it is established that he belongs to 'Thakar', caste, he is not a Thakar Scheduled Tribe. By this time, through the authoritative pronouncements from the Apex Court as well as this Court, it is well settled that it is not permissible to interpret an entry in the Scheduled Caste/Scheduled Tribe order and it is neither permissible for the Committees or the Courts to read it in any different fashion than as what is spelt in the presidential order. The documents filed by the petitioner clearly establish that her forefathers had the caste recorded as 'Hindu Thakar' and the Committee has accepted the explanation offered during the course of Vigilance Inquiry of the brother of the petitioner. The area restriction being done away by the Act of 1976 and the entry

at Sr.No.44 of the Scheduled Tribe Order 1950 includes Thakar, irrespective of the area where the community was traced to, we find no justification for the Committee to deny the benefits of being belonging to the said tribe. As far as affinity is concerned, in light of the judgment of the Apex Court in case of Anant Katole Vs. Committee for Scrutiny & Verification of Tribe Claims, 2012 (1) SCC 113, the affinity test cannot be accepted as a litmus test and it would be appropriate to make reference to the following observations of the Apex Court :

22 (ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc.

Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

12. On the basis of the documentary evidence produced, the petitioner has proved that he belongs to Thakar - Scheduled Tribe. The rejection of the claim of the petitioner by the respondent no.2 Committee by order dated 23rd March 2015 is not in accordance with the settled position of law and the impugned order deserves to be set aside and is accordingly set aside.

13. Rule is made absolute.

14. We declare that the petitioner belong to 'Thakar' a Scheduled Tribe and should be treated as such for all purposes and is entitled for availing the benefits flowing from a declaration to the above effect.