



927-J-WP-5593-22

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

WRIT PETITION NO.5593 OF 2022

Hemant S/o Waudeorao Chavhan

Age : 24 years, Occ: Student

R/o Near Appaswami Temple, Telipura,

Darwha, Tq. Darwha, Dist. Yavatmal

... Petitioner

-vs-

Schedule Tribe Caste Certificate

Scrutiny Committee, Amravati Division,

Old By pass Road, Chaprashipura Amravati

Through its Vice Chairman/Jt. Commissioner

... Respondent

Shri A. P. Kalmegh, Advocate for petitioner.

Shri A. A. Madiwale, Assistant Government Pleader for respondent.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : July 09, 2024

Oral Judgment : (Per : Nitin W. Sambre, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally with consent of learned counsel for the parties.

2. The challenge in the petition is to the order dated 18/01/2022 passed by the respondent Scrutiny Committee invalidating the claim of the petitioner of belonging to 'Thakur' Scheduled Tribe.

3. At the relevant time, the petitioner was studying and got admission vide caste-certificate dated 27/01/2014 issued by the office of the Sub-Divisional Officer, Darwha certifying that the petitioner belongs to 'Thakur' Scheduled Tribe. The educational institution accordingly forwarded the same for verification which was invalidated by the impugned order dated 18/01/2022.

4. The contention of Shri A. P. Kalmegh, learned counsel appearing for the petitioner is that the petitioner has produced documents in relation to his father, uncle and great grand-father Mahadev wherein caste is recorded as 'Thakur'.

5. It is claimed that the only adverse material placed on record is in relation to Baliram, cousin great grand-father wherein caste is mentioned as 'Takur' instead of 'Thakur' in the year 1926. Apart from above the test of 'affinity' is invoked so as to draw inference against the petitioner so as to negate the claim for issuance of validity certificate.

6. Shri A. P. Kalmegh, learned counsel would urge that the only document which reflects entry 'Takur' can be termed as tribe entry recorded by mistake. In this regard he would draw support from the observations in paragraph 10 of the judgment of Honourable Apex Court in *Priya Pramod Gajbe vs. State of Maharashtra and ors.* **2023 SCC Online SC 909** which read thus :

10. A perusal of the report of the Vigilance Committee itself would reveal that the appellant's great grandfather's birth record show the caste as 'Mana'. The said document relates to as early as 10th March 1924, while another document of 14th April 1926 shows as 'Mani'. However, it is pertinent to note, and learned counsel for the parties also agree, that there is no caste named 'Mani'. It is thus possible that there could be some mistake in writing when the caste was written. It is to be noted that original record is written in Marathi and not in English. As such, such an error is quite possible.

7. His further contention is in absence of caste or tribe by name 'Takur' only inference that can be drawn is to read the same as 'Thakur'. As such the learned counsel submits that the impugned order

is liable to be set aside.

8. As against above, Shri A. A. Madiwale, learned Assistant Government Pleader would invite our attention to the entries of 'Hindu Thakur' of the year 2003 in relation to the petitioner and of 1974 in relation to father of the petitioner. It is also claimed that the entry 'Thakur' of 1929 in relation to son born to Mahadev i.e. great grand-father is required to be overlooked in view of entry 'Takur' in relation to son born to Baliram, cousin great grand-father. It is further claimed that the petitioner also failed to satisfy the affinity test.

9. Entry as regards 'Thakur' Scheduled Tribe in respect of great grand-father Mahadev to whom son was born could be noticed from the birth extract of 02/07/1929 in categorical terms speaks of 'Thakur' entry of pre independence era. Only the entries which can be termed as adverse are 'Hindu Thakur' of 2003 and 1974 in relation to the petitioner and his father and entry 'Takur' in relation to cousin great grand-father of year 1926.

10. Once the entry of 1929 in relation to Mahadev, great grand-father of 'Thakur' is considered, accepted and not disputed, the Committee in such an eventuality should have accepted the said entry and not the entry 'Takur' or post independence era entries of 'Hindu Thakur'. Shri Kalmegh, in our opinion is justified in claiming that the entry 'Takur' of 1926 in relation to issue born to Baliram can be termed as recorded by mistake and rightly relied on the observations made in the matter of *Priya Gajbe* (supra). Apart from above it is not the case of the respondent that caste or tribe by name 'Takur' exists.

11. As there exists pre independence era entries of 'Thakur', we are of the opinion that such entries shall prevail for the purpose of deciding the claim of the petitioner as that of belonging to 'Thakur' Scheduled Tribe.

12. Apart from above, this Court as also the Apex Court in catanae of judgments have held that affinity test cannot be termed as litmus test for the purpose of deciding or rejecting the tribe-claim. In the case at hand there exists documentary evidence of entry 'Thakur' of pre independence era which is not discarded by any other subsequent document which was collected through vigilance Cell.

13. In this background we are of the view that the order impugned is not sustainable. As such the following order is passed :

- (a) The order dated 18/01/2022 passed by the respondent-Scrutiny Committee, Amravati is hereby quashed and set aside.
- (b) It is declared that the petitioner has proved that he belongs to 'Thakur' Scheduled Tribe and is entitled for issuance of validity certificate in that regard.
- (c) The respondent-Scrutiny Committee is directed to issue validity certificate to the petitioner in any case within a period of six weeks from production of this order before it.

14. Rule is made absolute in aforesaid terms with no order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)

Asmita-PS