

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5546 OF 2022

Mohan S/o. Kisan Pawar,
Aged about 49 years, Occ. Service,
R/o. At Post Gogri,
Tahsil Mangrulpir, District Washim

..... **PETITIONER**

...VERSUS...

1. The Vice Chairman/
Member Secretary
Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati

2. The Head-Master
Rashtrasant tukdoji Maharaj
Vidyalaya, Gogri, Post Sonala,
Tahsil Mangrulpir, Dist. Washim

3. The Secretary,
Reshtrasant Tukdoji Maharaj
Shikshan Sanstha, Gurudeo Nagar,
Gurukunj Ashram, Tahsil Tiosa,
District Amravati

4. The Police Inspector,
(Police Vigilance Cell),
Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati

.....**RESPONDENTS**

Ms. Preeti D. Rane, Advocate for the petitioner,
Mr. A.S. Fulzele, Addl. GP for respondent Nos. 1 & 4/State.
Mr. Praful A. Teni, Advocate for Respondent Nos. 2 and 3.

CORAM:- NITIN W. SAMBRE & ABHAY J. MANTRI, JJ.

DATE : 07.02.2024

JUDGMENT (Per : Abhay J. Mantri, J.)

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

3. The Challenge is to the impugned order dated 28.2.2022, passed by Respondent No. 1 - Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati (for short, “***The Committee***”), wherein the Tribe claim of the petitioner as that belonging to “***Thakur***” Scheduled Tribe, came to be rejected.

4. The case of the petitioner is that he belongs to the ‘Thakur’ Scheduled Tribe which is enlisted at Serial No. 44 of the Scheduled Tribe order. On 14.9.1989, the Executive Magistrate, Mangrulpir, and on 3.12.2018, Sub-Divisional Officer, Mangrulpir, issued caste certificates that the petitioner belongs to the ‘Thakur’ Scheduled Tribe.

5. Vide appointment order dated 22.01.2001, the petitioner was appointed as ‘Lab Attendant’ in respondent No. 2 school. On

16.06.2003, respondent No. 2- School forwarded the caste certificates of the petitioner to respondent No. 1 Scrutiny Committee for its verification along with the documents submitted by the petitioner. The Scrutiny Committee was of the view that the claim of the petitioner is doubtful, same was referred to the Vigilance Cell for enquiry. Accordingly, the Vigilance Cell conducted a detailed enquiry and submitted its report to the respondent No.1 Committee. Pursuant to the report of the Vigilance Cell, the Committee called for an explanation from the petitioner about the discrepancies in the documents found during the enquiry. The petitioner appeared before the Committee and submitted explanations on 20.10.2020 and 16.11.2021.

6. The Committee, after considering the documentary evidence, Vigilance Cell report, and the explanations of the petitioner has negated the claim of the petitioner as he belongs to the 'Thakur' Scheduled Tribe and invalidated the caste claim, hence, this petition.

7. The learned advocate for the petitioner questioning the impugned order has urged that the petitioner has produced several documents of the pre-independence era of his grandfather and other

ancestors in support of his claim. He has invited our attention to the documents dated 12.6.1926, 30.4.1937, 29.7.1937, and 17.4.2020, and the order dated 1.12.2022, passed in Writ Petition No. 6670/2022 (Anurag s/o. Gajendra Pawar and others vs. The Scheduled Tribe Caste Certificate Scrutiny Committee) by this court. He has further submitted that in view of the ratio laid down in *Apoorva d/o.Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and Others [2010(6)Mh.L.J.401]* and *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Others, (AIR 2023 SC 1657)*, the petitioner is entitled to the relief as claimed.

8. *Per contra*, the learned AGP appearing for respondents Nos. 1 and 4 argued that during the vigilance enquiry, two documents pertaining to Mr. Akaram Kisan and Mr. Prabhakar Ramji were found, wherein their caste is shown as 'Maratha', so also, petitioner has failed to prove affinity test, hence, he has urged that the order passed by the Committee is just and proper.

9. We have appreciated the submissions advanced and scrutinized the documents placed on record. The above-referred documentary entries dated 12.06.1926, 30.04.1937, 29.07.1935,

and 02.07.1935 speak of the ancestors of the petitioner i.e. the father, grandfather, and uncle belong to 'Thakur' Scheduled Tribe. Those documents are public documents and school records. The Vigilance Cell or the Scrutiny Committee has not disputed these documents or the existence of these documents which are of the pre-constitutional era and therefore they have greater probative value than the other documents.

10. Apart from the above, the petitioner has denied his relationship with Mr. Prabhakar Ramji and his cousin's brother Mr. Akaram Kisan. Besides, these documents are subsequent to the above-referred documents. Therefore, as per the settled position of law, the oldest entries carry greater probative value than the subsequent documents.

11. So as to find out whether the petitioner belongs to the 'Thakur' Scheduled Tribe, the Committee has applied the affinity test.

12. The Hon'ble Apex Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)* while dealing with the affinity test has observed that "*the matter is required to be referred to the Vigilance Cell at the level of enquiry before the Committee*

so as to find out whether the party like the petitioner belongs to a genuine scheduled tribe community. The Vigilance Cell is empowered to verify the knowledge of the applicant about the deities of the community, customs, rituals, mode of marriage, death ceremony, etc. in respect of that particular Scheduled Tribe".

13. However, the Hon'ble Apex Court has held that by very applicability of the affinity test, it cannot be said that the said test can be said to be conclusive in finding out whether the petitioner or a candidate belongs to 'Thakur' Scheduled Tribe. Similarly, the affinity test cannot be said to be a litmus test.

Apart from the above, the petitioner has relied upon the judgment of this Court in Writ Petition No. 6670/2022 (supra) wherein it has held that *"Ms. Darshana i.e. the daughter of the petitioner belongs to 'Thakur' Scheduled Tribe and directed the Caste Scrutiny Committee to issue validity certificate in her favour."* The petitioner has also produced the validity certificate issued in favour of Ms. Darshana.

When confronted with the learned AGP, he produced a letter dated 7.2.2024, issued by the Law Officer, Tribal Development Department before us. The relevant portion of the said letter reads thus:

“This is related to the letter dated 30.1.2024 that your office sent to the Tribal Development Department, requesting that the department to provide the status of the steps that have been taken to obtain permission from the Law and Judiciary Department to file a Special Leave Petition against the order that the Hon’ble Bombay High Court, Judicature at Nagpur, passed on 1.12.2022, in Writ Petition No. 6670 of 2022. I am directed to inform you that, upon scrutiny of the proposal, it was found that moving the SLP proposal to the Law and Judiciary department was inappropriate in light of the Judgment and Order dated 24.3.2023, rendered by the Hon’ble Supreme Court in the case of Mah. Adiwasī Thakur Jamat Swarakshan Samity v. State of Maharashtra and others.”

The opinion indicates that the Tribal Development Department has neither preferred a Special Leave Petition nor challenged said order before the Hon’ble Apex Court. That being so, in view of the law laid down in the case of *Apoorva d/o.Vinay Nichale* and *Maharashtra Adiwasī Thakur Jamat Swarakshan Samiti*, (supra), the Committee ought not to have refused the caste claim of the petitioner since the law laid down in the judgment supra is binding upon the Committee so as to substantiate the claim of the petitioner for issuance of the validity certificate in his favour.

14. Thus, it appears that the petitioner by producing the validity certificate of his daughter has discharged his burden as contemplated under Section 8 of the Maharashtra Scheduled Castes,

Scheduled Tribes, De-notified Tribes (Vimukta Jati), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and Rules 2003. In view of the above, it was for the Committee to observe and record the supporting findings for rejection of the claim based on the reasoning and the evidence that the issuance of such certificate to the daughter of the petitioner was by mistake.

15. Besides, the petitioner has produced the documents before the Committee as well as the court. These documents are of the pre-constitutional era, and have greater probative value, wherein the caste of his grandfather and ancestors is mentioned as 'Thakur'.

16. In the aforesaid background, if we consider the case of the petitioner, the fact remains that the petitioner's ancestors were holding entry as that of 'Thakur'.

17. The petitioner has furnished all the information in relation to his tribe claim including that of trades, customs which he

has followed. If we appreciate the aforesaid contention on the part of the petitioner in the backdrop of the pre-Constitutional entries, it is worth to refer to the observations in para “20 of the judgment in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra), which reads as under :-

"20. It is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the case to Vigilance Cell. One of the tests is as laid down in the case of Kumari Madhuri Patil 1 . It lays down that the documents of the preConstitution period showing the caste of the applicant and their ancestors have got the highest probative value. For example, if an applicant is able to produce authentic and genuine documents of the pre-Constitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations provided to the Tribes included in the ST order. In such a case, a reference to Vigilance Cell is not warranted at all."

18. In the aforesaid backdrop, rejection of the claim of the petitioner solely based on the affinity test particularly; when the petitioner has furnished the details about his caste/tribe and the Committee has referred the claim to the Vigilance Cell so as to find out whether the blood relations of the petitioner belong to 'Thakur' or not and having noticed that the pre-Constitutional entries are that of scheduled tribe, the Committee in our opinion has erred in rejecting the prayer of the petitioner.

19. In the aforesaid background, we deem it appropriate to allow the present petition and pass the following order:

(i) The petition is allowed.

(ii) The impugned order dated 28.02.2022 passed by respondent no. 1- the Scrutiny Committee is hereby quashed and set aside.

(iii) It is declared that the petitioner belongs to the '*Thakur*' Scheduled Tribe.

(iv) The respondent Committee is directed to issue a Caste Validity Certificate to the petitioner as he belongs to '*Thakur*' Scheduled Tribes within a period of four weeks from the receipt of the copy of this judgment.

20. Rule is made absolute in the above terms with no order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

R. Belkhede,
Personal Assistant