

(2019) 08 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 8152 Of 2019

Snehal Dilip Gaikwad

APPELLANT

Vs

Scheduled Tribe Caste Certificate Verification Committee And
Ors

RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:

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 6(1)
Maharashtra Scheduled Tribes (Regulation Of Issuance And Verification Of) Certificate Rules, 2003 — Rule 8, 9(a), 11(2), 12, 12(8), 12(9)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 08 BOM CK 0016

Hon'ble Judges : S.C. Dharmadhikari, J;Sandeep K. Shinde, J

Bench : Division Bench

Advocate : S.G. Kudle, Ashwini A. Purav

Final Decision : Allowed

Judgement

Sandeep K. Shinde, J

1. Heard both sides.
2. Rule. Respondents waive service. By consent rule is made returnable forthwith.
3. The first respondent is the Scrutiny Committee, constituted in accordance with Section 6(1) of 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. The second respondent is the State Government through Department of Health and third respondent is the college, where petitioner is provisionally admitted to course of education in Bachelor of Dental Surgery (for short, "BDS").
4. The Scrutiny Committee, invalidated petitioner's claim, belonging to Thakar

(ST 44) Tribe, which is recognized as Scheduled Tribe, under The Constitution (Scheduled Tribes) Order 1950. It is against the order of the Respondent No. 1, this petition is preferred under Article 226 and 227 of the Constitution of India.

5. Petitioner in support of her claim submitted following documents for verification of her Scheduled Tribe Certificate through her father, as required under Rule 11(2) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003;

a) School Leaving Certificate of Janardan Gopal Gaikwad - her father's paternal uncle;

b) School Leaving Certificate of Vasant Gopalrao Gaikwad, her paternal grandfather;

c) Certificates of Validity issued by the Scheduled Tribe Certificate Scrutiny Committee, Pune, Division to :-

i) Arun Chandrakant Gaikwad

ii) Mangesh Arun Gaikwad

iii) Sanjay Suryakant Gaikwad

iv) Shrikant Mahadeo Gaikwad; certifying all belong to the Thakar Scheduled Tribe.

Petitioner's father Dilip Vasant Gaikwad filed genealogy tree of family, with affidavit sworn on 02.01.2018. Besides, Vigilance Cell has placed on record genealogy and verification report of school record of petitioner's blood relatives.

6. We have perused and gone through the original files and genealogy produced by the Vigilance Cell. It shows Ranganath was common ancestor. He had two sons; Gopalrao and Dattatray. Gopalrao had six sons, Shivaji, Janardan, Chandrakant, Mahadeo, Vasantrao and Suryakant. Petitioner's father is Dilip, son of Vasantrao.

7. Mr. Kudle, Learned counsel for the petitioner invited our attention to the School Leaving Certificate of Vasant Gopalrao Gaikwad, paternal grandfather of the petitioner and School Leaving Certificate of Janardan Gopal Gaikwad (paternal uncle of petitioner's father). Leaving Certificates show that paternal grandfather of the petitioner was born on 02.04.1937; admitted in the Ahilyabai Prashala Kumtha Naka, Solapur on 20.07.1942 and his religion/caste shown therein as 'Thakar'. The School Leaving Certificate of Janardan Gopal Gaikwad, shows that he belonged to 'Hindu Thakar';

he was admitted in the school of Jilha Parishad at Solapur in May, 1940 and he was born on 18.07.1923. Mr. Kudle submits, the School Leaving Certificates, being pre-constitutional document, has high probative value and as such committee could not have kept it out of consideration.

8. Mr. Kudle has invited our attention to paragraph nos. 7 and 13 of the impugned order, from where it appears that the Vigilance Cell produced the School/ Birth and Death entries of petitioner's relatives, on paternal side. Original records show about eleven documents of the said nature disclose the caste of petitioner's relatives as 'Maratha'; nine documents disclose caste of petitioner's relatives as 'Thakar'; one document as 'Marathi Thakar'; six documents as 'Hindu Thakar'; two documents as 'Hindu non B.C.' and one document as 'Hindu other backward'. We have also confirmed it from records.

9. The committee in paragraph no. 13 concluded that the school records of petitioner's relatives do not, unequivocally prove that petitioner is Thakar Scheduled Tribe. It is submitted by Mr. Kudle that even if some of the documents brought on record by the Vigilance Cell showing, blood relatives of the petitioner are belonging to 'Maratha' Caste or 'Maratha Thakar' or 'Hindu Thakar', but that itself cannot be a valid ground to reject the claim of the petitioner, when there are at least five documents of the pre- constitutional period, wherein entries were recorded prior to independence and as such the Scrutiny Committee was not justified in discarding these entries, which have high probative value.

10. We have perused the genealogy and report of the Vigilance Cell, from the file and also gone through the conclusions and findings of the Scrutiny Committee.

11. Report of the Vigilance Cell, confirms the genealogy produced by the Petitioner's father. Report also confirms the details and particulars of the School Leaving Certificate of petitioner's paternal grandfather; being correct. Besides report also confirms that petitioner father's paternal uncle Janardan Gopal Gaikwad, Shivaji Gopal Gaikwad, Mahadeo Gopal Gaikwad, Chandrakant Gopal Gaikwad were born in 1923, 1920, 1394 and 1929 respectively and in the school record their caste was recorded as 'Thakar'.

12. There are Certificates of Validity, issued to Arun Chandrakant Gaikwad, Mangesh Arun Gaikwad, Sanjay Suryakant Gaikwad and Shrikant Mahadeo Gaikwad, who are cousin brothers of petitioner's father.

13. Thus, taking into consideration the evidence and in particular the school records of the petitioner's paternal grandfather (Vasantrao) and that of paternal uncles of petitioner's father, in our view the Committee was not justified in discarding this evidence only on the ground that such other documents of petitioner's relative, relating to school entries collected by the Vigilance Cell show their caste other than the 'Thakar' Tribe. The conclusions recorded in paragraph no. 13 of the impugned order are palpably incorrect in as much as it is quality of evidence and not quantity which is to be weighed.

That for invalidating petitioner's claim, Committee said that school entries of petitioner's blood relatives show their caste other than 'Thakar'. We have perused the record. What we found is as under :-

a) In case of eleven relatives, their entries in the school record show their caste

Maratha; out of which nine entries are of relatives without describing their relationship with the petitioner, and remaining two entries are of cousin great-grandfather (1907) and another is of sister of grandfather (1905).

b) The entry 'Maratha Thakar' is in respect of one relative but without describing his relationship with the petitioner. Similarly, as far as the entry 'Hindu Thakar' is concerned, all are post independence entries. Therefore, the entries relied on by the Caste Scrutiny Committee are not of petitioner's blood relatives. Thus, reliance on this bunch of entries is misplaced. It is a clear case of non appreciation of evidence.

14. Rule 12 of The Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 lays down the procedure to be followed by the Scrutiny Committee. Rule 8 contemplates that if the Scrutiny Committee, on the basis of the Vigilance Cell report and other documents available is not satisfied about the claim of the applicant, the Committee shall issue a show cause notice to the applicant and also serve a copy of the report of the Vigilance Officer by registered post with acknowledgment due and shall afford a personal hearing to the applicant. Rule 9(a) contemplates the Scrutiny Committee after personal hearing, if satisfied regarding the genuineness of the claim, shall issue Validity Certificate in form 'G'.

15. Thus, Rule 12(8) and (9) contemplates that it is only on the satisfaction of the Committee about a genuineness of the claim, a certificate could be issued. Therefore, before reaching the satisfaction, the Committee is empowered to evaluate the evidence placed before it and is required to consider the material facts and record the findings. In the case in hand, the Committee has kept out of consideration pre-constitutional documents as well as Caste Validity Certificates of the blood relatives of the petitioner and proceeded to invalidate the claim on the ground that such other material of her relatives in respect of their school records. However, the record does not contain particulars of such relatives and their relation with the petitioner. The Apex Court in the case of Kumari Madhuri Patil Vs. Addl. Commissioner : (1994) 6 SCC 241 has held as under :

"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 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 recorded the finding. Each case must be considered in the backdrop of its own facts."

16. It appears from the impugned order that the Validity Certificate issued to the blood relatives of the petitioner i.e. Arun Chandrakant Gaikwad, Shrikant Mahadeo Gaikwad, Mangesh Arun Gaikwad were kept out of consideration, only

on the ground that these certificates were issued, without calling for the Vigilance Cell Report. The another ground on which the petitioner's claim has not been validated because Committee is of the view that the Tribe Validity Certificate issued to Mangesh Arun Gaikwad and Shrikant Mahadeo Gaikwad are required to be reviewed.

17. Thus, upon consideration of the facts of the case and evidence on record, in our view, petitioner has proved that she belongs to 'Thakar' Tribe. We therefore quash and set aside the impugned order and hold that the petitioner belongs to 'Thakar' Tribe.

18. The petitioner herein has been admitted to the Health Science Courses i.e. BDS in 'Sinhagad Dental College and Hospital', as is evident from letter at page no. 25. This communication shows that her admission for the said course for BDS is in the reserved category would be confirmed, only after submitting Caste Validity Certificate. In view of this, we direct the Caste Scrutiny Committee to issue Validity Certificate to the petitioner on or before 8th August, 2019.

That even otherwise, all concerned, including Respondents No. 2 and 3 shall act on the authenticated copy of this order as it validates petitioner's claim and confirms the admission of the petitioner to the course of BDS (Bachelor of Dental Surgery), if the petitioner is otherwise eligible.

19. Petition is allowed in the aforesaid terms and disposed of accordingly.