

Manoj Vs. Committee for Scrutiny and Verification of Tribe Claim and Others

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Court : Mumbai Nagpur

Decided On : Oct-14-2014

Judge : A.P. Bhangale & C.V. Bhadang

Appeal No. : Writ Petition No. 2984 of 2003

Appellant : Manoj

Respondent : Committee for Scrutiny and Verification of Tribe Claim and Others

Judgement :

A.P. Bhangale, J.

1. Heard the learned Counsel for the respective parties.

2. By this petition, the petitioner has prayed for quashing and setting aside order dt.17.7.2003 passed by respondent no.1/Committee for Scrutiny and Verification of Tribe Claim, Amravati. The petitioner has also prayed for issuance of directions to hold that the petitioner belongs to Scheduled Tribe Thakur community. It appears that the petitioner namely Manoj Narayanrao More, resident of Murtizapur, District Akola claimed as belonging to caste 'Thakur' recognized as Scheduled Tribe on the basis of Caste Certificate issued by the Sub Divisional Magistrate, Akola dt.28.6.2002. The petitioner had relied upon the School Leaving Certificate dt.4.7.2001 indicating the caste Thakur mentioned therein and the School Leaving Certificate, dt.19.6.2001 issued in favour of the petitioner shows

that he is 'Thakur' by caste and the School Leaving Certificate issued to Narayan Baliram Thakur, father of the petitioner mentions that he is Thakur by caste, born in Wakad. Grand father of the petitioner namely Baliram Dagadu Thakur was also granted School Leaving Certificate dt.26.8.1991 which mentions his caste as Thakur; while Godavari Waman Shinde, mother of the petitioner was granted School Leaving Certificate, dt.10.1.1992 mentioning her caste as Thakur. Kisan Wamanrao Shinde, maternal grand father of the petitioner was also issued Caste Certificate dt.29.7.1981 indicating him as belonging to Thakur tribe. Thus, number of documents have been relied upon by the petitioner in respect of his father and grand father, maternal grand father and mother indicating their caste as Thakur.

3. The petitioner relies upon the judgment in Writ Petition No.2746 of 1998, dt.19.6.1999 by the Division Bench of this Court in the case of Ms. Anshita B. Dhage vs. State of Maharashtra and Others whereby this Court has found that the Tribunal (Committee for Scrutiny of Verification and Tribe Claim) was not justified in invalidating the caste claim of the petitioner Anshita Dhage as belonging to Scheduled Tribe. The Caste Scrutiny Committee appears to have passed order dt.13.5.2002 in respect of the claim by one Suresh Deorao Nikumbe, in which the Committee for Caste Scrutiny and Verification of the Tribal Claim, Nashik by order dt.13.5.2002 had referred to the rulings in Ms Asmita Dhage's case and concluded that the applicant in that case is individually entitled to get benefits of Thakur Scheduled Tribe community subject to decision in pending Writ Petition No.4123 of 1999 before the Division Bench of High Court, Bench at Aurangabad.

4. Genealogy tree of the petitioner and his close relatives was also pointed out to us to argue that the petitioner is belonging to Scheduled Tribe Thakur and his entitlement to benefits on that basis. This Court has earlier on Civil Application No.750 of 2011 passed order staying the impugned order passed by the Caste Scrutiny Committee directing respondent no.2 to consider the claim of the petitioner for admission to Post Graduate Medical Course from the Scheduled Tribe category if the petitioner is otherwise eligible and qualified further making it clear that if the petitioner is admitted to the Post Graduate Course, the said admission shall be provisional and he shall not claim any equity on that basis as the interim order was passed by this Court subject to final decision in this petition.

5. Our attention is invited to the ruling in the case of Anand vs. Committee for Scrutiny and Verification of Tribe Claims and Others reported in 2011 (6) Mh.L.J. 919. It is submitted with reference to the ruling in that case that, if there is any doubt, the Caste Scrutiny Committee must abide by the broad principles while dealing with the caste claim, which are mentioned as under:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject the claim.

6. Considering the above broad parameters, pre-Independence documents, if any, need to be considered by testing veracity thereof on the basis of oral evidence by hearing the applicant with reference to the documents. While applying the affinity test with reference to ethnological connections with the Scheduled Tribes, various traits, affinity test may not be regarded as a litmus test to establish link of the applicant with the Scheduled Tribe, but the same may be used for corroboration to the documentary evidence relied upon. It is true that burden to prove the caste claim is upon the applicant. He has to discharge it by production of requisite documents in support of the claim leaving it to the Caste Scrutiny Committee to perform the role of verification of the claim, scrutiny of documents and material produced by the applicant to prove his claim. The decision has to be just, fair and proper.

7. Our attention is also invited to the Judgment delivered by this Court on 20.12.2012 in Writ Petition No.1602 of 1998, Nandkumar s/o. Manohar More .vs. State, through its Secretary, Tribal Development Department, Mantralaya Annexe, Mumbai, to which one of us (A.P.Bhangale,J) was a party. In that case, validity was granted in favour of real brother of the petitioner. This Court had requested the learned Counsel appearing for the Caste Scrutiny Committee to take instructions as to whether the petitioner's brother namely Mohan's claim was validated after following the procedure prescribed including inquiry by the Vigilance Cell. When the learned Counsel for the respondent/Caste Scrutiny Committee accepted validity granted to the petitioner's brother after following the procedure as prescribed including the inquiry by the Vigilance Cell, this Court considered the documents in support of the petition and in the light of the facts that the real brother of the petitioner was held as belonging to the Scheduled Tribe and his real uncle was also held as belonging to the Scheduled Tribe by granting Validity Certificate to them, the Division Bench of this Court held that validity should also be granted in favour of the petitioner and allowed the petition setting aside the impugned order passed by the Caste Scrutiny Committee and directed the Caste Scrutiny Committee to award Validity Certificate in favour of the petitioner. The ruling is also applicable in the case in hand as well on the principle that when close blood relatives have been recognized as belonging to Scheduled Tribe Thakur, the petitioner can also be granted status of belonging to same

Scheduled Tribe Thakur.

8. Identical decision was also taken by this Court in Writ Petition No.4869 of 2012, Gopal s/o. Mahadeorao Bayaskar vs. The Scheduled Tribe Caste Certificate Scrutiny Committee and another, dt.27.9.2013 and also in the case of Praful s/o. Aniruddha Ingle .vs. State of Maharashtra and Others, Writ Petition No.1661 of 2009 decided by this Court on 10.10.2013.

9. Reliance is also placed by the petitioner on the following decisions :

a) Ku. Manisha Ramesh Tayade .vs. The Committee For Scrutiny and Verification of Tribe Claims, Amravati and Others, Writ Petition No.3558 of 2001.

b) Madhuri Nitin Jadhav vs. State of Maharashtra, through its Secretary, Tribal Development Department, Mantralaya, Mumbai and Others, Writ Petition No.7343 of 2013. c) Sagar s/o. Madhav Suryawanshi .vs. The Maharashtra University of Health Science, Wani and Others, Writ Petition No.3220 of 2014.

d) Order dt.26.8.2011 in Special Leave Petition (C) No.35982 of 2010, Prashant Shivaji Jadhav .vs. State of Maharashtra and Others.

10. Thus, considering the series of decision by this Court and the identical situation and considering that the present petitioner is similarly circumstanced, we quash and set aside the order dt.17.7.2003 passed by respondent no.1/Caste Scrutiny Committee. We hold that the petitioner belongs to the Scheduled Tribe Thakur and direct the respondent/Caste Scrutiny Committee to grant status to the petitioner as belonging to the Scheduled Tribe Thakur. Rule is made absolute in the above terms. No order as to costs.

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