
(2019) 10 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 4806 Of 2015

Pramila Vishram Thakar And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 342

Citation : (2019) 10 BOM CK 0010

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

Bench : Division Bench

Advocate : R.K. Mendadkar, M.M. Pabale

Final Decision : Dismissed

Judgement

Bharati Dangre, J

1. Rule. Rule returnable forthwith. Heard finally by consent of the parties.
2. The three sisters who have approached this Court, take exception to the common order dated 23rd March 2015 passed by the Respondent No.2 Committee invalidating the caste certificate of the petitioners belonging to 'Thakar' Scheduled Tribe and the grievance of the petitioners is that the Committee has failed to take into consideration the factors indicated by this Court on remand of the matter when in the earlier round, the claim of the petitioners was rejected and they had approached this court.
3. The petitioners claim to be belonging to Thakar, which is recognized as a Scheduled Tribe in terms of the Constitution (Scheduled Tribe's Order 1950) as amended by the Amendment Act of 1976. They are in possession of caste certificates issued by the Competent Authority declaring them to be belonging to Hindu Thakar (44) Tribe which is recognized as Scheduled Tribe. It also declare that they are residents of village Konalkatta of Sindhudurg district of State of Maharashtra. The petitioners are in the employment of Respondent No.3 and Respondent No.5 and since their appointment was on a seat reserved for

Scheduled Tribe, their claims were made by the respective employer to the Scrutiny Committee.

4. In support of their claim, the petitioners have relied upon individual documents and also common set of documents in relation to their ancestors. Apart from relying on the individual School Leaving Certificates, the School Leaving Certificates of their father - Thakar Vishram Shankar issued by the Head Master, New English School Bhedshi, Taluka Sawantwadi, District Sindhudurg, where the caste is recorded as Hindu Thakar and the date of admission is 10th June 1968 was placed on record by all the three applicants. A caste certificate of the petitioners' father dated 2nd October 1980 record the caste as 'Thakar'. An attested copy of School Leaving Certificate in respect of applicant's grand father Shankar Dhondu Thakar issued by Head Master, School Konalkatta, where the date of admission is recorded as 8th February 1927 and caste is recorded as Hindu Thakar is relied upon by all the applicants in support of their claim.

After the claim was made over to the Committee, a reference was made to the Vigilance Cell inquiry and copy of the said report was furnished to the petitioner Pramila. The oldest document of the grand-father of the petitioners i.e. Shankar Dhondu Thakar was obtained by the Vigilance Cell and the report record that the caste column of the said document record the caste as 'Hindu Thakar'. The Police Inspector attached to the Vigilance Cell record a finding that the school entry register of the grand father, father, uncle by name Namdeo Shankar Thakar, Ashok Shankar Thakar, record the caste as 'Hindu Thakar'. The Research Officer make a note that the traits, characteristics, customs, traditional occupation and dance as well as surnames and relatives of the applicant and their family do not match with that of Thakar Scheduled Tribe community.

5. By an affidavit filed on 7th October 2018, the petitioners have placed on record the validity certificate issued in favour of the real uncle of the petitioners Pratap Shankar Thakar which is issued by the respondent no.3 Committee on 11th September 2018. Applying the decision in Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1, 2010(6) Mh.L.J, 401, the petitioners therefore claim that they are also entitled for a status of Scheduled Tribe being conferred on them in light of their blood relationship to Pratap Shankar Thakar being established by the genealogy tree placed before the Committee on record.

6. The Committee referred to the documentary evidence relied on the petitioners, made an exhaustive reference to the place of residence of the petitioners and also ventured into ascertaining the affinity of the petitioners towards the Thakar, a Scheduled Tribe. As regards the place of residence, the Committee highlighted in great detail the history/background of the Thakars of Sindhudurg district of which the applicant is a Member and it then makes a reference to The Constitution (Scheduled Tribes) Order 1950 which included only Thakur community initially. It then made a reference to the Amendment Order 1956 by which the Thakur or Thakar including Ka Thakur, Ka Thakar, Ma Thakur,

Ma Thakar were included in the Scheduled Tribe Order by imposing area restriction and extending the recognition of the said community in 25 Tahsils of 5 districts of Maharashtra. The Committee also make a reference to the Scheduled Caste and Scheduled Tribe (Amendment Act 1976). After removal of area restriction and accepts that at entry no.44, Thakur, Thakar, Ka-Thakur, Ka-Thakar, Ma-Thakur and Ma-Thakar are mentioned and the list was made applicable to the whole State of Maharashtra. However, the Committee then makes a reference to a Government Resolution dated 21st November 1961 when the Thakar community was included in the list of Nomadic Tribes at Entry 22 which came to be deleted by a subsequent resolution dated 2nd June 2004. This is taken as a basis for determination of the claim of the petitioners and the Committee records that Thakar community from Sindhudurg district was covered in the list of Nomadic Tribe till the year 2004 and not into Scheduled Tribes as this particular group of Thakars in Sindhudurg district were not included in the list of Scheduled Tribes of Maharashtra by any parliamentary enactment. The Committee has then reasoned the rejection of the claim of the petitioners on the ground that in the State of Maharashtra, Thakurs are in the Scheduled Tribe, Thakars are in Nomadic Tribes and and Thakurs are found to be in OBC category and most crucially after removal of Thakar from Nomadic Tribe and OBC, now those Thakars are to be treated as open category and cannot take recourse to mere nomenclature as 'Thakar'. The Committee also do not agree on the point of affinity and after reproducing certain portions from the judgment of the Apex Court and after quoting paragraphs and paragraphs therefrom, it includes that the act of taking benefit of the nomenclature of Thakars is a wholesale fraud of the facilities and concessions meant for genuine Scheduled Tribes in the State of Maharashtra. Without commenting and individually dealing with the claim of the petitioners, with this observation of wholesale fraud , the committee proceeds to invalidate the claim of the petitioners by the impugned order.

7. The Committee, in its order include an exhaustive write up on the Thakur community which it colated from the various books including Re-EnThoven "Tribes and Caste of Bombay" Scheduled Tribes by K.S. Singh, two Marathi books and also Encyclopedic profile of Indian Tribes. It also makes reference to the Gazetteer of India, Maharashtra State, Thane district.

8. The Committee cursorily refer to the documents and in regard to the pre-constitutional documents of the year 1927, it admits that it is an oldest document having caste entry as 'Thakar' but it observes that mere mention of the name Thakur against the caste column in any public document cannot be the sole basis to declare that the person belongs to the said Tribe since as regards the Thakur caste is concerned, there are Kshatriyas, Rajputs, Sindhs, Marathas, Brahmins i.e. High Class Thakurs and these were the non-tribal communities and unless the petitioners establish ethnic linkage and affinity test to prove that he belongs to Thakur Tribe, the certificate cannot be validated. This is how the Committee has dealt with a pre-constitutional document.

9. It is not in dispute that the Committee which is entrusted with the task of scrutinizing the claims are required to identify the genuine Tribes on thorough examination of the document submitted in support of the claim and apply the affinity test, in particular, in relation to Tribes, which would include the anthropological and ethnological traits. There can be no absolute rule which can be led to be followed by the Committee in ascertaining the genuineness of a claim brought before it. The Committees are expected to adopt and approach to identify the spurious claims and the undeserving claimants who are desirous of availing the benefits by projecting themselves as belonging to a particular Tribe. The Committee is therefore comprised of the Research Officer who are expected to be well versed in the traits peculiar to a Tribe and who possess intimate knowledge in identifying the tribal community or group of tribes or tribal communities. The Research Officer associated with the Committee is not merely expected to match the traits but is expected to investigate the communities social status claim by collecting information from his place of origin, even though a particular claimant has migrated from his ordinary place of residence.

10. Perusal of the order of the Committee reflect that it has failed to apply any of the aforesaid parameters and merely on the ground that in case of Thakur/Thakar Tribe, there are non-tribal Thakurs who belong to forward caste, the oldest document in favour of the petitioners where the caste is recorded as Hindu Thakar as early as in the year 1927 has been ignored. The Committee has failed to consider the probative value attached to a pre-constitutional document, recording the caste 'Thakar' prior to the issuance of the Scheduled Tribe Order, 1950 when the ancestors of the petitioners were not posterous that after the Constitution comes into force, the people belonging to Thakar community would be conferred with the status of Scheduled Tribe. The entry found in the school record of the grand-father of the petitioners came to be recorded in its natural way and that it why it has great probative value. Presumptive on this count, the non-consideration of the relevant document by the Scrutiny Committee reduces the order of the Committee to a perversity and calls for an interference in exercise of our writ jurisdiction.

11. The subsequent developments of issuance of a validity certificate in favour of the real cousin of the petitioner is another point in favour of the petitioner since in light of the decision of this Court in case of Apoorva d/o Vinay Nichale (supra) when a validity is granted in favour of a near blood relation, the Committees are not justified in rejecting the claim of the claimant in absence of any fraud being alleged. The Committee has erred in rejecting the claim of the petitioners only on the ground that though it is established that he belongs to 'Thakar', caste, he is not a Thakar Scheduled Tribe. By this time, through the authoritative pronouncements from the Apex Court as well as this Court, it is well settled that it is not permissible to interpret an entry in the Scheduled Caste/Scheduled Tribe order and it is neither permissible for the Committees or the Courts to read it in any different fashion than as what is spelt in the presidential order. The documents filed by the petitioners clearly establish that her forefathers had the

caste recorded as 'Hindu Thakar' and the Committee has accepted the explanation offered during the course of Vigilance Inquiry of the brother of the petitioners. The area restriction being done away by the Act of 1976 and the entry at Sr.No.44 of the Scheduled Tribe Order 1950 includes Thakar, irrespective of the area where the community was traced to, we find no justification for the Committee to deny the benefits of being belonging to the said tribe. As far as affinity is concerned, in light of the judgment of the Apex Court in case of Anant Katole Vs. Committee for Scrutiny & Verification of Tribe Claims, 2012 (1) SCC 113, the affinity test cannot be accepted as a litmus test and it would be appropriate to make reference to the following observations of the Apex Court :

22 (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."

The Committee has also faltered in applying the 'Area Restriction' to the claim of the petitioners on the ground that they are from Sindhudurg district which is not an area where the said Tribe was originally traced to. The respondent Committee in all the orders passed by it in relation to Thakur/Thakar Scheduled Tribe has presented the area restriction as an impediment and considered it to be a ground for rejection of the claim. Apart from the catena of judgments from this Court, the Apex Court in case of Jaywant Dilip Pawar Vs. State of Maharashtra, 2018(5) All.M.R. 975 has put to rest the cloud in regards to the area restriction and has held that the claim of Thakar/Thakur Scheduled Tribe cannot be rejected only on the ground of area restriction. What flows from Article 342 of the Constitution is the status conferred on certain Tribe or Tribal communities, specified by the President in consultation with the Governor of a State who are deemed to be Scheduled Tribes in relation to that State. Once such Tribe or group of Tribes is enlisted in the Scheduled Tribes Order, the said particular Tribe or group of Tribes is deemed to be Scheduled Tribe for the entire State and it is only the Parliament which is empowered to include or exclude from the list of Scheduled Tribes. It is not permissible for the Court and surely not the Committees to interpret as to whether any community which finds place in the Scheduled Tribe Order is entitled to be placed in the said list. Once Thakur/Thakar community gets an entry in the

Scheduled Tribe Order at Entry No.44, it is not open for the Committees to declare that the claimant belongs to Thakar caste but he is not that Thakar, a Scheduled Tribe. This scope of interpreting an entry do not vest in the Committee and an entry in the Scheduled Tribe Order has to be read as it is with no scope of interpretation.

12. The Committee has thus grossly erred in rejecting the claim of the petitioners and the order passed by the Committee, therefore, cannot be sustained in law in light of the authoritative pronouncements and also on the ground that the order suffers from perversity, the impugned order dated 23rd March 2015 is quashed and set aside. It is hereby declared that the petitioners belong to Thakar Scheduled Tribe (Sr.No.44) of The Constitution (Scheduled Tribes) Order 1950 and are entitled for the benefits flowing from the said status being conferred on them.

Writ Petition is made absolute in the aforesaid terms.