



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12492 OF 2023

Sanjay S/o Prabhakar Thakur,
Age : 54 years, Occu. : Service,
R/o. M/p. Bhusawal, Dist. Jalgaon,
At Present B-6 Room No.306, Paras,
Co. Op. Hou. Soc. Ltd., Sunder Nagar,
Mira Road (East), Dist. Thane

.. Petitioner

Versus

- 1] State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai – 32.
- 2] Executive Magistrate,
Bhusawal, Dist. Jalgaon
- 3] Scheduled Tribe Certificate
Scrutiny Committee, Dhule,
Through its Member Secretary
- 4] Deputy Commissioner Transport
Best Agar Magathane Agar,
Boriwali (East),
Municipal Corporation

.. Respondents

...
Advocate for petitioner : Mr. Digambar B. Shinde
AGP for the respondent – State : Mrs. V.N. Patil - Jadhav
Advocate for the respondent no. 4 : Mr. Deepak S. Manorkar
...

**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 21 NOVEMBER 2024

ORDER (MANGESH S. PATIL, J.) :

The petitioner is challenging the judgment of the respondent – scrutiny committee in a proceeding under section 7 of the

Maharashtra Act No. XXIII of 2001, whereby it has refused to validate his 'Thakur' scheduled tribe certificate and directed it to be confiscated and cancelled.

2. We have heard both the sides finally at the stage of admission.

3. Learned advocate for the petitioner submits that the impugned judgment is perverse and arbitrary, contrary record of the persons who are not related to the petitioner by blood have been referred to and relied upon by the committee to discard the claim even when, in reply to the vigilance enquiry report, he expressly denied to have any relationship with these individuals. Even the committee has not assigned any reasons and dealt with this specific stand of denying any blood relationship. As against it, admittedly, petitioner's father's school record wherein he had taken admission on 11-03-1949 specifically mentioned in the caste column that he was '*Hindu Thakur*'. The genuineness of this pre-constitutional record has neither been disputed during the vigilance enquiry nor has it been doubted in the impugned judgment. It has been discarded by the committee illegally by referring to the contrary entries of two individuals with whom the petitioner had denied to have any relationship. The observation of the committee that entry in the school record as '*Hindu Thakur*' may not necessarily mean whether it is from the forward community or a tribe

having similar nomenclature finding place at serial no. 44 of the Scheduled Tribe list or at serial no. 22 of the Nomadic Tribe list. Such conclusion and inference of the committee is clearly perfunctory and based on surmises and conjectures. He would submit that merely because he is the first person in the family seeking certificate of validity, the committee ought not to have taken any view as it has, by making observation that no blood relative from the family possesses certificate of validity. Learned advocate would further submit that contrary to the settled law, the committee has even resorted to the affinity test illegally and the order be quashed and set aside and the petitioner be directed to be issued with a certificate of validity.

4. Learned advocate for the petitioner would also submit that since the petitioner was insisting for completing the validation proceedings to protect his employment, he had to file a writ petition. In spite of the directions of this Court, the committee did not decide the proposal within the stipulated time. A contempt proceeding had to be taken out and ultimately somehow, the committee has passed the final order under challenge, in all probability, entertaining a grudge against the petitioner.

5. Per contra, the learned AGP would submit that the observations and the conclusions of the committee are based on plausible appreciation of the facts, circumstances and evidence. There

is no perversity or arbitrariness. In exercise of the powers under Article 226 of the Constitution of India, this Court cannot substitute its views in place of the views of the committee. She would submit that the very fact that '*Thakur*' is a common nomenclature finding place at serial no. 44 of the Scheduled Tribe Order and serial no. 22 of the Nomadic Tribe Order, coupled with the fact that even forward communities also use the same or similar surname, would demonstrate that an illegitimate attempt is being made by the petitioner to derive the benefit of reservation. The school record of the petitioner's relatives of the period prior to 1949 described them as '*Marathe Thakur*', '*Hindu Thakur*' and '*Hindu Brahmbhat*' which is contrary to the petitioner's claim. Even if those are the persons not related by blood, the petitioner had expressly mentioned in the statement recorded by the committee that none of his blood relatives had performed inter-caste marriage. In the circumstances, even the affinity test had to be applied, which is legally permissible and the petitioner having failed to discharge the burden cast upon him under section 8 of the Maharashtra Act No. XXIII of 2001, no fault can be found with the impugned order refusing to validate his tribe certificate.

6. We have considered the rival submissions and perused the papers.

7. At the outset, it is necessary to emphasize that indeed this Court would be loath in causing interference in the order of the scrutiny committee under challenge, in exercise of the powers under Article 226 of the Constitution of India. It is only in case of perversity or arbitrariness that such power can be exercised. Again, by virtue of section 8 of the Maharashtra Act No. XXIII of 2001, burden would lie on the claimant i.e. the petitioner to prove his claim of belonging to 'Thakur' Scheduled Tribe (serial no. 44). However, it is also necessary to bear in mind the law that it being a civil matter, the facts can be proved on preponderance of probability and strict proof is not required.

8. As is rightly pointed out by the learned advocate for the petitioner and even the committee does not dispute the fact that the petitioner's father's school record of the year 1949 mentioned in the caste column that he was 'Hindu Thakur'. 'Hindu' being not a caste but a religion, its use as a prefix to 'Thakur', is redundant. This being a pre-constitutional document, genuineness of which has not been doubted, it would carry greater probative value in the light of **Anand Dhananjay Nalawade Vs. State of Maharashtra; 2014 (4) Mh.L.J. 77** being a pre-constitutional document.

9. True it is that nomenclature 'Thakur' can be found even in Nomadic Tribe order at serial no. 22. As observed by the committee,

there could be persons belonging to forward communities using surname '*Thakur*'. However, the impugned order does not mention that the persons from forward communities using surname '*Thakur*' are from any particular caste. The people might be using '*Thakur*' as a surname but that would not necessarily mean that they belong to a particular caste. As against this, when petitioner's father while admitting to the school, was so admitted by making necessary entry in the school register in the caste column that he was '*Thakur*', we find no justifiable reason, rather, find total arbitrariness in the stand of the committee in discarding such entry merely because some persons from forward communities use '*Thakur*' as a surname.

10. True it is that a tribe with a same nomenclature '*Thakur*' finds place at serial no. 22 of Nomadic Tribe Order but then, the petitioner's family was not to gain any advantage by claiming to be belonging to '*Thakur*' Scheduled Tribe serial no. 44 in stead of '*Thakur*' Nomadic Tribe serial no. 22, for the simple reason that even Nomadic Tribes get the benefit of reservation. The committee has overlooked this aspect of the matter and has apparently discarded 1949 school record of petitioner's father based on surmises and conjectures.

11. Admittedly, in spite of the petitioner's specific denial of having any relationship with Narayan Govind Nikumbh and Ramchandra Govind Nikumbh, the committee has not dealt with such

denial and has used the entries in the school record of these individuals as '*Marathe Thakur*', '*Hindu Brahmbhat*' and '*Hindu Thakur Brahmbhat*' as contrary to the petitioner's claim. It was imperative for the committee, to have demonstrated falsity in the stand being taken by the petitioner in denying the relationship.

12. Independently, even the committee itself in the impugned judgment while showing relationship of these two individuals with the petitioner, has mentioned that these two individuals are cousin father in law of petitioner's paternal aunt and further referred to the statement of the petitioner recorded during hearing before it stating that none of his blood relatives had performed inter-caste marriage. In our considered view, when the committee was unable to establish the relationship, it could not have even used this stand of the petitioner to use the contrary record of these individuals.

13. Some emphasis has been laid even on the fact that the petitioner while admitting to the school on 15-06-1974 was described as 'इतर मागासवर्गीय' i.e. 'other backward class'. As can be understood, it would be a generic description and was not to be inserted like that in the caste column where there should have been reference to a specific caste. Therefore, such entry cannot be regarded as contrary to the petitioner's claim.

14. Besides, as has been rightly pointed out by the learned advocate for the petitioner, even this school record was subsequently corrected under the provisions of the Secondary School Code, by the order of the Education Officer. A copy of the order dated 06-06-1991 addressed to the Headmaster of the concerned school by the Education Officer (Secondary), Zilla Parishad, Jalgaon is placed on record at page no. 34 of the paperbook.

15. Therefore, even for this reason, reliance of the committee by referring to such petitioner's school record which was subsequently corrected by following due process of law, will not stand the scrutiny of law.

16. Obviously, affinity test has a limited role, as has been explained by the Supreme Court in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326***. It is only when the committee feels that the documentary evidence produced by the claimant is not admissible or sufficient, that it can resort to such affinity test. When the committee was not discarding the school record of the petitioner's father of 1949, wherein he was described as '*Hindu Thakur*', the approach of the committee even in reverting to the affinity test, is not legally sustainable.

17. In the result, the impugned order being perverse and arbitrary, requires to be quashed and set aside and reversed.
18. Writ petition is allowed.
19. The impugned order is quashed and set aside.
20. The committee shall immediately issue certificate of validity to the petitioner of 'Thakur' Scheduled Tribe (serial no. 44).
21. The petitioner stands discharged from the undertaking furnished to the Court dated 21-10-2023 filed pursuant to the order dated 09-10-2023.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/