

(2023) 12 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 6906 Of 2021

Shubham

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 01-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis),
Nomadic Tribes, Other Backward Classes And Special Backward Category (Regulation
Of Issuance And Verification Of) Caste Certificate Act, 2000 — Section 10, 11

Citation : (2023) 12 BOM CK 0010

Hon'ble Judges : Mangesh S. Patil, J; Neeraj P. Dhote, J

Bench : Division Bench

Advocate : Sushant C. Yeramwar, A. S. Shinde

Final Decision : Dismissed

Judgement

Neeraj P. Dhote, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at the stage of admission. Perused the papers.

2. The Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India for assailing the order dated 22.04.2021 passed by Respondent No. 2 – Scrutiny Committee invalidating his claim of 'Thakur' Scheduled Tribe. The Petitioner is the student pursuing B.E. (Electrical) course in the Respondent No. 3 – Institution. The Petitioner was issued with the caste certificate of belonging to the 'Thakur' Scheduled Tribe by the competent authority. For the education purpose, the tribe claim of the Petitioner was referred for verification to the Respondent No. 2 – Scrutiny Committee. The tribe claim of the Petitioner was duly processed by the Scrutiny Committee and by the impugned order, it invalidated the same and cancelled the Tribe Certificate and directed action under the provisions of Section 10 and 11 of the the Maharashtra

Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 [hereinafter referred to as "Said Act of 2000"].

3. It is submitted by the learned advocate for the Petitioner that though there is an entry of the year 1917 in respect of blood relation of the Petitioner showing the caste as 'Thakur', the Respondent No. 2 – Scrutiny Committee considered the contra entries of the year 1922 and 1924 in respect of the persons who are not related to the Petitioner by blood. He further submitted that, though all the documents in respect of the blood relation of the Petitioner submitted by him during verification were having the caste entry as 'Thakur' Scheduled Tribe, still the Scrutiny Committee discarded the same and invalidated the claim. It is further submitted that the reference to the rejection of validity of Monika and Chetan, who are shown to be the relatives of the petitioner, is misplaced as Monika and Chetan are not at all relatives of the Petitioner. It is submitted that the impugned order is illegal and same be quashed and set aside and the Respondent No. 2 be directed to issue the validity certificate in favour of the Petitioner of 'Thakur' Scheduled Tribe.

4. The learned AGP submitted that during the inquiry into the tribe claim of the Petitioner, the vigilance inquiry was conducted in which the entries of 1922 and 1924 pertaining to the blood relatives of the Petitioner showing the caste as 'Bhat' and 'Thakur @ Bhat' were found and the same being oldest entries have more probative value. He submitted that the entry of the year 1917 relied upon by the Petitioner is not the entry towards the caste of the Petitioner's blood relative but it is the date of birth of the Petitioner's blood relative and, therefore, it is not of any assistance to the Petitioner. He further submitted that the genealogy prepared during the Petitioner's vigilance inquiry is signed by the Petitioner's father wherein the caste entry of the blood relations is shown as 'Bhat' and 'Thakur @ Bhat'. He submitted that the petition be dismissed as the Respondent No. 2 – Scrutiny Committee has rightly passed the order.

5. It is not disputed by either side that there is no validity in the blood relation of the Petitioner of 'Thakur' Scheduled Tribe. This is fortified by the Committee's observation in paragraph no. 10 (point no. 2, internal page no. 14 of the impugned order). We have perused the record of the Respondent No. 2 – Scrutiny Committee in respect of the Petitioner's tribe claim, which was made available by the learned AGP. The entry of the year 1917, which the Petitioner is relying heavily being of the pre-independence period, is nothing but of the date of birth as 16.03.1917 in respect of the cousin great grandfather of the Petitioner named Govind Kalu Thakur in which the caste is mentioned as 'Thakur'. The learned AGP is right in saying that it is not the date of entry of the caste/tribe in the record but the same is the date of birth. This being so, the said entry, which is the date of birth of Govind Kalu Thakur, is of no assistance to the Petitioner for his tribe claim.

6. From the impugned order it is clear, that the Committee has mainly relied upon the contra entries against the name Jamsing Ganpat Thakur and Byja Nharsing which are of September-1922 and August-1924, showing their caste as 'Bhat' and 'Thakur @ Bhat', respectively, which were collected by the Vigilance Cell during the school inquiry. Though the Petitioner has contended in the reply to the vigilance report and in the petition that the said two persons are not his relatives, the said contention appears to be afterthought for the reason that the said persons are named in the genealogy which is signed by the Petitioner's father. Though the Petitioner in the said reply to the vigilance report has stated that the vigilance officer has obtained the signature of his father by misleading him on the genealogy prepared during the inquiry, we find no merit in the same for the reason that it is nowhere the case that the Petitioner's father was an illiterate person and secondly that he had any reason to give false/incorrect genealogy during the vigilance inquiry.

7. It is needless to state that the entries of the year 1922 and 1924, which are of the pre-independence period, are having more probative value and the said entries are inconsistent with Petitioner's claim of 'Thakur' Scheduled Tribe. Under such circumstances, no fault can be found with the impugned order.

8. We need not say anything in respect of the other grounds on which the Petitioner's tribe claim has been invalidated i.e. area restriction and affinity, as the position under law is well settled in view of the judgment of the Hon'ble Apex Court in the case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra Ors. reported in 2023 SCC Online SC 326.

9. One of the prayers in the petition is that the respondent nos. 3 and 4, which are the institution where the petitioner is studying and the University to which the said institution is affiliated, be directed to return the original documents of the petitioner, such as leaving certificate, degree certificate etc. The annexures to the petition show that in Writ Petition No. 5719 of 2020 filed by the Petitioner for releasing mark-sheet, passing certificate and the degree certificate as the validation proceedings were pending, this Court has passed the following directions:

"6. The college shall not withhold the marks sheet of the petitioner only on the ground that validation proceeding is pending. The leaving certificate, passing certificate, degree certificate and all other documents may be retained by the college and university until the petitioner produce validity certificate. The respondents may take further course of action depending upon the judgment that would be delivered by the Committee in the validation proceeding. In case the claim of the petitioner is invalidated, naturally the petitioner will have to pay full fees of the college.

7. In the light of the above, the writ petition is disposed of. No costs."

10. As the tribe claim of the Petitioner has been invalidated by the Respondent No. 2 – Committee and no case is made out for interference by this Court in the

impugned order, the Petitioner is not entitled to the directions as prayed in paragraph no. C and D regarding return of the original documents in view of the proposed action recommended by the Respondent No. 2 – Scrutiny Committee pursuant to the provisions of the Said Act of 2000 which provides for withdrawal of benefits secured on the false Caste Certificate. It is needless to state that the relevant provisions of the Said Act of 2000 are considered by the Hon'ble Supreme Court of India in the case of Chairman and Managing Director, Food Corporation of India and others Versus Jagdish Balaram Bahira and others reported in (2017) 8 SCC 670.

11. In the backdrop of the above observations, the petition fails and is hereby dismissed. Rule is discharged.