

(2013) 03 SC CK 0029

In the Supreme Court Of India

Case No : Special Leave Petition (Civil) No. 3910 of 2008

Pournima Suryakant Pawar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : (2013) 3 ABR 422 : (2013) 6 AD 22 : AIR 2013 SC 1508 : (2013) AIRSCW 1829 : (2013) 4 AWC 3779 : (2013) 3 BomCR 572 : (2013) 2 JLJR 90 : (2013) 3 JT 591 : (2013) 4 MhLj 33 : (2013) 2 PLJR 242 : (2013) 120 RD 543 : (2013) 3 SCALE 281 : (2013) 3 SCC 690 : (2

Hon'ble Judges : Surinder Singh Nijjar, J;M. Yusuf Eqbal, J

Bench : Division Bench

Advocate : Naresh Kumar, Sudhanshu S. Choundhari and Asha Gopalan Nair, for the Appellant;

Final Decision : Allowed

Judgement

1. Delay condoned in SLP (C) No. 11376/2010.
2. Both the petitions are filed by two cousin (sisters) against the decision of the Scheduled Tribe Certificate Scrutiny Committee, Pune Region, Pune, (for short "Scrutiny Committee") in Case No. ICSC/MPSC/Pune-01/2006 decided on 30th July, 2007 and in Case No. TCSC/SER/PUNE/19/2006 decided on 26th March, 2009, whereby the claim of the Petitioners belonging to 'Thakar, Scheduled Tribe' was rejected. Both the Petitioners moved the High Court of Judicature at Bombay by way of separate writ petitions being Writ Petition No. 6674 of 2007 and Writ Petition No. 5231 of 2009, which were dismissed by orders, dated 8th January, 2008 and 4th November, 2009 respectively. Both the Petitioners are relying on common facts in support of their claim. They are also relying on the Certificate issued to Dilip Pandurang Pawar, recognizing his caste to be "Thakar Scheduled Tribe". For the purposes of this order, we shall make a reference to the facts as pleaded by the Petitioner in Writ Petition No. 6674 of 2007.

3. A perusal of the order passed by the Scrutiny Committee in the case of the Petitioner in Writ Petition No. 6674 of 2007 would show that she had relied upon the following documents in support of her claim:

I. Original and attested copy of caste certificate in respect of applicant showing caste as Hindu Thakar, Scheduled Tribe bearing No. 030405248, dated 11.7.2003 issued by the Deputy Collector, (C.F.C. Pune)

II. Attested copy of school leaving certificate in respect of applicant wherein caste is shown as Hindu Thakar and date of admission 02.06.88.

III. Attested copy of high school leaving certificate in respect of applicant wherein caste is shown as Hindu Thakar and date of admission 12.06.95.

IV. Attested copy of school admission abstract in respect of Laxman Tukaram Thakar (applicant's grandfather) wherein caste is shown as Thakar and date of admission is not recorded.

V. Attested copy of school leaving certificate in respect of Sakharam Tukaram Thakar (applicant's cousin grandfather) wherein caste is shown as Thakar and date of admission 23.08.23.

VI. Attested copy of caste certificate showing caste as Hindu Thakar, Scheduled Tribe and attested copy of validity certificate issued by the Scrutiny Committee, Pune vide No. TRI/TCSC/Pune-1/2001/2998, dated 19.07.2002 in respect of Dilip Pandurang Pawar (applicant's uncle). Also the original affidavit sworn by Dilip Pandurang Pawar showing the relationship with the applicant.

VII. Attested copy of death certificate in respect of Rama Pipalu Thakar (applicant's great grandfather) wherein caste is shown as Thakar and date of death is 10.12.22.

VIII. Attested copy of death certificate in respect of Bakula Kom Tukaram Thakar (applicant's great grandmother) wherein caste is shown as Thakar and date of death is 21.10.18.

IX. Attested copy of death certificate in respect of Banu Kom Tukaram Thakar (applicant's great grandmother) wherein caste is shown as Thakar and date of death is 15.04.39.

X. Attested copy of death certificate in respect of Chandri Bap Tukaram Thakar (applicant's father's aunt) wherein caste is shown as Thakar and date of death is 10.11.17.

XI. Attested copy of death certificate in respect of Parvati Bap Tukaram Thakar (applicant's father's aunt) wherein caste is shown as Thakar and date of death is 22.11.22.

XII. Attested copy of birth certificate showing that one female child is born to Tukaram Rama Thakar (applicant's grandfather) wherein caste is shown as Thakar and date of birth is 19.11.23.

XIII. Unattested copy of death certificate in respect of Babaji Bin Ramu Thakar (applicant's relative wherein caste is shown as Thakar and date of death is 04.10.12.

XIV. Unattested copy of birth certificate in respect of Shevanti Tukaram Thakar (applicant's father's aunt) wherein caste is shown as Thakar and date of birth is 11.04.33.

4. The Vigilance Cell conducted separate enquiries into the claim made by both the Petitioners. During the course of enquiry, statement of Suryakant Pandurang Pawar (Petitioner's father) in Writ Petition No. 6674 of 2007, was recorded on 31st January, 2007, in which he stated that:

Kuidaivat is Palicha Khandoba, Jejuricha Khandoba and Rekaidevi. From our family one person use to go to sing Banya once in every year at Khandoba of Pali. My mother knows to sing 'Banya' in various occasions. The surnames in our community are Toraskar, Gavali, Gaikwad, Pawar, Shinde, Savant, Bhosale, Londhe, Salunke, Kadam, Chavan etc. The main festivals of our community are Divali, Dasara, Gauri Ganpati, Holi, Akshaytrutiya, Gudhipadava, etc. There is no dowry system in our community. The marriages in our community are performed by the Bramhins. I am unaware about Umbarya-Umbari, Pitarya-Pitari, Avanj, Padekhot, Phadki etc. customs of our community. In our community, the cow's milk is extracted and we drink it.

5. The Vigilance Cell also examined the school admission general register issued by the Head Master, Z.P. Primary School, Kudal, Taluka Javali, District Satara, the abstract of which reveals the following information:

6. In order to comply with the rules of natural justice, a copy of the aforesaid vigilance enquiry report was served on the applicant-Petitioner and she was asked to submit her response to the same. The Petitioner was also called for personal hearing on 6th March, 2007. The Petitioner appeared before the Scrutiny Committee on 20th March, 2007. In her response, she stated that:

b) The name of the great grandfather has been reflected three times and his caste has been mentioned as Bhat. In old records people were identified by the name of their caste and it was surname which is used to be written as caste. Therefore caste of the great grandfather came to be entered as Thakar. However, inadvertently the caste is recorded as 'Bhat'. Save and except this is plated (sic) entry specific of my grandfather namely Laxman Tukaram Thakar mentions his caste as Thakar.

7. Although first part of the last sentence does not make sense, we presume that she has asserted that 'Bhat' has been wrongly stated to be caste of her grandfather. In its order dated 30th July, 2007, the Scrutiny Committee also noticed in Paragraph 5 as follows:

5. At the time of personal hearing, the applicant has filled in 'Sunavani Patrika' and given following information about traits, characteristics, customs and

traditions of her community:

- a) Traditional deity of their community is 'Waghdev'
- b) Kuldaivat of their family is 'Pimpreshwar, Wakadeshwar'
- c) Main festivals of their community are 'Dasara' Holi, Divali.
- d) Jat Panchayat of their community is "Padakhot, Jamatganga/Panchayat"
- e) Traditional dance of their community is "Kambad Nach, Dhol Nach, Dhamadi Nach, Gauri Nach, Bhondala Nach.'

8. Upon examination of the entire material on record, the Scrutiny Committee, in both the matters, rejected the claim of the Petitioners.

9. Mr. Sudhanshu S. Choudhari, learned Counsel for the Petitioners submitted that the Scrutiny Committee was not justified in ignoring the voluminous record produced by the Petitioners, which pertained to the pre-constitution period showing that the Petitioners belonged to 'Thakar Scheduled Tribe'. He submitted that as the Committee was not headed by a Judicial Officer, the High Court ought to have scrutinized the orders of the Scrutiny Committee with care and caution. The High Court was not justified in ignoring the crucial issue that the same Scrutiny Committee had verified the cast claim of Dilip Pandurang Pawar, the paternal uncle of the Petitioners, in both the matters. The Scrutiny Committee without any justification discarded all the documentary evidence produced by the Petitioners on the ground that the oldest record i.e. school record of Shri Tukaram Thakar, great grandfather of the Petitioners dated 1st August, 1890 recorded his caste as 'Bhat'. The decision rendered by the Committee in both the cases, being arbitrary, was liable to be set aside.

10. Ms. Asha Gopalan Nair, learned Counsel appearing for the Respondents, had pointed out that the Scrutiny Committee, after considering all the documents, decided the claim of the Petitioners. She has made reference to the report of the Vigilance Officer, which indicated that from 1st August, 1890 to 27th June, 1941, the caste of the Petitioners' relatives from paternal side, is clearly recorded as 'Bhat', 'Marathe', 'Thakar', 'Hindu Maratha' and 'Hindu Marathe'. She further pointed out that the Committee has observed the discrepancy in the information submitted by the applicant and the applicant's father in W.P. No. 6674 of 2007 on different days and different places. The statement made by the father was recorded without any forewarning, is spontaneous. It has been correctly accepted by the Scrutiny Committee to be reliable. The Scrutiny Committee also noticed that, on the other hand, the information given by the applicant, at the time of hearing was made upon notice and after careful thought. The Scrutiny Committee has, therefore, observed that it has been made, by making a reference to some literature, only with an intention to grab the benefits and concessions available to Scheduled Tribes.

11. We have given careful thought to the submissions of the learned Counsel.

12. Before we proceed further, it would be appropriate to notice the observations made by this Court in *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, which are as follows:

15. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.

13. Keeping in view the ratio above, let us now examine the fact situation in the present matters. As noticed earlier, the Scrutiny Committee, in both the cases, has noticed that number of documents from 1890 to 1941 showing that the family members of the Petitioners did not belong to the 'Thakar Scheduled Tribe', their caste being variously indicated as 'Bhat', 'Marathe', 'Thakar' and 'Hindu Marathe', were deliberately withheld by the Petitioners at the time of making the application before the caste Scrutiny Committee. The Scrutiny Committee also noticed that the Petitioners failed in the affinity test as the information supplied by them was at variance with the information given by Suryakant Pandurang Pawar, father of the applicant, in Writ Petition No. 6674 of 2007. On a careful analysis of the entire material, the Scrutiny Committee has concluded that the certificate issued in favour of Dilip Pandurang Pawar would be of no assistance to the Petitioners as the documents discovered by the Vigilance Cell relating to local school register from 1st August, 1890 to 27th June, 1941 clearly proved that the caste of the family members and predecessors of the Petitioners was recorded as 'Bhat', 'Thakar', 'Marathe' and 'Hindu Marathe'.

14. Upon examination of the reasons given by the Scrutiny Committee in both the matters, we are unable to accept the submissions made by Mr. Sudhanshu Choudhari that the High Court has committed any error in affirming the decision rendered by the Scrutiny Committee in both the matters. In fact, the decision rendered by the High Court would fall squarely within the ratio laid down by this Court in the case of *Kumari Madhuri Patel (supra)*. The conclusions recorded by the Scrutiny Committee are reasonable and fully supported by the material placed on record. Therefore, the conclusions reached by the Scrutiny Committee, and affirmed by the High Court cannot be said to be either perverse or based on no evidence.

15. In view of the above, we find no merit in both the Special Leave Petitions. Accordingly, both the special leave petitions are dismissed.