

(2024) 05 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 8039, 8380 Of 2009

Minal And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 08-05-2024

Acts Referred:

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Rules, 1995 — Rule 12(2), 12(7)
Bombay Primary Education Act, 1947 — Section 48(e), 132(3)

Citation : (2024) 05 BOM CK 0042

Hon'ble Judges : Ravindra V. Ghuge, J; R. M. Joshi, J

Bench : Division Bench

Advocate : K. T. Shirurkar, R. S. Wani

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J

1. These Petitions involve common questions of fact and law. Learned Counsels for the Petitioners and Respondent submitted common arguments. By consent of both sides, both Petitions are decided by this common judgment.

2. Petitioners are real sisters and daughters of Bharatsing Thakur. They claim that Thakur Tribe Certificate was issued to them on 30.10.2000 and 30.11.2000. Petitioner Minal came to be appointed on the post of Shikshan Sevak by Zilla Parishad, Dhule on 21.01.2009 and she is in service. As per the prescribed procedure, tribe validity certificate of this Petitioner was forwarded for verification along with necessary documents to Respondent No. 2 – Committee. Both Petitioners claim to have submitted 22 documents in support of their tribe validity claim. It is a case of Petitioners that evidence was submitted before Committee with regard to the school leaving certificate of her grandfather viz. Gulabrao Thakur wherein his caste is recorded as Thakur as on 25.07.1927. It is further claimed that their father B. G. Thakur was issued with tribe validity certificate on 22.12.2003. Similarly, their paternal cousin brother has also been

issued such certificate by the competent Committee. According to Petitioners, Caste/Tribe Scrutiny Committee, however, in ignorance of evidence on record, by impugned order dated 12.11.2009, invalidated the tribe claim of the Petitioners.

3. We have heard the learned Counsels for the rival sides and considered documents on record so also relevant files of the Petitioners before the Scrutiny Committee.

4. Learned Counsel for the Petitioners submits that since the father and paternal cousin brother of the Petitioners have been issued tribe validity certificate, it was not necessary for the Committee to undertake affinity test in order to reject the claim of the Petitioners for validity of their tribe. In support of his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. The State of Maharashtra and Others, 2023 (2) Mh.L.J. 785. He also submits that as per the law settled by the Supreme Court affinity test is not a litmus test for determination of the caste/tribe claim and the same is not essential in every case.

5. Learned AGP opposed the said contention by submitting that the judgment in case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra) does not lay down the law that in all cases wherein the validity certificate has been issued to the family members, no further inquiry is required. It is his submission that it is only when the caste certificate has been granted to the blood relative of the Applicant after holding an inquiry as contemplated under the Act and following due procedure further inquiry may not be necessary. It is submitted that the validity issued to the father of the Petitioner is not after following the procedure as laid down pursuant to the judgment in case of Kumari Madhuri Patil & Anr. Vs. Addl. Commissioner, Tribal Development & Ors, (1994) 6 SCC 241. It is thus contended that since the tribe validity of the father has been issued by relying upon the judgments of this Court, but without conducting any inquiry, the same cannot become a basis for validating tribe claim of the Petitioners.

6. Before appreciating the facts of the present case, it would be fruitful to take into consideration the position of law with regard to the validation of the caste/tribe claim of any person. The Hon'ble Supreme Court in case of Anand Katole vs. Committee and Others, 2012(1) SCC 113 in paragraph 18 has held as under:

18. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-independence documents because they furnish a higher degree of probative

value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(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.

7. In case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra), the Hon'ble Supreme Court in paragraph nos. 20, 22 to 24 and 36 has held as under:

20. It is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the case to Vigilance Cell. One of the tests is as laid down in the case of Kumari Madhuri Patil. It lays down that the documents of the pre-Constitution period showing the caste of the applicant and their ancestors have got the highest probative value. For example, if an applicant is able to produce authentic and genuine documents of the pre-Constitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations provided to the Tribes included in the ST order. In such a case, a reference to Vigilance Cell is not warranted at all.

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 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 the decision in the case of Kumari Madhuri Patil, 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.

36. Thus, to conclude, we hold that:

(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(b) For the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim;

and

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case.

8. This judgment no doubt lays down law that in case of a validity certificate has been granted to the blood relative from the paternal side of the Applicant and that the relationship with such person is established, no further inquiry would be required to be conducted by the Scrutiny Committee where validity is granted to such person, after due inquiry and following procedure established. However, in case of validity being granted to the blood relative of the Applicant by the Scrutiny Committee is without holding a proper enquiry and without recording reasons, the caste scrutiny committee cannot validate caste/tribe certificate only on the basis of such validity certificate of the blood relative.

9. While considering rival contentions, we find it necessary to record certain undisputed facts. There is no dispute about the fact that Petitioners are biological daughters of Bharatsingh Thakur, who holds tribe validity certificate issued by the

Competent Committee. Similarly, Vishal, their paternal cousin brother, also holds such a certificate. We made specific query to the learned AGP about any show cause notice being issued to them for cancellation of validity certificate or actual cancellation of the same, since filing of Petitions relates back to year 2009. On written instructions the learned AGP made statement that the tribe validity certificates of both father and cousin brother of Petitioners have not been cancelled nor any show cause notice is issued to them by Committee for cancellation thereof.

10. In the light of the aforesaid fact, perusal of impugned order indicates that vigilance inquiry was conducted and the report was submitted to the Committee on 04.07.2006. The findings of such inquiry are as follows:

The information regarding traits characteristics, Gods, Goddesses, surnames, festivals, traditions, ancestral occupation, customs, songs, dances of the applicants family do not resemble those of Thakur Scheduled Tribe and thus his affinity is not proved towards Thakur Scheduled Tribe.

11. The committee has also taken into consideration documents filed by the Petitioners and the reasons are recorded in respect of said documents to hold that the Petitioners have not proved their claim by way of documentary evidence. The said findings recorded by the Committee are reproduced herein below.

I. The documents quoted at Sr. No. 1, 5, 6 and 16 are copies of Caste Certificate, an affidavit sworn in and validity certificates in respect of applicant's father as well as their cousin. The ratio of these documents can not be given to the applicants in view of the discussion made in the issue no.4 of this order

II. The documents quoted at Sr. No. 2,3,4,15,19,20 and 21 are copies of School Record in respect of both the applicants wherein caste entries are -recorded as either Thakur or Hindu Thakur. The documents produced by the applicant in respect of the applicants themselves describe their caste as Thakur. However no document describes them as Thakur Scheduled Tribe These documents are quite consistent with the fact that they belongs to Thakur caste a non-tribal group and not to Thakur Scheduled Tribe.

III. The documents quoted at Sr. No. 7,8,9,10 and 11 are copies of School Records in respect of relatives of the applicants wherein caste entries are recorded as either Thakur or Hindu Thakur. In cases where synonymous entries are there ie. Schedule Tribe synonymous with other, old documentary entry of caste has no relevance because the synonymous caste which is not Schedule Tribe also show the same entry even prior to Presidential Notification. Therefore as per the settled principles of law laid down in the case of Madhuri Patil, the test of characteristics, customs, ethnic linkage etc. plays vital role. Therefore in such cases only the documentary evidence cannot be relied upon. Hence on the basis of Vigilance Cell Report, affinity test, these documents are not sustainable.

IV. The documents quoted at Sr. No. 12, 13, 17 and 18 are the documents

wherein caste entries are not recorded. Hence they are of no use.

V. The documents quoted at Sr. No. 14 and 22 are copies of caste certificates in respect of both the applicants. The caste certificates are always subject to scrutiny hence they cannot be relied upon.

12. There is no challenge to the genealogy and admittedly Gumansing Thakur is grandfather of Petitioners. His school leaving certificate shows entry "Thakur". This document indicates that as per Book No. 13 & Pupil's Register No. 145, he was admitted in school on 25.07.1927. There is an affidavit sworn by Bhimrao Gulabrao Thakur to indicate that 'Gumansing' & 'Gulabsingh' is same person. In absence of any dispute with regard to blood relationship between concerned parties, we find no reason to discard the said evidence, more particularly in view of the fact that validity granted to the father of the Petitioner is on the basis of same documents.

13. The committee has also held that the Petitioners do not pass affinity test. Relying upon the enquiry conducted, it is observed that Petitioners are unaware about the traditions, customs, traits and rituals of Thakur Scheduled Tribe Community. The committee has declined to consider certificate of father of Petitioners for the reason that there is a remark on the certificate that "this certificate is applicable in this case". There is further observation that relatives of Petitioner reside at area which is non Thakur Scheduled Tribe area. Similarly, objection is raised with regard to impure language of Petitioners.

14. As far as affinity test is concerned, the Hon'ble Supreme Court has held that "affinity test" is no litmus test. We find it appropriate to refer to the judgment of of Hon'ble Supreme Court in case of Anand Katole (supra), wherein it is considered and held that "with migration, modernisation and contact with other communities, there communities tend to develop and adopt new traits, which may not essentially match with characteristic of tribe". Petitioners herein have also provided explanation to that effect about the language etc. before Committee. We do not see any reason to accept decision of Committee to keep validity certificate of father of Petitioners out of consideration on the ground of the remark made thereon. We, therefore, find it difficult to convince ourselves with regard to the legality and sustainability of the impugned orders passed by the Scrutiny Committee.

15. One more fact which prevents us from lending our approval to the impugned orders is that undisputedly father of the Petitioners is granted Tribe Validity Certificate and the same has not been cancelled till date nor any show cause notice has been issued to him for the said purpose. Non granting of Tribe Validity to the Petitioners would lead to the anomalous situation that father belongs to Thakur scheduled tribe category and the daughters do not belong to the same tribe. Apart from this, there is one more tribe validity in the family by virtue of validity in favour of Vishal i.e., paternal cousin brother of the Petitioners. There is no allegation against either father or paternal cousin of the Petitioner of

obtaining those certificates by playing fraud or misrepresentation etc. In such situation, there is no question of any action being taken against them of revocation of the certificates on that ground.

16. At this stage, we would like to refer to the judgment in case of Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 Nagpur, [2010(6) Mh.L.J.401 : AIR 2010(6) Bom.R.21] observations as follows:

9. In the present case, we find that the committee has disbelieved the petitioner's case that she belongs to Kanjar Bhat after calling the school leaving certificate of petitioner's father and noticing that the original caste written on it was 'Thakur' and that was subsequently changed to Kanjar Bhat. The committee observed that the caste has been changed without complying with the procedure prescribed by section 48(e) and 132(3) of Mumbai Primary Education Act. In fact, the caste has been changed on the basis of the affidavit. From the findings of the committee it appears that the committee has observed that the change of caste has been done illegally. Obviously, the committee which decided the caste claim of the petitioner's sister did not hold the same view, otherwise it would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the petitioner.

These observations perfectly apply to the present case.

17. We would also like to refer to the judgment of the Hon'ble the Supreme Court in case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra), wherein it is held that unless the certificate is obtained by fraud or misrepresentation, etc. by the blood relative of the Applicant, where the relationship pleaded by the Applicant is established, the Committee is not required to undertake the affinity test etc.

18. In our view, having regard to the facts and circumstances of the case and more particularly considering the tribe validity being granted to the father and

paternal cousin of the Petitioners and the validity granted to them still subsists, we do not find any reason or justification to sustain the impugned orders.

19. In the result, both Writ Petitions are allowed in terms of prayer clause 'B'. The impugned orders are quashed and set aside. The Scrutiny Committee is directed to issue Thakur Scheduled Tribe certificates to both Petitioners, within 30 days from today.

20. Rule is made absolute in the above terms.