



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2313 OF 2021

Karan Satish Gaikwad

..... Petitioner

Vs.

State of Maharashtra & Ors.

..... Respondents

Mr. R. K. Mendadkar with Mr. Tanaji Jadhav for the
Petitioner

Mr. N. C. Walimbe, AGP for the State

**CORAM: S.B.SHUKRE &
G.A.SANAP, JJ.**

DATED : MARCH 2, 2022

P.C.

1 Learned Counsel for the Petitioner seeks to delete
Respondent Nos.4 and 5. Leave is granted. Respondent
Nos.4 and 5 be deleted from the array of the Respondents by
carrying out necessary amendment.

2 Heard.

Rule.

Rule is made returnable forthwith by consent.

3 The Petitioner claims as belonging to the Thakar - scheduled tribe but Respondent No.2 does not agree and has, therefore, rejected her said claim and invalidated the tribe certificate issued to the Petitioner by its impugned order.

4 It is seen from the impugned order that in spite of there being overwhelming evidence in the nature of the documents produced on record which were of pre-constitutional era and which showed that the Petitioner belonged to Thakar community which was later identified to be a scheduled tribe, the Scrutiny Committee, however, compared these entries with other entries, some of which were also of pre-constitutional period and later than the entries in favour of the Petitioner and found that those other entries disclosed the social status of the Petitioner as Maratha and thus, rejected the documents which went in favour of the Petitioner. The earliest entry was a birth entry dated 17th September 1926 standing in the name of Rupabai, who was paternal aunt of the father of the Petitioner. The social status of Rupabai has been shown in this document as Thakar. There is another entry standing in the name of

cousin of the father of the Applicant by name Narayan Babaji Gaikwad and this entry, a birth entry dated 16th December 1926, also shows the social status of Narayan to be that of Thakar. There is one more entry, a birth entry dated 26th April 1937 standing in the name of Subarao, showing him to be Hindu Thakar. Subarao is, admittedly, a grandfather of the Petitioner. Of course, there is a word "Hindu" prefixed to the word "Thakar" in the birth entry dated 26th April 1937. But, this word, undoubtedly can be seen to be giving religious identity to Subarao and therefore, it cannot be said that it creates a doubt about the entry "Thakar" which is indicative of tribe of Subarao.

5 These entries have been ignored and it appears that undue importance has been given to another birth entry dated 4th September 1934 standing in the name of Dudhabai Laxman Gaikwad, the paternal aunt of the father of the Petitioner showing her social status to be Maratha. There is also one more document relating to the sale deed dated 14th February 1927 wherein social status of one Laxman has been shown to be Thakar. Admittedly, Laxman is a grandfather of the Petitioner and this entry too has been

erroneously rejected by making its wrong comparison with the document which deserves to be ignored for the reasons stated by us earlier.

6 The oldest entries are, as discussed earlier, indicative of the Thakar community, and therefore, the subsequent entry of the year 1932 in the name of Laxman Babaji Gaikwad showing him to be Marathi or the entry of the year 1934, in the name of Dudhabai would lose their significance. Some times, it does happen that while creating some record indicative of social status of a person, the elders in the family do something to conceal their real social status on account of the disadvantages attached to that social status. Undoubtedly, pre-constitutional period was of the time when social stigma and several disadvantages were attached to particular castes and tribes on one hand and several advantages and privileges followed a few of the castes on the other. In order to overcome these difficulties, there used to be a tendency amongst the elders in the family to hide family's real social status and make false claim as belonging to a community then considered as "forward". This is how we consider the birth entry of 4th September 1934 of

Dudhabai or entry of the year 1932 of Laxman and this is the reason why we are of the opinion that they deserve to be ignored while taking overall view of the whole matter.

7 Apart from what is stated above, there is one more document which, in our opinion, puts a stamp of affirmation on the claim of the Petitioner. There is a tribe validity certificate issued to Sandeep Subarao Gaikwad on 27th September 2005 by the Caste Scrutiny Committee, Pune. Admittedly, Sandeep is a real brother of the father of the Petitioner. This document has attained finality and has been issued after conducting vigilance inquiry. It has, therefore, high probative value, rather a value of conclusive proof of the social status of the Petitioner. However, this document has been rejected by the Scrutiny Committee on the specious ground that the Vigilance Enquiry Officer was careless in conducting the inquiry. We must state it here that the Vigilance Enquiry Officer is a part of the machinery created for assessing the caste claim and therefore, it would be highly inappropriate for the members of the Scrutiny Committee to record an opinion that its officer failed to exercise due care and caution while submitting the report of

his inquiry, particularly when his report was accepted by earlier Committee which on its strength issued the validity certificate. Once one committee accepts the report it is not open for the subsequent committee to make any adverse comment upon the conduct of inquiry by the Vigilance Officer in some other matter. If any adverse remarks were to be passed, it would have to be done by following proper procedure and rules of natural justice. Unfortunately, Respondent No.2 Scrutiny Committee has failed to observe these norms of discipline in a case of quasi-judicial nature and thus, has committed impropriety by making adverse comments on the conduct of the Vigilance Officer and that too without giving any opportunity of hearing to the officer. We direct that the adverse remarks passed against the Vigilance Officer be expunged from the impugned order.

8 The discussion, thus far made would show that the Petitioner has established her claim as belonging to “Thakar” “Scheduled Tribe” beyond any reasonable doubt and therefore, this Petition deserves to be allowed.

9 The impugned order is hereby quashed and set aside.

10 Respondent No.2 Committee is directed to issue a Tribe Validity Certificate to the Petitioner as she belonging to the "Thakar" "Scheduled Tribe", within 4 weeks from the date of receipt of the order.

11 Rule is made absolute in terms of the above.

12 Writ Petition stands disposed of.

(G.A.SANAP, J.)

(S.B.SHUKRE, J.)