

(2024) 01 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 13567 Of 2021

Omkar And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 16-01-2024

Acts Referred:

Maharashtra Scheduled Castes, De-Notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes And Special Backward Category (Regulation Of Issuance And Verification Of) Caste Certificate Rules, 2012 — Rule 12(7), 12(8)

Citation : (2024) 01 BOM CK 0037

Hon'ble Judges : Vibha Kankanwadi, J;S.G. Ghapalgaonkar, J

Bench : Division Bench

Advocate : S.C. Yeramwar, P. S. Patil

Final Decision : Allowed

Judgement

S.G. Chapalgaonkar, J

1. Heard. Rule. Rule made returnable forthwith. By consent of parties, petition is heard and decided finally at admission stage.

2. The petitioners impugn the order dated 1/12/2021 passed by the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, thereby invalidating the tribe claim of the petitioners to be belonging to "Thakar Schedule Tribe" community which has been included in the list of Scheduled Tribes at Sr. No.44.

3. Mr. S.C. Yeramwar, learned advocate appearing for the petitioners would submit that the petitioners have been granted the Caste Certificate as belonging to Thakar Scheduled Tribe by the Deputy Collector (Planning) Aurangabad by following the due procedure of law. While petitioners were pursuing their education, their caste certificates were forwarded to the respondent No.2 Committee. The proposals of the petitioners were referred to the Vigilance Cell for inquiry. The report of the Vigilance Inquiry dated 1.12.2015 was furnished to the Committee which stipulates favourable remarks to the petitioners. However,

for no good reasons the Committee sought fresh Vigilance Inquiry report. Consequently, the 2nd Report dated 25.11.2021 is procured. It was served upon the petitioners alongwith the Show cause notice dated 26.11.2021. In response to show-cause notice, petitioners appeared before the Committee and submitted detailed reply dated 29.11.2021 offering comments regarding remarks in 2nd report of the Vigilance Cell. However, the Committee, relying upon adverse remarks in the 2nd report, invalidated the caste claim of the petitioners.

Mr. Yeramwar, Learned Advocate for petitioners would point out that no reasons are assigned for making second reference to the Vigilance Cell when the first report throwing light on all the relevant aspects was available with the Committee. He would submit that the procedure adopted by the Committee is contrary to Rule 12(7)(8) of the Maharashtra Scheduled Castes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012. (Hereinafter referred to as "the SC Rules"). He would further submit that the petitioners have submitted the record right from year 1951 in respect of the blood relations, showing caste entries of Thakar. However, by recording flimsy reasons the caste claim of the petitioners has been invalidated.

4. Per contra, Mr. P.S. Patil, the learned AGP, vehemently opposes the petition. He would submit that the Committee is empowered to refer any caste claim to the Vigilance Cell and obtain necessary information. Although first report of the Vigilance Cell was available in the file, the Committee doubted the correctness of the remarks and again referred the matter to the Vigilance Cell. The 2nd report of the Vigilance Cell specifies that the father of the petitioners failed to establish ethnological and anthropological connections with the Thakar- Scheduled Tribe.

5. Mr. Patil would point out that the Vigilance Report makes reference to various contra entries showing the caste of blood relations of the petitioners as 'Maratha Thakur'. He would submit that surnames of some of the blood relatives doesn't resemble to Thakar-Scheduled Tribe. He would submit that most of the blood relatives of the petitioners are speaking Marathi language. None of the blood relatives of the petitioners has been granted caste validity till this date. He would, therefore, submit that the Committee has rightly invalidated the caste claim of the petitioners. Mr. Patil would rely upon certain observations made by the Supreme Court in the case of Maharashtra Adivasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and others (Civil Appeal No. 2502 of 2022) dated 24th March, 2023.

6. Having considered the submissions advanced, upon perusal of the record it can be gathered that the petitioners, in support of their claim, produced several documents. The oldest is regarding the entries of blood relatives in National Census of 1951 which depicts entry of Thakar caste against each name. The petitioners have also produced the school record of cousin aunt, cousin grandfather, father etc. The entries right from the year 1962 onward depict caste entry as "Thakar". Perusal of the reasoning adopted by the Committee shows

that the document of 1951 regarding Census record has been discarded giving reason that the entries of "Thakar" are made with different ink and handwriting.

Pertinently, there is no specific observation regarding manipulation of documents.

7. The second set of documents is regarding the School Record right from the year 1962 in respect of cousin grandfather Ganga Baburao Thakar, Cousin aunt – Rukhmini Savitra Pawar and so on. There is no dispute as regards the relationship of the petitioners with the aforesaid blood relations. The Committee discarded the said evidence only for the reason that the documents are post-presidential order. The Committee observed that the entries in respect of some other persons from village of petitioners who are alleged to be from the same community, depict the entry of their caste as "Maratha". Even the surnames of such persons do not pertain to "Thakar" caste. Pertinently, there is nothing on record to indicate that the persons with contra entries are blood relatives of the petitioners. The observation of committee in this regard appears nothing more than surmise. We do not find any reason to discard the evidence in the nature of entries of 1951 in the Census record depicting the caste of the petitioner's grandfather and other blood relations. The oldest entry of Ganga Babu Thakar in the school is dated 7.8.1962. Thereafter, there are school record entries relating to cousin aunt Rukhmini Savitra Pawar dated 24.6.1966. If this record is taken into account alongwith Census entries of 1951, there is no reason to discard the claim of the petitioner as belongs to "Thakar" Scheduled Tribe.

8. The Committee observed that the adverse remarks in second report of the Vigilance Cell dated 25.11.2021 are controverted by the petitioners through their reply dated 29.11.2021. Admittedly, Committee had procured the First Vigilance Cell Inquiry Report dated 1.12.2015. The remarks in first report accepts the information furnished by the petitioners' father in respect of traits and characteristics of the community. The Research Officer also approved said information to be consistent with the Thakar Scheduled Tribe. However, it could not be gathered from the record as to why the Committee requisitioned the second Vigilance enquiry. Apparently, no reasons are recorded for calling the second report from the Vigilance Cell. Surprisingly, the findings recorded in earlier report have been reversed in the second report. Although there is no prohibition to obtain subsequent vigilance report, however before doing so it is fairly expected from the quasi-judicial authority like the Committee to at least record brief reasons for its dissent with the earlier report. The scheme under Rule 12, particularly, sub-clause (7) and (8) would depict that once the vigilance cell report is favourable, the Committee shall normally rely upon the same and issue validity certificates. However, when the remarks are adverse to the applicant, the report needs to be served upon him calling his explanation against such remarks. In the present case, earlier report dated 1.12.2015 was never served upon the petitioner. The petitioners could obtain the same only through an application tendered under the Right to Information Act, 2005. Such modus adopted by the committee cannot be justified.

9. The Committee has given one more reason for invalidation of the caste claim that the place of the petitioners' residence is beyond the scheduled area of Thakar Scheduled Tribe. Pertinently, the area restriction has been removed by the amendment of 1976. The issue is no more res-integra in view of the decision of the Supreme Court in the matter of Jaywant Dilip Pawar vs. State of Maharashtra (Civil Appeal No. 2336 of 2011 decided on 8.3.2017) as well the judgment of the Division Bench of this Court in the matter of Sanjivkumar Wanhkede vs. State of Maharashtra reported in 2019(5) Bom.C.R. 355.

10. This Court referred to the observations in the earlier judgment in the case of Motilal Namdeo Pawar Vs. Scheduled Tribe Certificate Scrutiny Committee dated 22.12.2017 to observe that the Committee's observation regarding original area of the concerned tribe are unacceptable in view of the removal of area restrictions. The reasoning of the Committee in this regard is fallacious. It is not expected that the person belonging to a particular tribe would continue to remain in the original area in view of the advent of technology and science so also avenues of transport. Therefore third reason given by the Committee can not be sustained in law.

11. So far as the adverse remarks pertaining to affinity test is concerned, the Supreme Court of India in the matter of Anand Katole vs. Committee for Scrutiny and Verification reported in 2011(6) Mh. L.J. (SC) 191 observed that the documentary evidence has greater probative value. However, while applying the affinity test, a cautious approach has to be adopted. A few decades ago, when tribes were immune to cultural development, the affinity test could serve as a determinant factor. However, with modernization, migration and contact with other communities, new traits are adopted by the scheduled tribes, which need not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as Litmus test to establish link of the applicant with the scheduled tribe.

In view of the aforesaid observations, adverse remarks in the second vigilance cell report can be ignored.

12. We are, therefore, convinced that considering the entries of the year 1951 in the Census record, particularly, in respect of Bala Babu – cousin uncle of the petitioners and cousin aunts as well as school records of blood relations right from the year 1962, particularly, in relation to Ganga Babu Thakar (i.e. cousin grandfather dated 7.8.1962) and further entries, we have no hesitation to hold that the petitioners have established their claim to be belonging to Thakar Scheduled Tribe and further hold that the decision of the Committee is unsustainable. Hence, we pass the following order :-

ORDER

[i] Writ petition is allowed;

[ii] The impugned order passed by the Respondent No.2 Scrutiny Committee

dated 1.12.2021 invalidating the Tribe Claim of the petitioners is hereby quashed and set aside;

[iii] The respondent No.2 shall issue the Certificate of Validity in favour of the petitioners to be belonging to "Thakar" Scheduled Tribe within a period of three months from the date of receipt of this order.

[iv] Rule made absolute in above terms with no orders as to costs.