

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1012 OF 2021

Kum. Akanksha Babasaheb Shinde

... Petitioner

Versus

1. State of Maharashtra
through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai – 400 032.

2. Scheduled Tribe Certificate
Scrutiny Committee, Nashik Division,
Nashik through its Member Secretary,
having its Office at Adivasi Vikas Bhavan,
2nd floor, Gadkari Chowk, Old Agra
Road, Nashik, Dist. Nashik.

3. Commissioner and Competent
Authority, State CET Cell,
having its office at New Excelsior
Building, 8th Floor, A.K. Nayak
Marg, Fort, Mumbai- 400 001.

4. Cumming Engineering College
for Women, Pune, having office at
Karve Nagar, Dist- Pune,
Pune- 411052.

... Respondents

Mr.R.K. Mendadkar a/w. Ms. Komal Gaikwad for the Petitioner.

Mr. Sameer Khedekar for Respondent No.3.

Mrs. P. N.Diwan, AGP for State.

Mr. Sandeep Waghmare for Respondent No.4.

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP JJ.**

DATE : 4th APRIL, 2022.

JUDGMENT : [Per G.A. SANAP, J.]

Rule.

2 Rule made returnable forthwith. Heard finally, by consent of the parties.

3 In this Petition, the Petitioner has challenged the order dated 8th December, 2020 passed by Respondent No.2-Scheduled Tribe Certificate Scrutiny Committee, Nashik Division, Nashik invalidating the caste certificate of the Petitioner as belonging to Thakur Scheduled Tribe.

4 It is the case of the Petitioner that she belongs to Thakur, Scheduled Tribe by birth. The Competent Authority issued a caste certificate of Thakur, Scheduled Tribe to her on 4th August, 2019. The Petitioner is a student. The Petitioner, therefore, applied to the Respondent No.2 on 23rd September, 2019 seeking verification of her

caste certificate. The Petitioner was required to submit the validity certificate as a condition precedent for prosecuting studies under the reserved category i.e. scheduled tribe. The Petitioner submitted number of documents including two pre-constitution period documents and caste validity certificate issued to Sachin Nana Shinde, a real uncle. The Petitioner participated in the hearing of the proceeding conducted by the Respondent No.2. According to Petitioner, without considering the pre-constitution period documents and validity certificate Respondent No.2 rejected her tribe claim. No reasons have been recorded. It is stated that the Petitioner has been allotted a seat under a scheduled tribe category in the first round of M.K. S.S. Cummins College of Engineering for Women, Karve Nagar, Pune-Respondent No.4.

5 The validity certificate is required to be produced to prosecute her studies under the scheduled tribe quota. According to Petitioner, the order passed by the Respondent No.2 does not record reasons. The documentary evidence has not been properly considered. The rejection of tribe claim of the Petitioner is not according to law.

6 One Ambadas Lahanu Gaikwad, a Research Officer, attached to Respondent No.2 has filed the Affidavit on behalf of Respondent No.2

and opposed the claim. It is contended that the Scrutiny Committee has taken into consideration all the documents produced on record. In some of the pre-constitution period documents the caste of the relatives was shown as 'Hindu Thakur' or 'Hindu Maratha Thakur'. The entries were self contrary. No convincing evidence was placed on record. The Caste Scrutiny Committee during the course of enquiry found that the caste certificate of the uncle of the Petitioner got validated without proper material. The Committee, therefore, issued a show cause notice to the uncle of the Petitioner for invalidating the scheduled tribe claim. The Petitioner was granted an opportunity of hearing. The Vigilance Cell Report was submitted by the police. The report did not support the Petitioner. The material collected during the vigilance enquiry did not establish the cultural affinity of the Petitioner with the scheduled tribe community. The Committee has recorded the reasons.

7 We have heard the learned Advocate Shri.Mendadkar for the Petitioner and learned AGP for Respondent Nos. 1 and 2. We have perused the record and proceedings.

8 Learned Advocate Shri. Mendadkar submitted that the Petitioner had produced two pre-constitution period documents to substantiate her scheduled tribe claim. The Petitioner had also produced before the

Committee the caste validity certificate of her uncle Sachin Nanasaheb Shinde. Learned Advocate Shri. Mendadkar submitted that since the pre-constitution documents and caste validity certificate of blood relatives of the Petitioner from her paternal side were produced, the Caste Scrutiny Committee ought to have allowed the claim of the Petitioner. Learned Advocate further submitted that the tribe claim has been supported by the documents. In the submission of the learned Advocate, the contrary entries of the blood relatives cannot be given precedence before the pre-constitution period entries of the blood relatives relied upon by the Petitioner.

9 Learned AGP submitted that the Scrutiny Committee has recorded the reasons while rejecting the documents and the caste validity certificate relied upon by the Petitioner. Learned AGP further submitted that the validity certificate issued in favour of her uncle has now been questioned by the Committee. Learned AGP submitted that there are number of entries of the blood relatives of the Petitioner on paternal side to indicate that the Petitioner does not belong to 'Thakur' scheduled tribe category.

10 In order to appreciate the rival submission, we have perused the Order passed by Respondent No.2-Scheduled Tribe Certificate Scrutiny

Committee on 06/01/2021, the Vigilance Cell Report and the documents relied upon by the Petitioner. A Perusal of the Order would show that the Respondent No.2- Scrutiny Committee has considered the documents of 13 blood relatives of the Petitioner and the validity certificate issued to the uncle of the Petitioner. The reference to all these documents has been made in the Vigilance Cell Report. Besides, in the Vigilance Cell Report the comments about the cultural affinity of the Petitioner's caste with the Scheduled Tribe people has been stated with elaboration. The Vigilance Cell as well as the Committee found that the material on record does not satisfy the cultural affinity traits of the Petitioner with the Scheduled Tribe Community. The Committee has rejected the pre-constitution period documents on the ground that there are other documents which have contrary entries in the case of the blood relations of the Petitioner. The Scrutiny Committee while commenting upon the validity certificate has observed in paragraph No.11 of the Report that the earlier Scrutiny Committee did not examine the documents and the aspect of the cultural affinity of the uncle of the Petitioner and therefore, same could be of no assistance to the case of the Petitioner. The Committee has ordered that the decision of granting caste validity in favour of uncle of the Petitioner is required to be reconsidered by issuing a show cause notice to him. The learned AGP pointed out that the said reconsideration process has already

begun. It is, therefore, seen that the validity certificate issued in favour of the uncle of the Petitioner is the subject matter of enquiry and fate of the same depends upon the outcome of the said enquiry.

11 The learned Advocate relying upon the decision in the case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.**¹ submitted that in view of the law laid down in this case, the tribe claim of the Petitioner could not be rejected. In this case, the Apex Court has held that the genuineness of the caste claim has to be looked into a broad perspective rather than the verification of documents. It is held that older documents have a higher probative value and must be given its due regard. It is further held that affinity test can be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim. It is to be noted that in this case the finding of the Committee on the point of the cultural affinity is against the Petitioner. The Scrutiny Committee has recorded the finding on the basis of the material on record that the cultural affinity traits of the Petitioner are not identical and does not match with the genuine Scheduled Tribe Community. The claim of the Petitioner, therefore, rests on two pre-constitution period documents. Bhimashankar Gangaram is the great grandfather of the Petitioner. The Petitioner has produced on record his school leaving certificate. His birth date is 01/01/1911.

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He was admitted in school on 07/06/1929. His caste mentioned in certificate is 'Thakur'. This is the oldest pre-constitution period document. The second oldest document is of year 1946. It is the school leaving certificate of sister of the grandfather of the Petitioner. In the said certificate the birth date recorded is 18/03/1939. She was admitted in school on 06/06/1946. The caste mentioned is 'Hindu Thakur'.

12 A perusal of the Vigilance Report would show that from the documents obtained during the course of enquiry, the caste of the other blood relatives of the Petitioner was mentioned as 'Hindu Thakur'. It is to be noted that except the document of great grandfather of the Petitioner and the caste verification certificate of the uncle, there is no other evidence. The document of the great grandfather is of the year 1911. In our view, this document deserves due regard. However, the subsequent decision taken by the Scrutiny Committee to reconsider the validity certificate issued in favour of the uncle of the Petitioner, it would be necessary to adopt a very cautious approach in this case. In this case the validity certificate issued to the uncle of the Petitioner is not finally withdrawn. In our opinion, till its final withdrawal the benefits sought for by the Petitioner relying upon the same could not be denied to her. The pre-constitution period document of great grandfather would also come to the rescue of the Petitioner. However,

the Committee has made candid observation that the entire material had not been gone into while issuing the caste validity certificate to the uncle of the Petitioner and, therefore, reconsideration of the said decision was required.

13 In our view, therefore, at this stage the Petitioner cannot be denied benefit on the basis of the caste certificate obtained by her. In our opinion, in view of the development brought to our notice, the Respondent No.2-Scrutiny Committee can be directed to issue the validity certificate provisionally. On the basis of the material on record, we are convinced that the Petitioner would only be entitled to get a provisional validity certificate. Accordingly, the Petition deserves to be allowed. Hence, the following order.

ORDER

(i) The Petition is allowed.

(ii) The impugned order is hereby quashed and set aside. The Scrutiny Committee is directed to issue a provisional tribe validity certificate to the Petitioner showing that she belongs to Thakur Scheduled Tribe, which certificate shall be subject to the outcome of the proceedings sought to be initiated against the relative Sachin Nanasaheb Shinde for reconsideration of the tribe validity certificate issued by the Committee.

(iii) The provisional validity certificate as above shall be issued by Respondent No.2 within two weeks from the date of receipt of copy of

the order.

(iv) We also direct Respondent No.4 to forward the provisional validity certificate to Respondent No.1 for its appropriate decision, within a period of two weeks from the date of submission of aforesaid validity certificate by the Petitioner and we further direct the Respondent No.1 to take the decision in accordance with law, within a period of four weeks on receipt of the provisional validity certificate.

(v) Rule is made absolute in the above terms.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]