



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION (L) NO. 23349 OF 2019

Onkar Santosh Chavan

...Petitioner

vs.

The State of Maharashtra and Ors.

...Respondents

Mr.Anandsingh Bayas i/b. C.K. Bhangoji for Petitioner.

Mr.V.M.Mali, AGP for Respondent Nos.1 and 2.

Mr.Aadesh J. Sawant for Respondent No.3.

CORAM : S.C. GUPTE &  
SURENDRA P TAVADE, JJ.

DATE : 25 JANUARY 2021

P.C. :

Heard learned Counsel for the Petitioner and learned AGP for the Respondent – State. Rule. Rule taken up for hearing forthwith, by consent of Counsel.

2 This petition challenges an order passed by Respondent No.2-Scrutiny Committee invalidating the Petitioner's tribe claim as belonging to the Scheduled Tribe of 'Thakar'. The Petitioner relied on several old birth and death records, some of them even pre-constitution, describing the immediate blood relations of the Petitioner as 'Thakar' or 'Hindu Thakar'. There are at least three pre-constitutional records, including those of the grandfather of the Petitioner, one Vitthal Pitambar Chavan, which described him as 'Hindu Thakar'. A predominant majority of these entries, which were relied upon by the Petitioner, and which were taken note of by the Vigilance Cell, show the Petitioner's immediate paternal relations as either

Thakar or Hindu Thakar. It appears that merely because in some entries, the Petitioner's cousin great-grandfather or relations, including daughter of a cousin great-grandfather, are described either as Marathi or Hindu, the Scrutiny Committee has rejected the Petitioner's tribe claim as Thakar. This court has made it clear in a number of cases that neither Marathi nor Hindu can be described as a caste or a tribe; Marathi is a linguistic identity, whereas Hindu is a religious identity; neither reflects on the caste or tribe of any person. The Scrutiny Committee, accordingly, appears to have committed a clear error, leading to miscarriage of justice, in relying on the entries of some relations of the Petitioner, describing them either as Marathi or Hindu.

3           The other reason held by the Scrutiny Committee against the Petitioner appears to be want of cultural affinity with the tribe of 'Thakar'. The discussion of the Scrutiny Committee in this behalf leaves much to be desired. In any event, as this court has made it clear in a number of cases, in the face of old records of paternal relations, including pre-constitutional records, bearing on the candidate's caste or tribe claim, it is not permissible to simply rely on some aspects of cultural affinity or the candidate feigning ignorance of such cultural elements .

4           One of the main and practically indefeasible supporting material for the Petitioner's tribe claim appears to be a validity certificate issued by the Scrutiny Committee to his cousin uncle, who is demonstrably a close paternal relation as disclosed in a family tree of the Petitioner which is not a matter of dispute. The cousin uncle's case, in fact, indicates existence of documents as old as 1920, where his paternal relations are shown as belonging to the Scheduled Tribe of Thakar. There is abundance

of pre-constitutional documents in support of the cousin uncle's tribal claim, which claim has admittedly been accepted by the Scrutiny Committee. Whilst commenting on the validity certificate issued to the cousin uncle, the Scrutiny Committee has given only one reason for disregarding the validity certificate. In its impugned order, the Scrutiny Committee has observed that some of the documents prior to the year 1950, which purportedly describe some paternal relations of the cousin uncle as Maratha or Marathi, were not available before the Scrutiny Committee and that, accordingly, the validity certificate in his case appears to be based on "suppression of facts and misrepresentation". It is difficult to see how this amounts to suppression of facts or misrepresentation on the part of the Petitioner's cousin uncle. No such conclusion is possible on the basis of the record of the cousin uncle's case, including the order of the Scrutiny Committee passed on his application.

5           The tribal claim of the Petitioner being, thus, based on a substantial footing and being supported by indefeasible pre-constitutional documents and even a validity certificate issued to a close paternal relation, the impugned order of the Scrutiny Committee not only deserves to be quashed and set aside, but the Scrutiny Committee deserves to be issued a positive direction to issue a tribe validity certificate to the Petitioner.

6           Rule is, accordingly, made absolute and the petition is allowed by quashing and setting aside the impugned order of Respondent No.2 Scrutiny Committee dated 3 May 2019 and directing Respondent No.2 to forthwith issue a validity certificate to the Petitioner that he belongs to the Scheduled Tribe of Thakar. The Scrutiny Committee is directed to issue

such Tribe Validity certificate by 29 January 2021.

(SURENDRA P. TAVADE, J.)

(S.C. GUPTE, J.)