

(2018) 08 BOM CK 0103
In the Bombay High Court
Case No : Writ Petition No. 8981 OF 2018

Sachin Subhash Thakur

APPELLANT

Vs

State Of Maharashtra Through Its Secretary And Ors.

RESPONDENT

Date of Decision : 10-08-2018

Acts Referred:

Constitution Of India, 1950 — Article 15(4)

Citation : (2018) 08 BOM CK 0103

Hon'ble Judges : S.C. DHARMADHIKARI, J; BHARATI H.DANGRE, J

Bench : Division Bench

Advocate : R.K. Mendadkar, V.P. Mal

Judgement

BHARATI H. DANGRE, J

1 The short ground on which the present Writ Petition filed by the petitioner, assailing the order dated 7th August 2018 passed by the Caste Scrutiny

Committee needs to be allowed, is abject perversity and non-application of mind on behalf of respondent no.2 Committee.

The petitioner who had appeared for the Common Entrance Test for Engineering/ Technology Admissions conducted in the year 2018 and aspiring to

secure a seat in one of the Institutes conducting MBA curriculum has approached this Court being aggrieved by rejection of his claim as belonging to

Thakur Scheduled Tribe. Pursuant to the participation in the CET, the petitioner has already been granted admission in the First Year of MBA Post

Graduate Degree Course during the Academic Year 2018-19 in the Pune Vidyarthi Griha's Institute of Management, Nashik i.e. respondent no.4.

2 The petitioner was granted a caste certificate certifying that he belongs to Thakur Scheduled Tribe. The said certificate was granted to him by the

Competent Authority on 28th May 2008. He was desirous of persuading his education and claiming the benefit of being Thakur " a Scheduled Tribe.

He approached the respondent no.2 Committee on 17th December 2009 for verification of his claim. In support of his claim, he submitted several documents including the documents of his forefathers, wherein the caste was recorded as Thakur. The petitioner also placed reliance on the caste validity certificate granted to his real cousin brother i.e. Vijay Suresh Thakur by the Caste Scrutiny Committee, Nashik.

3 The claim of the petitioner was taken up for scrutiny by the respondent no.2 Committee and it was forwarded to the Vigilance Cell for conduct of a detail school and home inquiry. The Vigilance Cell submitted its report to the Committee on 30th September 2010 and the petitioner was served with a show cause notice by the Committee on 3rd November 2014 which was replied to by the petitioner. However, since the claim of the petitioner was not decided, the petitioner was constrained to approach this Court by filing a writ petition. This Court issued a direction to the Committee to decide the claim of the petitioner before 8th August 2018 and that is how the Committee called the petitioner on 7th August 2018 for personal hearing and the matter was closed for orders. The Committee passed the impugned order thereby rejecting the claim of the petitioner as belonging to Thakur Scheduled Tribe by an order dated 7th August 2018.

4 The learned counsel Shri Mendadkar appearing for the petitioner would submit that the Committee in its usual stride has relied upon the irrelevant material and has completely ignored the relevant material produced on record by the petitioner. Shri Mendadkar would submit that the oldest document in favour of the grandfather of the petitioner recorded the caste entry as "Hindu Thakur". However, the Committee has completely ignored the said entry and has referred to the Khandesh Gazetteer of Bombay Presidency published in the year 1880 wherein it is recorded that apart from Thakur, a Tribe, there are other castes like the village Bhats who are also known as Thakur and are inhabitants of every village. Shri Mendadkar would submit that inspite of repetitive pronouncements by the Hon'ble Apex Court and this Court, on removal of Area restriction, the Scrutiny Committee had relied on the area issue to deny the claim to the

petitioners. Further, Shri Mendadkar would submit that the Committee has relied upon the 7/12 extract with respect to one Devidas Raghu

Thakur and Giridhar Raghu Thakur of Gut No.254 of Waghoda (Kh) Taluka Raver, District Jalgaon, and the Committee noted that there is no mention

of 'Tribal land' on the said extract and the mutation entries to that effect have not been brought on record. Shri Mendadkar would thus seek a

relief of quashing and setting aside the said impugned order and also makes a prayer for imposition of costs on the respondent committee.

5 We have heard learned Assistant Government Pleader Shri Mali who would support the impugned order passed by the Caste Scrutiny Committee.

Perusal of the impugned order would reveal that the petitioner had placed reliance on old documents which came to be verified by the Vigilance

Cell. The oldest of the documents, relied on by the petitioner is of one Girdhar Raghu Thakur, grandfather of the petitioner, which is a school

admission extract book and the date of this document is 1st February 1937. In the said document, the caste is recorded as 'Hindu Thakur'. As far

as the other documents on which the petitioner has placed reliance belong to his father and uncle are all post constitution extracts of school admission

book where the caste is recorded as 'Hindu Thakur' (backward). The Scrutiny Committee heavily relies on the entries of 'Hindu Thakur'

(backward) and 'Hindu Backward Thakur' recorded in the year 1960, 1964, 1968 and 1974 in the school record of the father and uncles of the

petitioner and the Committee concludes that the entries are consistently recorded as belonging to backward class. In the backdrop of these entries,

the Committee opines that the earlier entry of grandfather Girdhar Raghu Thakur recorded in the year 1937 is itself not conclusive and what is

consistent is recording of 'Hindu Thakur (Backward)'. In the backdrop of this observation, the Committee has concluded that the petitioner

has failed to prove his claim by way of documentary evidence.

The Committee also placed reliance on the Khandesh Gazetteer of Bombay Presidency, Vol.XII published in the year 1880, where the higher families

are shown to be titled as 'Thakur' and there is also a reference of village Bhats also known as Thakur being settled inhabitants of every village. The

Committee concludes that there was existence of Thakur in Khandesh and it was distinct from the Thakur Scheduled Tribe.

Thus, in the backdrop of this Gazetteer, the Committee has recorded a finding that though the applicant's grandfather's caste is recorded as Thakur

and this document is of preindependence period and undisputedly old one, the Committee, only on the basis of this entry cannot conclude without

testing their social, racial, ethnic relationship with the existing genuine Thakur Scheduled Tribe population of Maharashtra.Â The Committee also goes

to the extent of observing that Hindu Thakur (Backward) and Hindu Backward Thakur falls within â??Other Backward Classesâ? at Serial No.18 in

the reserved list of State of Maharashtra. On count of affinity test also, the Committee did not find favour with the claim of the petitioner.Â

6 As far as the validity certificate issued in favour of Vijay Suresh Thakur, a blood relative of the petitioner, the Committee has observed that in light

of the entries of the father and real uncle of the petitioner being recorded as Hindu Thakur (Backward) and Hindu Backward Thakur which falls

under

â??Other Backward Classesâ? at Serial No.18 in the reserved list of State of Maharashtra, the validity certificate in favour of Vijay needs to have a

reÂlook.Â The Committee therefore, has proceeded to issue show cause notice to Vijay Suresh Thakur who had been issued validity certificate by

the Nashik Committee, as to why his certificate should not be cancelled. With this observation, the Committee has rejected the claim of the petitioner

as belonging to Thakur, Scheduled Tribe.Â

7 The perusal of the impugned order leads to a irresistible conclusion being drawn by us that the Committee is either not aware of the legal position

holding the field, or is feigning ignorance of the said legal position.Â In case of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims &

orsÂ the Hon'ble Apex Court has clearly ruled that the affinity test is not to be applied as a litmus test and equal importance has to be adhered to the

preÂconstitutional entries where the caste is clearly reflected.Â The petitioner has placed on record a document in form of school admission book of

his grandfather and the date of this document is 1st February 1937.Â In the said document, the caste of the grandfather of the petitioner Girdhar

Raghu Thakur is recorded as â??Hindu Thakurâ?.Â The Committee does not express any doubt about the existence of this document and through

the Vigilance Cell inquiry also, the said entry is not doubted by the Committee.

The said document where the caste is recorded as 'Hindu Thakur' is of a preconstitution era and when the entry of the grandfather of the petitioner came to be recorded, probably by his father, he did not contemplate that Thakur would be included in the Scheduled Tribe order and people from this Tribe would be entitled for availing certain benefits. The entry of Caste as 'Hindu Thakur' came to be recorded in its natural course and, therefore, it has to be taken as one with great probative value. The Committee expresses no doubt about this entry, but according to the Committee, it loses its significance in light of the subsequent entries in favour of the father and uncles of the petitioner being recorded as Hindu Thakur (Backward) and Hindu Backward Thakur. There is no caste as 'Hindu Thakur (backward)' neither there is any caste/tribe like 'Hindu Backward Thakur'. It is the Thakur community as a tribe which came to be recognized as the Scheduled Tribe in the year 1950. The backwardness is the characteristic of this tribe so as to find its inclusion in the Scheduled Tribe order, to confer certain benefits upon the said tribe in terms of Article 15(4) of the Constitution. In several matters, our attention was invited to the circulars issued by the State Government wherein directives were issued to mention whether, a person was backward or not, instead of mentioning the caste. It is quite possible that the entries have been recorded as 'Backward' in the backdrop of the said circular since these entries are of the year 1960 onwards.

In any contingency, the word 'backward' is not the determining factor and it is not the description of caste/tribe, but it is an expression which finds place in Article 15(4). The reasoning adopted by the Committee that these entries recorded in the school admission extract of the father and uncle of the petitioner wipes out the entry in favour of the grandfather is a completely misconceived reasoning adopted by the Committee. Once the caste/tribe finds place in Schedule Caste/Scheduled Tribe order, then it is not permissible to interpret such entries and to find out whether the Tribe placed in the Schedule Tribe order by way of Presidential Notification are backward or not. There is no scope of such inquiry being conducted either by this Court or by the Scrutiny Committee and the entries introduced by way of Presidential Notification have to be read as it is. In this backdrop, the entry of the grandfather of the petitioner recorded as 'Hindu

Thakurâ? on 1st February 1937, ought to have been given due weightage and since no doubt is expressed about this entry, there was no reason for the Committee to discard the said entry.

8 The Committee has not cited any other reason apart from the affinity test and the reliance on the documentary evidence to reject the claim of the petitioner. Reliance on the gazetteer published in the year 1880 and the government circulars is also of no assistance to the Committee once it is found that caste Thakur is listed as a Scheduled Tribe at Serial No.44 in the list of Scheduled Tribes enlisted in State of Maharashtra.Â The oldest document relied upon by the petitioner is credible and trustworthy of evidence and the Committee has completely erred in discarding it so casually.Â

9 As a result of the above discussion, we pass the following order :

(i) The impugned order dated 7th August 2018 passed by the Scrutiny Committee is quashed and set aside.

(ii) The certificate of validity shall be issued to the petitioner certifying him as belonging to Thakur Scheduled Tribe listed at Sr.No.44 of the Second

Schedule of Part IXÂMaharashtra of the Scheduled CasteÂScheduled Tribe Orders (Amendment) Act, 1976.Â The certificate of validity shall be

issued on or before 16th August 2018.

(iii) In the event the petitioner is otherwise found to be eligible for admission or admitted to the MBA Post Graduate Degree Course for the academic

year 2018Â?19, then, based on our order passed in this writ petition, the admission be treated as confirmed.

(iv) However, we clarify that our order and direction shall not be construed as a bar or impediment for the Scrutiny Committee to reÂopen the case of

Shri. Vijay Suresh Thakur, who has been issued a certificate of validity earlier, but a show cause notice dated 2nd August 2018 has been issued to

him.

The learned AGP to communicate this order to the concerned competent authority/Commissioner (CET Cell) forthwith.