



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5824 OF 2018

Sneha Vishnu Thakar .. Petitioner
Versus
State of Maharashtra through
its Secretary and ors .. Respondents

...
Mr.R.K. Mendadkar for the petitioner.
Mr.B.V. Samant AGP for the State.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 15th JUNE 2018

ORAL JUDGMENT :(Per BHARATI H. DANGRE, J)

1 The petitioner, a student aspiring to persuade her studies in medicine, on declaration of the NEET examination for the year 2018, has approached this Court praying for quashing and setting aside the order dated 14th March 2018 passed by the Schedule Tribe Certificates Scrutiny Committee, Pune thereby invalidating claim of the petitioner as belonging to Thakar Schedule Tribe. The said petition has been filed on 30th May 2018 and during the pendency of the petition, the

Tilak

NEET 2018 examination result has been declared and the admission process has declared that the counselling would commence from 12th June 2018.

2 The present petition is one of those petitions where the petitioner is constrained to approach this Court in a second round of litigation. In an earlier round, the petitioner had approached this Court praying for a speedy decision for her claim as belonging to Thakar Schedule Tribe, as the petitioner had staked her claim before the respondent no.2 committee in the year 2015. The petitioner had approached this Court that though her claim was pending since September 2015, the same was not decided by the respondent no.2 Committee. Due to inaction of the respondent committee, she had lost one precious academic year and then she approached this Court by filing a writ petition and by order dated 12th March 2018 Committee was directed to decide the claim of the petitioner as expeditiously as possible within a period of two weeks from the date of receipt of the order. On such direction being issued, the respondent no.2 committee decided the claim of the petitioner

Tilak

by the impugned order passed on 14th March 2018, thereby rejecting the claim.

3 The petitioner in order to establish her claim had placed reliance on several documents, including the pre-constitutional documents, reflecting the caste of her forefathers to be 'Thakar'. The petitioner placed reliance on the document of her grand-father Rajaram Sakharam Thakar bearing date of birth "15/10/1940" and reflecting caste "Hindu Thakar". She also placed on record the extract of the school register in respect of her cousin grand-father Balkrishna Sakharam Thakar where his date of birth is recorded as "2/12/1931" and the entry in the school is recorded as "16/1/1937". She also placed on record certain documents on her maternal side reflecting the caste as "Hindu Bhatt". The petitioner produced on record the genealogical tree showing her relationship with all those on whose documents she had placed reliance.

The claim of the petitioner was referred to Vigilance Cell and inquiry was conducted. The Vigilance Inquiry referred to several documents which included the documents of the

Tilak

petitioner's cousin grand-father Balkrishna Sakharam Thakar, the document of her own grand-father, Rajaram Sakharam. Thakar where the date of admission is reflected as “19/8/1947” and the date of birth is reflected as “15/10/1940” in the school register and the caste is shown as Hindu Thakar. The Vigilance Cell during its inquiry had also obtained certain documents of the relatives of the petitioner of the year 1941 and 1943 reflecting the caste as 'Hindu Maratha'.

4 The petitioner was heard by the Committee and during the course of hearing, along with her father, she pointed out the old documents in favour of her grand-father and other blood relatives where the caste is shown as 'Thakar'. The petitioner also relied on the caste validity certificate granted in favour of her father after following due procedure of law and submitted before the Committee that since her father has been declared as 'Thakar Schedule Tribe' and she would take the caste from her father, her claim needs to be validated.

5 The respondent no.2 Committee, however, refused to consider the documents produced by the petitioner nor was

Tilak

it satisfied with the validity granted in favour of the petitioner's father. The Committee referred to certain statements recorded during the course of Vigilance Inquiry and recorded a finding that the grand-father of the petitioner whose statement was recorded did not reflect any affinity with Thakar Schedule Tribe. Furthermore, the Committee has observed that the ordinary place of residence of the family of the petitioner is Taluka Karad, District Satara and during the Vigilance Inquiry, certain documents reflecting the entries as Thakar, Maratha, Bhatt have been traced. The Committee proceeded to observe that the petitioner has offered an explanation on certain entries being recorded as 'Bhatt, Maratha' and had tried to draw a distinction between the blood relatives and other relatives. However, the Committee observed that no such distinction can be drawn and since certain relatives of the petitioner have been shown to be belonging to Maratha caste, it cannot be conclusively proved that the petitioner belongs to Thakar Schedule Tribe. The Committee also noted that the petitioner has not been able to establish cultural affinity with Thakar Schedule Tribe. The Committee also did not find favour with

Tilak

the claim of the petitioner in view of the fact that the place of residence of the family of the petitioner prior to 6th September 1950 was Taluka Karad, District Satara, and this region is not a part of the region where the Thakar Schedule Tribe was ordinarily located prior to removal of area restriction. Reliance has been placed on a full bench judgment of this Court in Yogita Sonawane in relation to removal of area restriction.

Another interesting facet in the order of the committee is the manner in which the Committee has dealt with the validity certificate issued in favour of her father. The Committee has failed to place reliance on the said validity certificate and has noted that since during the vigilance inquiry it is revealed that the entries of Maratha, Bhatt etc have come on record, the validity obtained by her father has been based on suppression of facts, and in such circumstances, the Committee is in the process of reconsidering the validity granted in his favour and is also in the process of issuance of show cause notice to the father and of independently, re-considering the issue. With this observation, the committee has refused to rely

Tilak

on the validity certificate granted in favour of the father of the petitioner. Resultantly, by the impugned order, the claim of the petitioner as belonging to Thakar Schedule Tribe has been rejected and the certificate issued in favour of the petitioner as belonging to Thakar Schedule Tribe issued by the Sub-Divisional Officer, Karad on 2nd December 2013 has been cancelled and confiscated.

6 The three grounds on which the Committee has denied the claim of the petitioner are the usual grounds cited by the Committee in rejecting claims belonging to Thakur/Thakar Schedule Tribe. In spite of setting aside the orders of the Committee with detailed reasoning by this Court on numerous occasions, the Committee continues to rely on the same reasoning case after case. In the impugned order, the Committee concludes that the petitioner has failed to establish any affinity towards Thakar Schedule Tribe and this conclusion is derived on the basis of the statement of the close relative as well as the information collected from the petitioner and her father establishing cultural affinity in form of information in the

Tilak

typical format devised by the committee seeking information about traits, deities, customs, practices, etc.

In the case of *Anand Katole V/s. Committee for Scrutiny and Verification of Tribes Claims*¹, the Apex Court has held that the genuineness of the 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. It is not a sole category where the person belongs to particular tribe. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim.

The petitioner has placed on record the documentary evidence which includes the document in favour of her grand-father and cousin grand-father of the year 1940 and 1937 respectively. The authenticity of this document is also

¹ 2012(1) SCC 113

been verified by the Committee through Vigilance cell. No reason is adduced by the Committee to discard the said pre-constitutional document with greatest probative value. The caste is categorically recorded as “Hindu Thakar” and there is no reason why such entry could have been effected long before the Schedule Tribe Order 1950 came into existence as the grand-father or the cousin grand-father of the petitioner did not contemplate recognition of Thakar as the Schedule Tribe, post-constitutional period. There is no reason why this two pre-constitutional documents have been discarded by the Committee.

Another reason which the Committee has adopted on the ground of area restriction and the Committee has observed that the family of the petitioner is from Taluka Karad, District Satara and this particular region do not find place in the areas where the Tribe was traced before the removal of area restriction. The Committee has clearly ignored the law laid down by this Court on the said point and specifically that the issue as regards the area restriction has been put to rest by the order of the Hon'ble Apex Court in the case of Jaywant Dilip

Tilak

Pawar Vs. State of Maharashtra in Civil Appeal No.2336 of 2011 decided on 8th March 2017 wherein the Hon'ble Apex Court in reference to the Thakar community itself has observed that the issue of area restriction is wholly irrelevant. Their Lordship has observed thus :

“The Scrutiny Committee which has negated the claim before the Apex Court on the ground that the relatives of the appellant were not residents of the areas mentioned in the presidential order 1956 and further, they were not be able to give any details of customs and traditions being observed by the said community, the Apex Court has observed that the said issue is totally irrelevant and the appellants are only required to establish that they belong to the community mentioned at Sr.No.44 of paragraph 9 of 2nd Schedule of Act 108 of 1986”.

In light of the said observations made by the Hon'ble Apex Court, it is clear that once the petitioner demonstrates that she is in possession of documents reflecting the caste as 'Thakar' which find place in entry no.44 of the Schedule Tribe Order 1950, then it is not open for the committee to find out whether the petitioner belongs to Thakar

Tilak

Schedule Tribe and it is not permissible to deduce an inference that there are also other castes which are 'Thakars'.

7 Another aspect of the matter is the consideration of validity certificate in favour of the petitioner's father. The father of the petitioner is issued a validity certificate on 11th November 2005 and it is to be noted that it is the Schedule Tribe Committee, Pune, itself which had granted validity certificate in favour of the petitioner's father. From 2005, the status of Schedule Tribe has been conferred on the father of the petitioner and resultantly, the same is enjoyed by the petitioner also. However, on a mere suspicion that certain documents during the vigilance inquiry have been unearthed which reflect the caste as Maratha/Bhatt, the Committee expresses doubt about the validity granted in favour of the father. The petitioner herself, along with her claim had submitted information about documents bearing caste "Hindu Bhatt" of her mother, mother's father, her maternal uncle. It is not that the petitioner had concealed the said information which the Committee has been able to extract on conduct of vigilance

Tilak

inquiry. The Committee further observed that there is no material brought on record that the petitioner's father had an inter-caste marriage. In any contingency, the caste of the claimant has to be decided on the basis of the relatives on the paternal side and not on the maternal side. When the petitioner had specifically placed on record the pre-constitutional documents of her grand-father and cousin grand-father, and has not concealed the documents of Hindu Bhatt in favour of her mother's side, there was no reason for the Committee to doubt the genuineness of the claim of the petitioner's father. Furthermore, the impugned order merely makes a reference to a statement that in light of suppression of facts, the Committee is in the process of issuing show cause notice to the petitioner's father for re-verification of his claim.

8 During the course of hearing of the matter, the learned Assistant Government Pleader, Mr.Samant would submit that the said show cause notice has been issued to the petitioner's father. In order to ascertain the veracity of the said statement, we had asked Mr.Samant to produce the record in

Tilak

the course of hearing which took place on 14th June 2018. Today, Mr.Samant had produced before us a show cause notice issued to the father of the petitioner by the respondent no.2 Committee asking him to show cause as to why the validity granted in his favour should not be reviewed. It is pertinent to note that the said document bears two dates i.e. 14.3.2018/2.5.2018. Mr.Samant fairly submits that the said show cause notice was despatched on 2/.5/2018. It can thus be seen by us that when the Committee passed the order on 14/3/2018, a show cause notice was not issued to the father, but it was contemplating issuance of a show cause notice to the father in light of the suppression of facts revealed during the course of vigilance inquiry conducted while examining the claim of the petitioner and it was in the process of issuing such a show cause notice. As on date of the passing of the impugned order i.e. 14.3.2018, no such show cause notice was issued to the father of the petitioner and the validity certificate issued in favour of the petitioner's father could not have been merely ignored on the said contemplated action.

Tilak

The respondent Committee has rejected the claim of the petitioner on completely superficial grounds which are not sustainable in law in light of the decision of the Hon'ble Apex Court. This Court, the same Bench (S.C.Dharmadhikari, J and Bharati H. Dangre, J) in Writ Petition No.7/2014 by a detailed judgment delivered on 22nd December 2017 had dealt with the approach of the Committee and in great detail has dispelled the evasive grounds on which the petitioner has rejected the claim of the petitioner therein, the foremost being the affinity test and the area restriction issue. This Court had specifically observed that the reasoning given by the Committee is nothing short of being unmindful of its onerous duty to verify the claims by misdirecting itself and by claiming that the duty of the Committee is to ensure that pseudo claimant do not take benefit meant for the genuine Schedule Tribe. We have forewarned the Committee that the approach of the Committee is totally erroneous and under such a guise even the genuine claimants are deprived of their rightful claim resulting into great injustice to them.

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We observe nothing more. However, we cannot sustain the impugned order passed by the Committee and deprive the petitioner of her claim of belonging to Thakar Schedule Tribe at this stage when she has already appeared for the NEET examination and has cleared the same and is aspiring to join the medical course by putting her claim as the Schedule Tribe candidate.

9 For the reasons set out in the foregoing paragraphs and in the light of two Division Bench judgments of this Court relied upon i.e. a Division Bench judgment dated 3rd March 2017 in Writ Petition No.918 of 2015 and a subsequent judgment, copy of which is also attached to the writ petition, this writ petition succeeds.

Rule is made absolute in terms of prayer clause (a).

A certificate of validity be issued to the petitioner forthwith by the second respondent.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)

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