

(2019) 10 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 4700 Of 2015

Manoj Gavankar

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Citation : (2019) 10 BOM CK 0012

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Bharati Dangre, J

1. The petitioner, who obtained a caste certificate on 24th August 2001 as Thakar, recognized as Scheduled Tribe under the Constitution (Scheduled Tribes Order 1950) has approached this Court on cancellation of the said certificate by the respondent no.2 Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane. The petitioner was recruited to the post of Shikshan Sevak on 21st April 2008 on the basis of the said caste certificate on a post meant for a Scheduled Tribe candidate. On his claim being made to the respondent no.2 Committee for verification, it was rejected by the impugned order dated 23rd March 2015 and this has constrained the petitioner to approach this Court.

2. In support of his claim, the petitioner relied upon his caste certificate as well as the School Leaving certificates issued in his favour by the Head Master of the pre primary school, Kalmath, Bazaar peth, Taluka Kankavli, District Sindhudurg by the Head Master High School, Kankavli, District Sindhudurg where the caste is recorded as Hindu Thakar. Apart from his own documents, he relied upon the caste certificate of his father Satyavijay Gavankar issued by the Sub-divisional Officer, Kankavli dated 25th September 2001. An attested copy of School Leaving Certificate in respect of his father issued by the Head Master, Kalmath Bazar Peth

No.1 where date of admission is recorded as 10th June 1969 and caste is recorded as Hindu Thakar has also been relied upon.

In the earlier round of litigation, the petitioner had approached this Court by filing Writ Petition No.3044 of 2013 when the order passed by the Committee was quashed and set aside and the matter was remanded to the Committee for reconsideration. The petitioner was granted liberty to file additional evidence - oral as well as documentary. The Committee afforded an opportunity of hearing to the petitioner and also permitted participation of the Sindhudurg Zilla Thakur Samaj. During the pendency of the petition, petitioner has placed on record copy of the Vigilance Cell Report and also placed on record the documents of his cousin grand father Vishwanath Shekhar Gavankar who was admitted in Ist Standard who was admitted in first standard in Zilla Parishad Primary School, Kalmat, Bazar Peth on 9th September 1954 where the caste is recorded as Thakar. By the affidavit, he also placed on record Gaon Namuma No.14 i.e. birth extract of his cousin grand father i.e. Ambaji Krishna Thakar where date of his birth is recorded as 23rd November 1937 and in the caste column, the caste is recorded as Thakar. The said document is of the cousin grand father and the genealogy placed on record before the Committee dated 11th January 2007 establish the relationship between the petitioner and Ambaji. In the said affidavit filed on 30th November 2018, the petitioner has stated that the said documents were not available with him while filing the proposal before the Committee as well as the time of filing the Writ Petition.

On perusal of the affidavit, we are satisfied that the document dated 23rd November 1937 containing an entry in respect of the cousin grandfather of the petitioner which records the date of birth as 23rd November 1937 and the caste as 'Thakar' carry a high probative value and bring a pre-constitutional document, needs verification through Vigilance Cell. During examination of the claim of the petitioner by the Committee, the oldest document to which the petitioner had made reference was the document of 1959 in respect of petitioner's father, which is post the Scheduled Tribe Order 1950. The document which is brought on record by the petitioner by way of an additional affidavit was not before the Committee when it decided the claim of the petitioner. In such circumstances, we are of the considered opinion that the said documents need to be examined by the Committee by conducting a Vigilance Inquiry and we deem it proper to afford one opportunity to the petitioner and the committee to ascertain the veracity of the said documents which is of great consequence for determining the claim of the petitioner. Further, the petitioner has also placed on record the validity certificate issued in favour of his cousin brother i.e. Nilesh Laxman Thakar and Suraj Sunil Gavankar as well his uncle Dattaprasad Ambaji Thakar, son of Ambaji Thakar. The said certificates have been placed on record by the petitioner along with an affidavit filed in this Court on 4th September 2019. We also direct the Committee to consider the validity granted to the said blood relations of the petitioner and also determine its effect on the claim of the petitioner.

3. We also direct the Committee to consider the validity granted to the said blood relation of the petitioner and also determine its effect on the claim of the petitioner in light of the judgment in case of Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1, 2010(6) Mh.L.J. 401.

4. For the aforesaid reasons, we quash and set aside the order passed by the Committee and direct the matter to be remanded to the respondent no.2 Committee.

The Committee is directed to re-ascertain the claim in light of the aforesaid documents to which we have made reference to the above paragraphs and decide the claim of the petitioner afresh within a period of six months from today.

We also direct that pending the decision of the respondent no.2, no coercive action shall be taken against the petitioner by the respondent nos.3 and 4.