



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9188 OF 2014

Rahul Prakash Bagul .. Petitioner
Vs.
State of Maharashtra and ors. .. Respondents

Mr.Ramchandra K. Mendadkar, for the Petitioner.
Mr.S.S.Panchpor, AGP for State.

**CORAM : S.C.DHARMADHIKARI &
M.S.KARNIK, JJ.**

**RESERVED ON : 11th FEBRUARY, 2019
PRONOUNCED ON : 18th APRIL, 2019**

ORDER (PER M.S.KARNIK, J.) :

. Rule. The respondents waive service. By consent,
Rule made returnable forthwith and heard finally.

2. By this Petition under Article 226 of the Constitution
of India, the petitioner challenges the order dated 16/03/2012
passed by the respondent No.2 – Scheduled Tribe Certificate
Scrutiny Committee, Nashik Division, Nashik (for short

'Committee') invalidating caste claim of the petitioner as belonging to Thakur, Scheduled Tribe.

The facts of the case in brief are as under :

3. The petitioner was granted caste certificate dated 15/06/2002 by the respondent No.3 as belonging to Thakur Scheduled Tribe. The petitioner's caste certificate was forwarded for verification to the respondent No.2 through his junior college. Pending the decision of the respondent No.2 Committee, the petitioner was admitted in B.Pharmacy degree course. The petitioner has completed his B.Pharmacy. In support of his caste claim, the petitioner produced various documents on record. The petitioner also relied upon the document at page 56 of the paper-book which is a certificate of validity dated 15/04/2005 issued in favour of his real elder brother - Pravin P. Bagul. He also relied upon caste validity certificate issued in favour of his cousin brother from paternal side – Kalpesh Suryakant Bagul which at page 57 of the paper-

book. The petitioner also placed reliance on pre-constitutional documents of his relatives from the paternal side, one such document pertains to his grandfather. The Vigilance Cell report is in favour of the petitioner. As the Committee did not agree with the vigilance cell report, he was called upon to file reply.

4. The Committee by the impugned order rejected the caste claim of the petitioner applying the affinity test and area restriction. The Committee was of the opinion that merely mentioning the name 'Thakur' against the caste column in any public document cannot be a sole basis to hold that the person belongs to Thakur, Scheduled Tribe. It was of the opinion that the permanent place of residence of the petitioner does not fall under scheduled area for the Thakur community where they predominantly resided i.e. mainly in respect of 25 Tahsils of 5 Districts i.e. Ahmednagar, Kulaba, Nashik, Pune and Thane. Despite certificate of validity issued in favour of real brother of the petitioner, the Committee was of the opinion that the petitioner will still have to prove his case independently.

5. The petitioner relied upon the decision of this Court dated 22/12/2017 in case of **Motilal S/o. Namdeo Pawar Vs. Scheduled Tribe Certificate Scrutiny Committee, Nashik and ors.** in Writ Petition No. 07 of 2014 to which one of us 'S.C.Dharmadhikari J.' was a party and in the case **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others** 2010 (6) Mh.L.J. 401, in support of his submissions.

6. On the other hand, learned AGP invited our attention to the detailed order passed by the Committee. He submits that the Committee has for cogent reasons recorded in the order impugned, upon considering the materials on record rejected the caste claim of the petitioner. He therefore, submits that no interference is warranted as the finding cannot be said to be perverse or not supported by the materials on record.

7. We have heard learned Counsel for the parties. We have gone through the Petition and annextures thereto. By the

Scheduled Caste and Scheduled Tribes Orders (Amendment Act) 1976 (Act No. 108 of 1976) published on 18/09/1976, area restrictions have been removed. In several decisions of this Court rendered by Division Benches, one of which was presided over by one of us (S.C.Dharmadhikari, J.) in **Motilal S/o Namdeo Pawar** (*supra*), this Court extensively referred to the aspect of removal of area restriction, its removal and its impact on the verification and scrutiny of the claims of this nature. In that process, it also referred to a recent order of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court held that the inquiry should now be restricted to finding out whether the claimant/ applicant belongs to 'Thakur' Scheduled Tribe as listed at Entry No.44 in the Presidential Notification. Beyond that, nothing should be introduced, much less by a back-door method. Once this authoritative pronouncement is in the field, then, we cannot sustain the finding on the point of area restriction.

8. The Committee, despite the caste validity certificate

of the petitioner's real brother produced on record (page 56 of the paper-book) applied the affinity test and arrived at the conclusion that the petitioner has failed to prove the caste claim. This approach of the Committee, in view of the decision of the Division Bench of this Court in **Apoorva d/o Vinay Nichale's** (*supra*) case is unsustainable. In **Apoorva d/o Vinay Nichale's** (*supra*), Division Bench of this Court held that when during the course of inquiry, the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the Committee may grant such certificate without calling for Vigilance Cell Report. It is only when the Committee finds that earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.

9. In the present case, not only in the petitioner's real brother is issued with the caste validity certificate dated 15/04/2005 by the Committee having jurisdiction, but also, the

petitioner's cousin brother from the paternal side - Kalpesh Suryakant Bagul is issued with the caste validity certificate as belonging to Thakur, Scheduled Tribe. It is not the finding of the Committee that certificates issued to the petitioner's real brother or his cousin from the paternal side are tainted by fraud or issued by the Committee which did not have jurisdiction.

10. In this view of the matter, the impugned order cannot be sustained.

11. The Petition is allowed in terms of prayer clause (a).

12. The certificate of validity shall be issued to the petitioner as expeditiously as possible and within a period of 4 weeks from today.

13. Writ Petition is accordingly stands disposed of. Rule is made absolute in the above terms.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)