
(2007) 02 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 731 of 2007

Vijaykumar Ingle

APPELLANT

Vs

Caste Scrutiny Committee and Others

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Constitution of India, 1950 — Article 342

Citation : (2007) 6 ALLMR 766 : (2007) 6 MhLj 36

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : R.S. Parsodkar, for the Appellant; S.M. Puranik, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—The petitioner had applied for verification of certificate dated 2-7-1986, MRC 81/239/86 issued by Executive Magistrate Shegaon District Buldana towards his Tribe claim to belong to Thakur¹ Scheduled Tribe, He needed verification of Tribe claim as he was elected as a Councillor in Municipal Council, Shegaon.

2. In this petition service on the respondents 2 to 4 is not necessary as those are proforma parties. The petitioner challenges the order of Scheduled Tribe Certificate Scrutiny Committee, Amravati Division, Amravati (for short described as the Scrutiny Committee) delivered on 17-2-2007 Annexure-XXII, invalidating his claim as "Thakur" Scheduled Tribe.

3. Heard Learned Advocate Mr. Ram Parsodkar for the petitioner and the Learned Advocate Mr. Sudhir M. Puranik for the respondent No. 1.

4. It is seen that the petitioner had furnished before the respondent No. 1, in all 20 documents. Out of those, the documents at Sr. Nos. 1,2,4,7,8, 10, 13, 14 and 16 to 20 (Total 13 in number) are of recent origin do not prove status of forefathers of the petitioner as belonging to Scheduled Tribe Thakur".

5. Other documents are referable to period which is prior to 1966. The Vigilance Cell conducted enquiry and gave report to following effect:

A) The old documents in respect of paternal relatives of the applicants show his caste as Thakur.

B) The information regarding traits characteristics, Gods, Goddesses, surnames, festival, traditions, customs, songs, dances of the applicants family do not resemble to those of Thakur Scheduled Tribe, and thus his affinity is not proved towards Thakur, Scheduled Tribe.

[Quoted from page 103 of Paper Book of Writ Petition]

6. Petitioner furnished written representation objecting to the report of the Vigilance Cell. Relevant portion whereof is at page 76 of the writ petition paper book. Its true translation whereof reads as follows:

However, since the Committee was not satisfied, above information was asked by conducting home enquiry from me and my brother. At that time, my brother and myself also told the information about the social status and culture of our family practiced during 100 to 150 in past and having received it from my grandfather from his father and by my father from his father and I myself from my father as we have experienced in the marriage ceremony, as it was then performed.

However, it seems that Vigilance Cell Officer Shri R.D. Charjan was not satisfied.

As on date, since we are living in City, we have come into contact with other communities we have started worshipping Hindu God and Goddesses and their photography are there in our house. This itself was objected by Vigilance Cell and Research Officer and a remark was passed to the effect that culture traits do not tally with those of Thakur Tribe as were recorded after study.

In fact, whatever we have stated is the social status and culture of the "Thakur" Tribe, it was based on the information about Thakur Scheduled Tribe, available with them. The Vigilance Cell and Research Officer should have verified it and then should have made the observation thereon. However, without doing so imaginary adverse remark is passed which is wrong and is not in accordance with law and hence, is not acceptable to me. In fact, when I have submitted concrete evidence of revenue record prior to 1950 and statement of my father (who is aged 65 years), which is in fact correct statement, decision on merit needs to be taken and a validity certificate should be issued in my favour.

7. The Committee framed issues which are quoted below along with Committee's findings:

Sr. No. Issues Findings 1. Whether the claim of the present applicant is No proved by way of documentary evidence? 2. Whether the claim of the applicant sustains by No way of affinity test? 3. Whether the applicant is entitled to Scheduled No Tribe status as per current legal position? 4. What order As per final order given below. [Quoted from Page 104 of Paper Book of Writ Petition]

8. The committee accepted the fact that the record of the caste of the petitioner's father is recorded to be Thakur", and it is not as Thakur "Scheduled Tribe". In relation to these old documents and effect thereof on the part of fact of petitioner's Tribe claim based thereon, the Committee observed as follows:

II) The documents quoted at Sr. Nos. 6, 11, 12, 5 and 9, 10 are copies of an abstracts of Kotwal Book, Hakk Nondani Register and copies of sales deed sworn in respect of relatives of the applicant wherein caste entries are recorded as Thakur. In cases where synonymous entries are there i.e. Scheduled Tribe synonymous with other, old documentary entry of caste has no relevance because the synonymous caste which is not Scheduled Tribe also show the same entry even prior to Presidential Notification. Therefore, as per the settled principles of law laid down in the case of Madhuri Patil, the test of characteristics, customs, ethnic linkage etc. plays vital role. Therefore, in such cases only the documentary evidence cannot be relied upon.

(Quoted from page 105 of Paper Book of Writ Petition)

9. As to issue number 2: After taking resume of family background place of origin, the dialect spoken in the family of the petitioner, various rites and ceremonies, deities and other traits of tribes, the Committee found as follows:

VII) For the purpose of Article 342, for a Group to be included as a Scheduled Tribe, Govt. of India has recommended the following broad parameters. They are not spelt out in the Constitution but they are universally accepted.

1. Primitive traits.
2. Distinct culture.
3. Geographical isolation.
4. Distinct dialect
5. Animism.
6. Subsistence economy.
7. Shyness of contact with outside world.
8. Backwardness.

These parameters conform to the characteristic features of an ideal tribal society as put forward by anthropologists, out of their sustained studies of tribal societies all over the world. In the light of these parameters, the case of the present applicant does not merit any consideration for being a tribal person who is intended to be benefited by the provisions of Article 342 of the Constitution.

In the instant case, the applicant has not been able to prove his affinity with Thakur Scheduled Tribe.

Thus, we answer the issue No. 2 in the negative.

(Emphasis supplied. Quoted from pages 112 and 113 of Paper Book of Writ Petition)

10. The Committee then found as to issue No. 3 as follows:

IV) As a matter of fact in a given society when there exist certain communities which are distinct ethnic groups but having same nomenclature, one being forward and the other being relatively backward, one being entitled to the protective discrimination while the other not being so, the only way out is to adjudicate their claims by applying affinity test.

V) In the instant case the applicant belongs to Thakur, a higher caste and not to the Thakur, Scheduled Tribe which is intended to be benefited by Entry No. 44 in the Constitution's Scheduled Tribe Order, 1950, as amended from time to time.

Hence, we answer the issue No. 3 in negative.

(Quoted from page 117 of Paper Book of Writ Petition)

11. The petitioner has taken serious exception to this judgment of the Scrutiny Committee and findings aforesaid. The challenge, which is spread over in the long narration of about 36 pages of the petition, as can be gathered from oral submission, is condensed and summarized as follows:

The Committee heard and decided the caste claim of the petitioner sheerly on the affinity test ignoring the proved documentary evidence as the petitioner belongs to Thakur Scheduled Tribes.

As a foundation of this contention, the petitioner has placed reliance on a proposition namely:

when the "nomenclature" of the tribe claimed by the candidate tallies with the "nomenclature" given in the Presidential Order, and it is established from the documentary evidence itself that the candidate belongs to said caste/tribe of said "nomenclature", it is not open for the Scrutiny Committee to take recourse to any other mode such as "affinity test", as the recourse thereto is wholly impermissible.

12. For the proposition quoted above, Learned Advocate for the petitioner placed reliance on the reported Judgments as follows:

1. Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another, 2. Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, 3. Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, 4. 1998 (2) M. LJ. 806 , Pandurang Rangnath Chavan v. State of Maharashtra and Ors. 5. 2001(1) Mh.LJ. 1 , State of Mah. v. Milind and Ors. 6. Mana Adim Jamat Mandal Vs. State of Maharashtra and Others, . 1. State of Maharashtra and Others Vs. Mana Adim Jamat Mandal, , 8. Writ Petition No. 571 of 2007, Ku. Pragati Vasantrao Bhujade v. The ST Caste Certificate Scrutiny Committee, Amravati and Ors. Judgment delivered on

13-12-2004 (Un-reported).

13. According to the learned Advocate for the petitioner, special reference needs to be made to the judgment of this Court in Writ Petition No. 571 of 2004 (Item 8 supra) wherein, in para 5, this Court held as follows:

4 ...The petitioner submitted as many as 14 documents details of which are not necessary in view of the fact that all the documents were showing the tribe of the petitioner as "Halbi". None of the documents was on record showing the tribe of the petitioner other than that of Halbi. One of the oldest documents on record was photo copy of school leaving certificate in respect of Uttam Narayan, who happened to be the grandfather of the petitioner, whose caste was recorded as Halbi as back as in 1-2-1932. However, the Scrutiny Committee, relying upon the report of the Vigilance Cell and applying the affinity test, rejected not only the document of 1-2-1932, but also other documents wherein the caste of the petitioner was shown as Halbi.

5. In our view, the approach adopted by the Scrutiny Committee invalidating the claim of the petitioner belonging to Halbi tribe and thereby cancelling the caste certificate issued in favour of the petitioner by the Sub-divisional Officer, Achalpur, is unsustainable in law. The Scrutiny Committee could not have applied the test of affinity when a clear case of a person belonging to Halbi tribe was established. Needless to mention that the affinity test is required to be applied in the event of doubt or in order to resolve the dispute as to whether or not the person really belongs to a particular tribe. The case in hand is a clear case establishing the fact that the petitioner belongs to Halbi tribe. Not a single document is on record to negative the case of the petitioner that she belongs to Halbi tribe. The report of the Vigilance Cell was also based on applying affinity test. As a matter of fact, no affinity test could have been applied in a clear case wherein no other view was possible, based on the documentary evidence.

(Emphasis supplied.)

According to the petitioner, this Court has taken a view that once the caste claim is established on the basis of documentary evidence, recourse to affinity test is wholly unnecessary and cannot be resorted.

14. Learned Advocate for the petitioner has also placed reliance on the observations contained in the judgment in Gayatrilaxmi Bapurao Nagpure's case supra and in particular, the observations contained in para 18 which read as follows:

18 ...We are of the view that the authorities concerned must also play a role in assisting the Committee to arrive at a correct decision. In this case, except the documents produced by the appellant, nothing has been produced by the authorities concerned to arrive at a different conclusion.

(Emphasis supplied)

15. According to the learned Advocate, the dictum appearing in direction No. 4 and 5 namely in Ku. Madhuri Patil's case:

4 ...All the State Governments shall constitute a Committee of three Officers, namely (I) an Additional or Joint Secretary or any Officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another Officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged, in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc.

has lost the significance since in Gayatrilaxmi Nagpure's case, Hon''ble Supreme Court has in categorical terms preferred to accept the documentary evidence, and not the affinity test, and thereby the intensity and need of affinity test is now totally watered down. According to the petitioner, the dictum in case of Gayatri Laxmi (supra) Hon''ble Supreme Court has in positive terms directed that the authorities had not brought any evidence contrary to one brought by claimant, meaning thereby that the Vigilance Cell or the Committee has to bring contrary evidence.

16. Learned Advocate Mr. Parsodkar for the petitioner also invited the attention of the Court to the fact that due to the divergence of opinion in different bench of this Court as to applicability of affinity test when antecedent documents of probative value are available, a reference has been made to the Full Bench, and hence, the present Writ Petition requires admission, and it should be kept pending for final hearing, awaiting answer of reference from the Full Bench of this Court.

17. In reply, the learned Advocate for the Scrutiny Committee Mr. S. M. Puranik placed reliance on the following Judgments of this Court.

1. State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another, , 2. Ashwini Anil Chavan Vs. State of Maharashtra and Others, 3. Kishor Vishwanath Khartadkar v. State of Maharashtra W. P. No. 643 of 2000 decided on 21 -6-2005 along with Writ Petition No. 174/2000 (unreported).

18. It is seen that in these judgments quoted at Sr. No. 2 and 3 in the foregoing

para, This Court has taken a view that affinity test does not lose its importance. Rather, it has a pivotal role in the matter of adjudication of the tribe claim.

This Court is of the view that further and the detailed discussion on the judgments of this Court, namely two judgments relied upon by the respondent No. 4 and all other judgments relied upon by the petitioner cited at bar and those not cited, but barely referred is not necessary, and it shall suffice to refer and to rely upon the Judgment of Hon''ble Supreme Court in case of State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another, Sr. No. 1 in foregoing para.

19. This Court finds that it would not be necessary to quote dictum of Hon''ble Supreme Court in Ravi Prakash Parmar's case in extenso, the Hon''ble Supreme Court has removed all shadows of doubts. The dictum in this case can be summarized as follows:

(a) The Judgments in case of (i) Gayatrilaxmi Nagpure, and (ii) Palghat J ilia. Thandan Samudhaya Samrakshna Samithi's case, were the Judgments based on facts and circumstance as obtaining therein (Para 26 thereof of the Judgment).

(b) The fact of tribe claimed and its reality has to be gone into by the, and Scrutiny Committee, and that Scrutiny Committee ought not be guided, impressed or swayed away due to synonymy in nomenclature.

(c) Adjudication is necessary and needs to be done where there is synonymy in the name of tribe and other upper castes based on evidence which is documentary as well as oral.

(d) The importance of affinity test is reaffirmed in this Judgment. It shall suffice to refer to para No. 19 to 31 in which all these matters are ruled.

20. This Court further finds that various judgments cited from the side of petitioner were rendered when Scrutiny Committee was constituted by the executive directions contained in case of Ku. Madhuri Patil. Now the situation that exists stands on much different footing.

The Scrutiny in question i.e. in present case is done furtherance to provisions of The Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, which is enacted on the lines of the mandate of the Hon''ble Supreme Court in Kum. Madhuri Patil's case, yet with much distinction.

While it is a fact that any of the directions contained in Kum. Madhuri Patil's case have not in any manner been interfered by the said statutory enactment, the aspect of burden of proof of Tribe/caste claim which inherently has to be on the person who claims any particular caste/Tribe has been further stratified by enacting section 8, which reads as follows:

8 ...Burden of proof.

Where an application is made to the Competent Authority u/s 3 for the issue of a Caste Certificate in respect of Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category and in any enquiry conducted by the Competent Authority and Scrutiny Committee or the Appellate Authority under this Act or any trial of offence under this Act, the burden of proving that the person belonged to such Caste, Tribe or Class shall be on such claimant applicant.

21. Now the scheme of the Act and rules provides for calling of the Vigilance Cell Report. If after the perusal of the report of irrespective of Vigilance Cell, whether the report of the Vigilance Cell which may be favourable or unfavourable to the claimant, the Scrutiny Committee finds that the claim requires to be proved by the candidate, the candidate is to be put to prove of his claim by such legal evidence as may be available at his command or which can be summoned with the aid and assistance of the Committee. In no manner, any duty or burden is seen fastened on the Committee requiring the Committee be proactive and search the evidence or proof supporting the candidates claim of caste/Tribe or contrary.

22. It needs to be noted that law does not create any presumption that a certificate once issued by the competent authority carries any presumptive value. In fact, the certificate when issued is, on the very issuance, valid only subject to scrutiny. Therefore, whenever the matter reaches the Scrutiny Committee, and the Scrutiny Committee directs the candidate to prove claim, the claimant has to prove his claim like any other fact as is required to be proved before any other Court of law or Tribunal according to law in existence. It would, therefore, be contrary to Section 8 to expect that the Scrutiny Committee shall to take a lead to disprove the objection to the certificate or prove any suspicion that has been raised in relation to worthiness and truthfulness of caste claim or evidence produced by candidate.

23. The learned Advocate for the petitioner had expressed surprise or amazement upon the findings of Scrutiny Committee, however, any specific argument or submission as to how the findings are being called perverse is not raised.

24. The entire address and submissions of the petitioners are based on the proposition that once the nomenclature of Tribe claim of candidate is found to be concurrent with nomenclature of Tribe described in the Presidential Order, it is not open for the Scrutiny Committee to go into the fact finding as to whether the claimant-candidate is a person belonging to upper caste or from the evidence brought by him, he proves that he belongs to tribe. This Court is satisfied for the reasons recorded in foregoing paras based on State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another, , that this issue, raised as legal issue, is no more res integra open to adjudication as is covered by a precedent which is binding.

25. This Court, therefore, find no merit in the petition. Petition is dismissed.