
(2023) 08 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 6769 Of 2023

Sujit	Vs	APPELLANT
State Common Entrance Test Cell And Others		RESPONDENT

Date of Decision : 07-08-2023

Acts Referred:

Evidence Act, 1872 — Section 79

Citation : (2023) 08 BOM CK 0014

Hon'ble Judges : Mangesh S. Patil, J; Shailesh P. Brahme, J

Bench : Division Bench

Advocate : Sagar S. Phatale, Ajinkya Reddy, A. A. Jagatkar

Final Decision : Partly Allowed

Judgement

Shailesh P. Brahme, J

1. Rule. Rule is made returnable forthwith. Heard both sides for final disposal at the admission stage considering the urgency.
2. The petitioner claims to be a member of the 'Thakur' (Scheduled Tribe). The tribe certificate issued to him was scrutinized by the respondent No. 2/Scrutiny Committee. By judgment and order dated 26.05.2023 the tribe certificate was invalidated as well as confiscated. Therefore, the petitioner has approached this Court.
3. The petitioner is relying on old entry of 1940, the school record of himself and various relatives, the revenue record, genealogy, affidavit and reply to the vigilance report. The petitioner does not have any validity of his paternal side close relatives to corroborate his claim.
4. The Scrutiny Committee has invalidated the claim of the petitioner on the ground that the school record of the relatives of the petitioner mentions caste as Thakur and at some places Thakar. Reliance was placed on the contrary entries of uncle Balasaheb Venkatrao Thakar recording Maratha as a caste. The scrutiny

committee expressed suspicion about the caste of the petitioner on the basis of the vigilance enquiry and the information collected from one Mr. Babruwahan Baliram Suryawanshi and considering the record of the relatives who have taken education.

5. The scrutiny committee could not verify pre-independence entry because original record was destroyed in fire. The place of residence of the petitioner and his forefathers was also found to be incompatible with normal place of the residence of Thakur (Scheduled Tribe). The committee also noticed that there was manipulation in the school record of Raghunath, Yogiraj, Ratan and Chandrakala.

6. The surname of the petitioner and his relative was found to be inconsistent with the surnames of Thakur (Scheduled Tribe). The Committee therefore concluded that the caste of the petitioner could be upper caste Thakur and not Thakur (Scheduled Tribe). The Scrutiny Committee relied on the report of the vigilance officer and found that there was no ethnic linkage of the petitioner with Thakur (S.T.). The scrutiny committee concluded that the petitioner was trying to take advantage of the caste status by furnishing false and incorrect information/material.

7. The learned Assistant Government Pleader would support the impugned judgment and order. He invited our attention to various entries in the school record collected during the course of scrutiny, manipulations and the vigilance report. He submitted that the scrutiny committee has considered all aspects of the matter and has arrived at a reasonable and plausible conclusion. According to him there is no perversity or illegality in the impugned judgment and order.

8. We have considered the rival submissions canvassed by both the parties and perused the record.

9. The petitioner has placed on record old entry of Khasara Patrak of 1350 Fasli (1940 A.D.), which is pre-independence record having greater probative value. The extracts of the entry are at page Nos. 18 and 19 of the paper book. It bears name of the ancestor of the petitioner Krushna Narsu in column No. 9. In that column 'Thakur' has been mentioned. In the same extract the next entry appears to be of one Ratanlal. His caste Marwadi is mentioned. The entry appears to be recorded in natural course of business and has a presumptive value U/Sec. 79 of the Indian Evidence Act.

10. The old revenue record was produced by the petitioner. It was referred to vigilance officer. But it could not be verified because original record was destroyed in fire. No tampering, overwriting or manipulation is noticed. It is not the report that the land was non existence or Krushna was not related to petitioner. No fault can be attributed to the petitioner just because the record was destroyed and verification of entry could not be done. No foul play or mischief can be attributed to him. The Scrutiny Committee failed to appreciate this document and casually dealt with it.

11. We also noticed another revenue entry of Krushna Narsu at page No. 19 mentioning caste Thakur. The 7/12 extract of the land gut No. 192 showing name of the father of the petitioner is also placed on record at page No. 20 and 21. That entry shows remark of prohibition to alienation. The land belonged to the father of the petitioner. Normally statutory prohibition to alienation would be for lands belonging to members of the Scheduled Tribe. It suggests that the father belongs to the scheduled tribe. This revenue record of the father corroborates the claim of the petitioner.

12. There are school entries of uncle Balasaheb Venkati Suryawanshi of the year 1978 and school entries of the father of the petitioner showing caste as Thakur. The scrutiny committee has not considered this aspect of the matter in the correct perspective as Thakur and Thakar both are the entries at Sr. No. 44 of the Scheduled Tribe order. The difference in the nomenclature does not adversely affect the claim of the petitioner. We find that the above discussed school entries, khasra patrak and revenue record are convincing and clinching to support the claim of the petitioner.

13. The scrutiny committee did not advert to the reply filed by the petitioner to the vigilance report which is at page No. 38 of the paper book. He has explained that there is very little difference of Thakur and Thakar as recorded in the school record of the relatives of the petitioner. It is further explained in the reply that the school record of the uncle of the petitioner, Balasaheb was showing caste Maratha is an obvious mistake of the school authorities. The elder brother Tatyrao was shown to be belonging to Thakur in the school record. Their grand father Krushna was shown to be Thakur in record of 1940. The reply of the petitioner was not taken into account by the scrutiny committee.

14. We may rely upon the pronouncement of the Supreme Court in the matter of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others reported in (2012) 1 SCC 113. Para No. 22 of the said judgment reads as follows :

22. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre- Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso

facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

15. The Scrutiny Committee has recorded that the caste of the petitioner was in fact upper caste like Maratha or Bhat Thakur and by suppression of material fact the petitioner is claiming to be belonging to Thakur (Scheduled Tribe). This finding is perverse because there is no material on record to come to this conclusion. It is based on conjectures and surmises.

16. The findings recorded by the scrutiny committee about the place of the residence of the petitioner and his forefathers is also not sustainable. The area restrictions are removed in view of the Presidential Order of Scheduled Caste and Scheduled Tribe Order (Amendment) Act 1976. Reliance is placed by the petitioner on paragraph No. 3 of the judgment and order dated 21.07.2023 passed in Writ Petition No. 8668 of 2019 in the case of Deepak Vasant Thakur Vs. State of Maharashtra, which reads as follow :

"3. He would submit that the committee also ignored the consistent view being taken whereby area restriction was expressly abolished by a presidential order of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. The observation was clearly inconsistent with the decision of Supreme Court in the matter of Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.; (1994) 1 SCC 359 and several other subsequent judgment of this Court passed relying upon that decision."

17. The findings recorded by the scrutiny committee in respect of the affinity test are also perverse. The affinity test is not a litmus test. The test can be resorted to for very limited purpose. In the present matter there is documentary evidence to support the case of the petitioner. We find that this is not a fit case to reject the claim of the petitioner on the basis of affinity test.

18. We find that the petitioner has discharged the burden by leading sufficient evidence to establish the caste status. The scrutiny committee failed to conduct threadbare enquiry in the matter. The findings recorded by the scrutiny committee are not based on material. The impugned judgment and order is arbitrary and unsustainable.

19. For the reasons recorded above, we proceed to pass following order.

ORDER

- a. The writ petition is partly allowed.
- b. The impugned judgment and order dated 26.05.2023 passed by the respondent No. 2/Scrutiny Committee is quashed and set aside.
- c. The respondent No. 02/Scrutiny Committee shall issue the caste validity

certificate to the petitioner as belonging to 'Thakur' (Scheduled Tribe) forthwith.

d. Rule is made absolute in above term. There shall be no order as to costs.