



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1222 OF 2012

Amol Narayan Wakkar
residing at A-503,
Guruvilas Cooperative
Housing Society Ltd.
Ashok Nagar, Kanjurgaon,
Bhandup (E),
Mumbai-42.

...Petitioner.

versus

1. State of Maharashtra
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai 400 032.
2. Scheduled Tribe Caste
Certificate Scrutiny Committee,
Konkan Division, Thane,
Through its Member Secretary
having its office at Vartak
Nagar Ward Committee
Office, Vedant Complex,
Opposite Kores Company,
Vartaknagar, Thane (W),
Dist. Thane.
3. Deputy Collector,
Sindhudurg having its office
At Kudal, Dist. Sindhudurg.

..Respondents.

.....
Mr. R.K. Mendadkar for the Petitioner.

Mr. V.S. Gokhale, AGP for Respondent Nos.1 to 3.

.....
CORAM : A.S. OKA &
A.S. GADKARI, JJ.

Judgment reserved on : 15th December, 2014.
Judgment pronounced on : 27th February, 2015

ORAL JUDGMENT (PER A.S. GADKARI, J.) :

1. Rule. Rule made returnable forthwith.
2. The learned AGP waives notice for and on behalf of the Respondents. At the request of and by consent of the parties hereto, the present Petition is taken up for final disposal forthwith.
3. By the present Petition under Article 226 of the Constitution of India the Petitioner has prayed for a Writ of Certiorari or any other writ, order or direction in the nature of Certiorari thereby quashing and setting aside the impugned order dated 11th October, 2011 passed by the Respondent No.2 i.e. the Scheduled Tribe Caste Certificate Scrutiny Committee, Konkan Division, Thane, in case No.DD/TCSC/EDN/Sindhudurg-1843/2011, with a further direction to the Respondent No.2 Committee to issue a certificate of validity in respect of the caste certificate dated June 2001 issued by the Respondent No.3 herein in favour of the Petitioner.
4. The brief facts giving rise to the present Petition can be stated as under :
 - (i) The Petitioner hails from village Vayari – Bhutnath, Taluka Malvan, District Sindhudurg. The Petitioner was granted / issued a caste certificate by the Respondent No.3 i.e. Deputy Collector,

Sindhudurg having its office at Kudal in June 2001 as he is belonging to “Thakar” Scheduled Tribe. The Petitioner thereafter moved the Respondent No.2 Committee for verification of his caste certificate on 21st February, 2004 by submitting his application and a compilation of documents in support thereof including the caste validity certificates granted to his father and real sister thereby establishing that they belonged to “Thakar” Scheduled Tribe.

- (ii) The Respondent No.2 Committee passed a common order dated 11th June, 2004 thereby invalidating 200 cases of the claimants from Sindhudurg district. The Petitioner along with others approached the High Court by filing a Writ Petition bearing No.6048 of 2004 thereby challenging the said common order dated 11th June, 2004 passed by the Respondent No.2 Committee. The Division Bench of this Court after hearing the Petitioner and other parties to the said Petition quashed and set aside the said impugned order dated 11th June, 2004 and remanded the matters back to the Scrutiny Committee to decide each case separately in view of the legal position and observations made by the Division Bench in the said judgment. The said judgment is reported in. 2005(2) ALL MR 15 (Amol Narayan Wakkar and another v. State of Maharashtra and

others). A copy of the said judgment is annexed at page No.41 of the present Petition.

(iii) Pending the decision by the Respondent No.2 Committee, the Petitioner got admission in the engineering degree course. During the pendency of the said decision by the Respondent No.2 Committee, he also completed the degree course. As this matter was subjudiced with the Respondent No.2 Committee, the concerned university did not issue the mark-sheet to the Petitioner of his examination and therefore, the Petitioner had to file Writ Petition No.1261 of 2011 in this Court on the Original Side. The Division Bench of this Court by its judgment and order dated 16th August, 2011 directed the concerned university to issue the statement of marks and other related passing certificate to the Petitioner and also directed the Scrutiny Committee to decide the case of the Petitioner within a stipulated period.

(iv) The Respondent No.2 Committee subsequently directed the Petitioner to appear before it for hearing on 19th September, 2011. The Petitioner along with his father and maternal uncle appeared before the Respondent No.2 Committee for hearing and he filed exhaustive written notes of argument pointing out

merits of his case. It is the case of the Petitioner that no fresh vigilance cell enquiry was conducted by the Respondent No.2 Committee as far as the Petitioner's case is concerned. The Petitioner received the impugned order dated 11th October, 2011 passed by the Respondent No.2 Committee thereby invalidating the caste certificate of the Petitioner belonging to "Thakar" Scheduled Tribe for the second time. The Petitioner has impugned the said order dated 11th October, 2011 passed by the Respondent No.2 Committee by way of filing the present Petition.

5. After receipt of notice, Shri Mukund N. Ghodke, Research Officer, Scheduled Tribe Caste Certificate Verification Scrutiny Committee, Konkan Division, Thane (Maharashtra) filed a detailed affidavit dated 15th June 2012 in response to the present Petition and opposed the grant of any reliefs to the Petitioner. The Respondent No.2 in his affidavit-in-reply has stated that the copies of school records in respect of the Petitioner and his father, wherein the caste has been recorded as "Thakar" and as the documents submitted by the Petitioner are of recent origin i.e. after passing of the first presidential order 1950, the same have less probative value of evidence and therefore, the said documents cannot be treated as conclusive proof while determining the tribe claim of the Petitioner. The Respondent No.2 has further

stated that the only entry as “Thakar” cannot result in an automatic validation of the tribe claim. It is also stated that the caste “Thakar” and Scheduled Tribe “Thakar” are altogether two different entities and they have no ethnic linkage with each other.

6. It has been further stated that in the said affidavit that, as far as the validity certificates with respect to the Petitioner's father and real sister are concerned, the then Committee has issued those validity certificates on the documentary evidence which came before the particular Committee during that time. The said validity certificates cannot be considered in this case. It has been further contended that the Scrutiny Committee has to deal with each and every case separately on its own merits and by taking into consideration the entire evidence as well as the vigilance cell report placed on record. It is stated that the information given by the Petitioner or his relatives reveals that he is not true Thakar, which comes in the list of Scheduled Tribe. It is also stated that there are contradictory documents on record which does not support the tribal claim of the Petitioner. That it will not be appropriate to issue Validity Certificate to the Petitioner only because the validity certificates have been issued to the Petitioner's father and sister. It is further contended that by Government Resolution dated 2nd June, 2004 the Government of Maharashtra in Social Justice Department deleted the entry of Thakar

from the list of Nomadic Tribes. That merely the deletion or exclusion of Thakar community from the list of Nomadic Tribes, the said community cannot be included in 'Thakar' community which is a Scheduled Tribe, enumerated at Sr. No.44. That the deletion of entry No.22 of Thakar from the list of Nomadic Tribes will not automatically result into addition of the said community in the list of Scheduled Tribes under entry No.44 under Article 342. In the said affidavit excerpts of various judgments of the High Court and the Supreme Court have been quoted in support of the contentions raised by the Respondent No.2 which are suiting to their case. We may observe here itself that reliance on various quotes from the decisions is either misplaced or has been placed without taking into consideration the real crux of the present matter.

7. Heard Mr. R.K. Mendadkar, learned counsel appearing for the Petitioner and Mr. V.S. Gokhale, learned AGP appearing for the Respondents. We have also perused the record annexed to the present Petition and the additional compilation of documents tendered by the learned counsel appearing for the Petitioner during the course of hearing. We have also perused the record produced by the learned AGP.

8. The learned counsel appearing for the Petitioner submitted

before us that the Respondent No.2 Committee did not take into consideration the most relevant certificates of validity granted in favour of the Petitioner's father and real sister. He further criticized the finding recorded by the Scrutiny Committee whereby the Respondent No.2 has held that, these validity certificates cannot be considered in this case because vigilance cell report obtained in this case shows the entries as Thakar, do not denote whether they belong to Scheduled Tribe or not. He further submitted that the vigilance cell report was called earlier i.e. prior to remand of the matter and after the remand, the said vigilance cell enquiry was not ordered in the case of the Petitioner and therefore, it was necessary for the Respondent No.2 to safely rely upon the caste validity certificates issued in favour of the father of the Petitioner and his real sister. Mr. Mendadkar, learned counsel appearing for the Petitioner further submitted that his client had placed on record the vigilance cell report in the case of Petitioner's sister, Ms. Darshana and the facts in the case of Ms. Darshana, the real sister of the Petitioner and the facts in the case of the present Petitioner were not only similar but identical. He, therefore, contended that in view of the fact that when the Respondent No.2 Committee granted caste validity certificates to the Petitioner's father and real sister, the Respondent No.2 Committee in the absence of any other substantive evidence contrary to the certificates of his father and sister, ought not have discarded the said certificates. The

learned counsel appearing for the Petitioner further submitted that the Respondent No.2 Committee after taking into consideration the entire evidence available on record was pleased to validate the caste certificates of the Petitioner's father and and real sister and therefore, it was not open to the Scrutiny Committee to invalidate the caste certificate of the Petitioner without there being any contrary material or evidence in support of its findings. The learned counsel appearing for the Petitioner next contended that the contents of page Nos.9 to 18 of the present impugned order are identical and verbatim reproduction of the order passed by the Respondent No.2 Committee in the case of Mr. Tushar Vilas Thakaur and therefore, it exhibits a total non-application of mind at the behest of the Respondent No.2 Committee. He further submitted that the finding of the Respondent No.2 Committee that the forefathers of the Petitioner have not migrated to Nemali (Thakarwadi) Taluka Sindhudurg from Ahmadnagar, Colaba, Nashik, Pune and Thane districts is not in consonance and is against the Amendment Act of 1976 by which the area restrictions have been removed and in any event runs contrary to the Caste Certificate Rules 2003. Mr. Mendadkar, learned counsel appearing for the Petitioner then contended that the Respondent No.2 Committee did not consider the detailed representation filed by the Petitioner and the entire evidence available on record in its proper perspective.

9. Mr. Mendadkar, learned counsel appearing for the Petitioner in support of his contention relied upon a judgment of the Division Bench of this Court of which one of us (Shri A.S. Oka, J.) was a member, dated 29th August, 2013 passed in Writ Petition No.3800 of 2013 (Dipak Laxman Shinde v. Scheduled Tribe Certificate Scrutiny Committee and another) and submitted that in similar circumstances the Division Bench of this Court was pleased to allow the Petition of the Petitioner therein. Mr.Mendadkar, therefore, urged before this Court that after taking into consideration the various facts and evidence available on record, the present Petition may be allowed and the Respondent No.2 Committee be directed to issue certificate of validity in respect of the caste certificate dated June 2001 of the Petitioner.

10. Per contra, Mr. V.S. Gokhale, learned AGP supported the impugned order passed by the Respondent No.2 and submitted before this Court that the Respondent No.2 Committee after taking into consideration the entire material and evidence available on record has rightly passed the order dated 11th October, 2011. The learned AGP therefore urged before this Court that the present Petition may be dismissed in limine.

11. It is to be noted here that the Respondent No.2 in his affidavit has nowhere denied the fact that the certificates of validity of caste

with respect to the father and the real sister of the Petitioner viz. Ms. Darshna have been issued by the Respondent No.2 Committee. It has further not been disputed that before issuing the certificate of validity pertaining to the real sister of the Petitioner viz. Darshana, vigilance cell report was called for and after taking into consideration the vigilance cell, report the certificate of validity dated 24th August, 2001 was issued in favour of said Ms. Darshana by a detailed order passed by the then Caste Scrutiny Committee. It is not disputed by the Respondents that said Darshana is the real sister of the Petitioner.

12. It has been observed in the impugned order that, it is true that a Thakar is community which is also included in the Scheduled Tribe in the State of Maharashtra under Article 342, but it does not mean that every person who is 'Thakar' also belongs to the Scheduled Tribe community. In the present case, the Caste Scrutiny Committee has overlooked the basic and fundamental fact that the real sister of the Petitioner has been granted certificate of validity by upholding her caste claim that she belongs to Thakar, a Scheduled Tribe after the Caste Scrutiny Committee considered the report of vigilance cell and other documents on record. At highest the validity certificate granted to the Petitioner's father could have been kept out of consideration as the same may have been issued without vigilance cell inquiry. It may further be noted here that the entry as 'Thakar' from the list of

Nomadic Tribes has been deleted by the State of Maharashtra by Government Resolution dated 2nd June 2004. It appears from the record that the Petitioner never made a claim that she belongs to 'Thakar' a Nomadic Tribe. The record discloses that the stand of the Petitioner is consistent since beginning that he belongs to 'Thakar', a Scheduled Tribe. Apart from the aforesaid fact, it is necessary to mention here that the Petitioner got his certificate of caste showing that he belongs to 'Thakar' Scheduled Tribe in June 2001 and the deletion of the entry of 'Thakar' from the list of Nomadic Tribes was made subsequently. The caste validity certificate granted to the Petitioner's real sister after vigilance cell enquiry by a reasoned order could not have been ignored by the Caste Scrutiny Committee. This validity certificate was very relevant which could not have been ignored while determination of the caste claim of the Petitioner.

13. There is no reason to discard the order dated 24th August, 2001 granting caste validity certificate to the Petitioner's real sister. As observed earlier, the relation between the Petitioner and said Darshana has not at all been disputed by the Respondent No.2 Committee and as a matter of fact, the same has been accepted. Therefore, the Caste Scrutiny Committee has committed an error by not placing reliance on the certificate of validity dated 24th August, 2001 of the real sister of the Petitioner. In our considered opinion,

there was no reason to invalidate the caste claim of the Petitioner to the caste 'Thakar' a Scheduled Tribe. As the caste claim of the Petitioner's real sister has been validated after a due and proper enquiry, the Petitioner's caste claim could not have been rejected.

14. Hence, we pass the following order :

- i) The impugned judgment and order dated 11th October, 2011 passed by the Respondent No.2 is quashed and set aside;
- ii) We direct the Caste Scrutiny Committee i.e. the Respondent No.2 to issue certificate of validity to the Petitioner within a period of one month from the date of receipt of an authenticated copy of the present judgment and order;
- iii) Rule is made absolute in the aforesaid terms.

(A.S. Oka, J.)

(A.S. Gadkari, J.)