



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

WRIT PETITION NO.756 OF 2022
WITH
WRIT PETITION NO. 4298 OF 2022
WITH
WRIT PETITION NO. 6845 OF 2022

WRIT PETITION NO. 756 OF 2022

PETITIONER :

Gajanan Bansi Ingle,
Age:46 years, Occupation : Agriculturist
R/o. Tiwali, Tq. Malegaon, District Washim.

VERSUS

RESPONDENTS:

1. Schedule Tribe Caste Certificate Scrutiny Committee, Amravati Division, Old By Pass, Chaprashipura, Amravati, through its Vice-Chairman/Joint Commissioner.
2. The Collector, Washim.
3. Tahsildar, Malegaon, District Washim.
4. Gram Panchayat Tiwali, through its Secretary, Tq. Malegaon, District Washim.

With

WRIT PETITION NO.4298 OF 2022

PETITIONER :

Yashvant s/o Rambhau Ingle,
Age : 19 years, Occupation : Student,
R/o At Post Chatari, Tq. Umarkhed,
District-Yavatmal.

VERSUS

RESPONDENT :

Schedule Tribe Caste Certificate Scrutiny Committee, Amravati Division, Old By-pass, Chaprashipura, Amravati.
Through its Vice Chairman/Joint Commissioner

with
WRIT PETITION NO. 6845 OF 2022

PETITIONER :

Nilesh s/o Gajanan Ingle,
Age: 22 years, Occupation : Student,
R/o. At Post Tiwali, Tq. Malegaon,
District-Washim.

VERSUS

RESPONDENT:

Schedule Tribe Caste Certificate Scrutiny
Committee, Amravati Division,
Old By-Pass, Chaprashipura, Amravati,
Through its Vice Chairman/Joint Commissioner.

Shri A. P. Kalmegh, Advocate for petitioner in all writ petitions.
Ms. T. H. Khan, Assistant Government Pleader for respondent nos. 1 to 3 in
Writ Petition No.756/2022 and for respondent sole in Writ Petition
No.4298/2022 and 6845/2022.

CORAM :- N.W.SAMBRE AND ABHAY J. MANTRI

DATE :- 12th MARCH, 2024

ORAL JUDGMENT (Per N. W. SAMBRE, J.)

The challenge raised in these writ petitions is to the order dated 24.01.2022 passed by the respondent-Scrutiny Committee, Amravati whereby the tribe claim of the petitioners came to be negated by a common order. The petitioners are blood relatives and as such, all these writ petitions are disposed of by this common judgment, by consent.

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge is to the order impugned dated 24.01.2022 whereby the tribe claim for issuance of validity to the petitioners in all these petitions came to be negated by the respondent – Scrutiny Committee. The claim of the petitioners is that of belonging to ‘Thakur’ Scheduled Tribe.

3. Contentions of Mr. Kalmegh, learned counsel appearing for the petitioners in all these writ petitions, are that the petitioners have produced on record pre-Constitutional era documents and the oldest one was dated 22.11.1925 in relation to grandfather of Gajanan namely Vithoba. In addition, he would claim that the petitioners have produced the details about a child born to Lakshman, the great-grandfather of Gajanan, on 30.11.1930.

4. It is the contention of Mr. Kalmegh that the oldest entries are scrolling around since 1922 till the date the Constitution of India being given effect to. He would claim that such documents which are containing tribe entries as Thakur existing prior to the Constitutional era have more probative and evidenciary value and as such, the Scrutiny Committee ought to have relied on the same instead of relying on the entries which are subsequent in point of time for rejecting the claim of the petitioners.

5. His further contention are the issue is no more *res integra* in view of the law as laid down by the Apex Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and others* [2023 SCC Online SC 326] and *Priya Pramod Gajbe vs. State of Maharashtra and others* [2023 SCC OnLine SC 909], which is further followed in the order passed by this Court on 18.01.2024 in **Writ Petition No.7485 of 2022** (*Shyam Gajanan Bhuyar vs. Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati*).

Mr. Kalmegh, learned counsel, would further urge that the petitioners even have tried to satisfy the affinity test in the matter.

6. As against above, while resisting the claim of the petitioners, Ms. Khan, learned Assistant Government Pleader for the respondent-State would urge that the Scrutiny Committee is duty bound to appreciate each and every document which was produced as an evidence before it. According to her, once the Vigilance Cell enquiry was caused through whom adverse documents are brought before the Scrutiny Committee, the petitioners owes an explanation in view of provisions of Section 8 of the Maharashtra Scheduled Caste, 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 (for short, the said Act) thereby discharging the burden so as to demonstrate that they belong to 'Thakur' Scheduled Tribe. She would claim that 'Thakur' could be noticed in upper caste, so also other than Scheduled Tribe and that being so, the Scrutiny Committee after applying the affinity test is justified in rejecting the claim of the petitioners.

7. We have appreciated the aforesaid submissions.

8. The fact remains that the petitioners having produced the documents scrolling from 1922 i.e. in relation to Gajanan's great-grandfather-Lakshman dated 16.05.1922 and subsequent documents in relation to grandfather - Vithoba in the nature of revenue record dated 18.12.1935, a son was born to Lakshman i.e. great-grandfather on 30.11.1930, the school leaving certificate in relation to Vithoba - grandfather dated 22.11.1925 and other documents containing similar entries which demonstrate that the oldest record existing prior to independence era in relation to great-grandfather, grandfather and father depicts entry as that of 'Thakur'.

9. The Scrutiny Committee since was not satisfied with these old entries caused Vigilance Cell enquiry in the matter and the Vigilance Cell has collected information in relation to nine relatives. The entry in the

record of these relatives is that of 'Marathe'. The petitioners have come out with a case that the persons with regard to the documents at sr. nos. 4, 7 and 8 namely Maroti Vithoba, Mathuri va Natthuji death entry and a son was shown to be born to Ram va Lakshman in 1946 are not related to the petitioners.

10. As far as the remaining entries which were collected by the Vigilance Cell and referred in the report are concerned, the first entry as that of Gajanan's great-grandfather namely Vithoba is of 1927 which speaks of Thakur caste/tribe. Rest of the entries in relation to other relatives are reflected to be 'Marathe'. No doubt, the evidence collected by the Vigilance Cell depicts entries other than 'Thakur' which the respondent-Scrutiny Committee formed basis for rejecting the claim of the petitioners.

11. In the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti, Priya Pramod Gajbe* and *Shyam Gajanan Bhuyar* (supra), it is settled principles of law that the pre-independence era documentary evidence shall have more probative value. Once the petitioners have established through the documentary evidence by relying on 1922 caste entry and also such other entries of pre-independence era which depicts Thakur-Tribe/Caste entries in the caste column of his relations, it has to be

held that the petitioners have discharged their burden under Section 8 of the said Act by prima facie establishing that they belong to ‘Thakur’ Scheduled Tribe.

12. In such an eventuality, once the petitioners have discharged burden, it is for the respondent-Scrutiny Committee to record a finding through analytical approach of adverse evidence that the petitioners are not belonging to ‘Thakur’ Scheduled Tribe. But, for the adverse entries of 1935 onwards, the Scrutiny Committee has failed to infer or interpret the document to form an opinion that the documents which were produced by the petitioners of 1922 onwards are not in relation to their relatives.

13. Apart from above, the petitioners have answered to the affinity test which may not be to the satisfaction of the Scrutiny Committee. However, this Court is required to be conscious and sensitive of the fact that the petitioners have produced such documents which are from 1922 onwards and the documents which are relied on by the Scrutiny Committee are subsequent to such entries, which were produced by the petitioners i.e. of the year 1935 onwards. The petitioners have already disputed the entries in relation to the documents at sr. nos. 4, 7 and 8 relied on/referred to in paragraph 6 of the impugned order. However the Scrutiny Committee has failed to record convincing finding on the said issue.

14. The Apex Court in the case *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti, Priya Pramod Gajbe* (supra) which is subsequently followed in *Shyam Ganjan Bhuyar* (supra) had, in categorical terms, observed and laid down that such documents which are having entry of caste existing prior to pre-Constitutional era will have more probative value and have to be accepted in evidence. That being so, it was incumbent on the part of the respondent-Scrutiny Committee, while passing the order impugned, not only to accept the evidence which was brought on record by the petitioners which is of pre-independence era scrolling from 1922 onwards but also to record a finding as to why such documentary evidence was discarded. The reasons furnished for discarding such documentary evidence is not at all appealing to this Court, particularly when authenticity of such documentary evidence is not disputed by the Scrutiny Committee. Such evidence is in existence prior in point of time as that of the documentary evidence which was produced through the Vigilance Cell.

15. As such, once it is held that the petitioners have discharged their burden under Section 8 of the said Act, this Court is required to accept the evidence which is brought on record by the petitioners thereby demonstrating that since 1922 onwards there exists entry of 'Thakur'.

Hence, they are justified in claiming entitlement of such status of ‘Thakur’.

16. That being so, we deem it appropriate to allow these writ petitions by quashing the impugned order dated 24.01.2022 passed by the respondent-Scrutiny Committee. We cause a declaration that the petitioners have proved that they belong to ‘Thakur’ Scheduled Tribe and are entitled for issuance of such validity certificate. We direct respondent-Scrutiny Committee to issue validity certificate in favour of each petitioner in these writ petitions within a period of four weeks from the date of production of copy of this judgment.

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

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Andurkar..