
(2003) 06 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 2741 of 1990

Narendra Dhudku Thakur

APPELLANT

Vs

Scheduled Tribe Certificate Scrutiny Committee and Others

RESPONDENT

Date of Decision : 27-06-2003

Acts Referred:

Constitution of India, 1950 — Article 342

Citation : (2004) 1 BomCR 467 : (2004) 2 MhLj 578

Hon'ble Judges : P.V. Kakade, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : P.R. Katneshwarkar, holding for R.G. Karmarkar, for the Appellant; S.M. Kulkarni, For respondent Nos. 1 and 2 and C.K. Shinde, A.G.P. for respondent Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

P.V. Kakade, J.—The petitioner has moved this writ petition seeking to quash the judgment and order dated 2-1-1989 passed by the respondent No. 1. Scheduled Tribes Certificate Scrutiny Committee, Maharashtra State, Pune (hereinafter called as "Committee"), and also the judgment and order passed by the respondent No. 1, Additional Commissioner, Tribal Development, Nashik, in Caste Appeal No. 177/1989, dated 31-3-1990, and to seek declaration that the petitioner is a member of Scheduled Tribe and, as such, entitled to the caste certificate to seek admission to the Medical College accordingly.

2. The petitioner is resident of District Jalgaon and belongs to Scheduled Tribe, "Thakur", and as such, he is said to be entitled to get certificate for the same. He passed his XIIth Standard (H.S.C. Examination) in the year 1989. While he was studying in XIIth Standard, he made an application to the Scrutiny Committee for verification of his caste certificate. The said application dated 4-10-1988 was considered by the Committee in two sittings and he was also given personal hearing in support of his claim, that he belongs to Thakur" community which is Scheduled Tribe community; he produced as many as 19

documents before the Committee, including the caste certificate that he belongs to Scheduled Tribe, Thakur", issued by the Executive Magistrate, Erandol, dated 23-7-1988. The documents also included the caste certificate of his father issued on 23-8-1987 which also specified that he belonged to Scheduled Tribe, Thakur". The Scrutiny Committee, according to him, recorded erroneous findings based on a substantive considerations and held that the petitioner was a member of Scheduled Tribe, Thakur", but belonged to Thakur" Caste which was non-tribal and, therefore, cancelled and confiscated the certificate of Scheduled Tribe issued by the Executive Magistrate.

The petitioner carried the appeal against the said order to the respondent No. 2, Additional Commissioner, Tribal Development, Nashik. However, no interim relief was granted in his favour by the concerned authority. Therefore, he filed Writ Petition No. 1839/1989 before this Court, which issued directions to respondent No. 2 to the effect that it should decide the appeal of the petitioner within a period of three weeks from the date of the order passed by this Court. However, the respondent No. 2 did not decide the appeal within time and finally informed him on 13-10-1989 that the appeal was rejected and full judgment would be made available to him in the first fortnight of October 1989. Eventually, the petitioner had to file Contempt Petition in December 1989 against the respondent, which is said to be still pending. However, in the meantime, on 11-4-1990, this Court granted interim relief to the petitioner directing respondent Nos. 3 and 4 to give provisional admission to the petitioner in the reserved seat for the Scheduled Tribe, for the academic year 1990-91.

In the meantime, respondent No. 2 passed his judgment on 31st March 1990 rejecting the appeal and confirming the decision given by the Committee. Hence, the petition.

3. We heard the learned Counsel for the petitioner as well as the respondents at length. At the outset, it may be noted that the perusal of the Committee's order shows that as many as 19 documents were produced by the petitioner in the course of hearing before it, including the certificate issued by the Executive Magistrate to himself, wherein it was categorically stated that he was belonging to Scheduled Tribe, Thakur". The remaining documents including the school leaving certificate of himself, as well as, his father and birth extract of his father and copy of the service book of his father showed that his caste was shown as Thakur". In other words, it is an admitted, as well as, evident position that the petitioner belongs to Thakur" community. The Members of the Committee in the course of their order, discarded the certificate issued by the Executive Magistrate to the effect that the petitioner belonged to Scheduled Tribe, Thakur", and observed that the Executive Magistrate committed an error in issuing the certificate classifying the candidate under the category of Thakur", Scheduled Tribe, at Serial No. 44. According to the Committee, it was beyond doubt that the Executive Magistrate could not distinguish "Hindu Thakur" (Non-Scheduled Tribe) from the notified Thakur" (Scheduled Tribe) that have same nomenclature. The

Committee further held that the candidate belonged to Thakur" Caste and not Thakur" under the category of Scheduled Tribe, as there was a clear misclassification of Thakur" Caste into Thakur" Tribe and, therefore, the caste certificate produced by the candidate could not be accepted as a valid certificate in law.

The perusal of the judgment of the Additional Commissioner, Tribal Development, Nashik, runs on the same line, wherein it was observed that the documentary evidence produced by the petitioner was not sufficient to prove his tribal status as there are number of people in Maharashtra belonging to Caste Thakur" and, therefore, it was pointed out that the observations and findings of the Committee were correct.

4. At this stage, we may note that the discussion regarding difference between Thakur" Caste and Thakur" Tribal, is rendered more or less academic in nature and the observations made by the Committee Members, as well as, the Additional Commissioner, Tribal Development, are found to be erroneous by virtue of Act 108 of 1976, as enacted by Parliament, which holds that a person who is either a Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur or Ma Thakar are declared to belong to Scheduled Tribe within the meaning of Article 342 of the Constitution. In the case of Pandurang Rangnath Chavan Vs. The State of Maharashtra and others, , Division Bench of this Court has settled the issue once for all. It is categorically observed, after referring to Act 108 of 1976 enacted by the Parliament, that the State Government or Court has no power to determine whether a particular community falls within it or outside it. The Court further observed thus:

"The sum and substance of the above constitutional provisions is that:

(i) Initially, by the Constitution (Scheduled Tribes) Order, 1950 only Thakurs were declared to belong to Scheduled Tribes as per Entry 21 in the First Schedule, Part III dealing with erstwhile Bombay State.

(ii)

(iii) However, pursuant to the report of the Advisory Committee on the Revision of Lists of Scheduled Castes and Scheduled Tribes, the parliament thought it necessary to remove the area restriction which was working as a clog on social mobility and which was inconsistent with the concept of social integration of the different tribes and communities in India. Consequently, the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, Act No. 108 of 1976 was enacted by Parliament and Entry 44 in Part IX of the Second Schedule to the said Act specifically includes Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar as Scheduled Tribes in Maharashtra for the purpose of the Constitution."

5. In this context, we also would like to refer the decision of the Apex Court on the scope of the constitutional provisions and the power, if any, of the State Government to amend such a provision or even the power of the Court to

enquire into the correctness or otherwise of the said list. In Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another, , the Apex Court has held that the Scheduled Caste Order has to be applied as it stands and no inquiry can be held or evidence led in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Caste Order, except as contemplated by Article 341 was valid. It was further observed that it was not for the State or even for the Court to enquire into the correctness of what was stated in the report that had been made thereon or to utilise the report in effect to modify the Scheduled Caste Order.

6. In view of this established legal position, the observations made by the Members of the Scrutiny Committee, as well as, the Additional Commissioner, Tribal Development, trying to distinguish "Thakur" Caste from Thakur" Scheduled Tribe, and also relating to area restrictions, are not only erroneous but totally illegal and, therefore, have to be discarded from consideration.

7. In the result, we hold that the petitioner belongs to Thakur" Scheduled Tribe, and the certificate issued by the Executive Magistrate, Erandol, vide No. MAG/1088/SR/93 dated 23-7-1988, is legal and valid and the order holding the said certificate of the petitioner as illegal, passed by the respondent Nos. 1 and 2, are hereby quashed and set aside. The respondent No. 1/ Committee is hereby directed to issue a fresh certificate to the petitioner to the effect that he belongs to "Thakur" Scheduled Tribe and inform accordingly to the concerned Medical College in which he is taking education.

Petition is allowed and rule is made absolute in the above terms. In the circumstances of the case, there shall be no order as to costs.