



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

WRIT PETITION NO. 7120/2022

Shri Arun S/o Madhukar Tayade
Age : 63 years, Occ. Retired,
R/o Pavsali Layout, Kaulkhed Road,
Akola, Tq. & Dist. Akola.

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Petitioner.

Versus

1. Schedule Tribe Caste Certificate Scrutiny Committee,
Yavatmal Division, Yavatmal.
Through its Vice Chairman/Jt. Commissioner.

2. District Social Welfare Officer,
Akola, Tq. & Dist. Akola.

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Respondents.

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Mr. Ankush P Kalmegh, Advocate for petitioner.
Mr. A.A. Madiwale, Assistant Government Pleader for respondent nos.1
and 2.

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CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATED : 19th January, 2024

ORAL JUDGMENT (Per Nitin W. Sambre, J)

1. Leave to amend the nomenclature of the respondent no.1 in the
cause title. Amendment to be carried out forthwith.

2. Rule. Rule made returnable forthwith. Mr. Madiwale, learned Assistant Government Pleader waives notice for the respondent nos.1 and 2. Heard finally by consent of the parties.

3. The challenge is to the order dated 17th January, 2021, whereby the respondent no.1 – Caste Scrutiny Committee has rejected the claim of the petitioner for issuance of validity, as he belonging to “Thakur” Scheduled Tribe.

4. On 13th March, 1990, pursuant to an application made by the petitioner, the Sub Divisional Officer, Ner has issued a certificate in favour of the petitioner as that of belonging to “Thakur” Scheduled Tribe.

5. The petitioner thereafter appears to have secured an employment based on the aforesaid caste certificate with the respondent no.2, who in turn, vide communication dated 22nd August 2007 referred the claim of the petitioner for an enquiry and verification to the respondent no.1-Committee.

6. In support of the claim put forth by the petitioner for grant of validity, reliance was placed on the following entries:

अ. क्र.	कागदपत्राचे स्वरूप	कागदपत्रावरील व्यक्तीचे नांव	जमात	दिनांक	अर्जदाराशी नाते
३	शाळा सोडण्याचे प्रमाणपत्र	अरूण मधुकर तायडे	ठाकुर	११.७.१९७७	अर्जदार
५	जन्म नोंद	नथू ठाकुर यांना एक मुलगा झाल्याची नोंद	ठाकुर	३.१०.१९१०	पणजोबा
६	जन्म नोंद	किसन नथू ठाकूर यांना एक मुलगा (महादेव) झाल्याची नोंद	ठाकुर	५.९.१९३२	आजोबा
७	शाळा सोडण्याचे प्रमाणपत्र	मनोहर किसनराव तायडे	ठाकुर	११.७.१९७७	अर्जदाराचे काका

7. Since the Committee, on perusal of the aforesaid documents, was not inclined to accept that the petitioner belongs to “Thakur” Scheduled Tribe, referred the claim to the Vigilance Cell, pursuant to the provisions of sub-rule (2) of Rule 12 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 framed under the Act.

8. The Vigilance Cell accordingly conducted an home enquiry in the matter of caste of the petitioner, associated with the Research Officers of the Committee. The Vigilance Cell accordingly submitted a report stating that the said documents itself speaks that the petitioner belonging to “Thakur” caste, customs and traditions, which are observed by the petitioner and his family does not demonstrate that he belongs to the Scheduled Tribe “Thakur” community.

9. As a sequel of above, the petitioner was called upon to submit his explanation and the petitioner submitted his explanation on 7th April 2021 and 28th December, 2021.

10. Based on the above, the petitioner was heard by the Committee on 28th December, 2021.

11. The Committee thereafter recorded the finding that the petitioner failed to demonstrate that he belongs to “Thakur” Scheduled Tribe and rejected the claim of the petitioner.

12. Mr. Kalmegh, Counsel for the petitioner would submit that the petitioner based on the documents, which are of pre-independence era i.e.1910 in relation to his great grandfather and 1932 in relation to his grandfather sufficiently establishes that the petitioner belongs to “Thakur” Scheduled Tribe.

13. According to him, the Committee thereafter is not empowered to conduct an enquiry to find out as to whether the petitioner is a “Thakur” scheduled tribe or an upper caste “Thakur”. Even otherwise, according to him, the Committee after having applied affinity test, the petitioner has

satisfied the same and the Committee erred in not granting the validity certificate.

14. Drawing support from the judgment of the Apex Court in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others* reported in *AIR 2023 SC 1657*, he would urge that the petitioner having produced the documents of pre-independence era thereby demonstrating that he belongs to “Thakur” scheduled tribe. According to him, prayer for issuance of validity cannot be rejected on the ground of area restriction and failure to satisfy the affinity. He would claim that the applicability of the affinity test cannot be termed as a litmus test.

15. As against above, the Assistant Government Pleader would urge that the father of the petitioner and also his uncle has secured an employment from the open category and have soon retired. Similarly, he would urge that the area restriction and the failure on the part of the petitioner to satisfy the affinity test has prompted the rejection of the claim.

16. We have appreciated the submissions.

17. We have considered the law laid down by the Apex Court in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (cited supra). Para 20 of the said judgment reads thus:

“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. It lays down that the documents of the pre-Constitution 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 backdrop of the observations made by the Apex Court in the aforesaid judgment as referred hereinabove, once the petitioner has produced the pre-independence era documents, such documents will have more probative value. The acceptance of such documents by the Committee in the evidence is necessary, as the documents were holding the field even

before the constitution scheduled tribe order was brought into effect. As such, the sanctity to the aforesaid pre-Constitutional entries, in our opinion, should have been prevailed before the Committee for consideration and issuance of the validity certificate.

19. Apart from above, the Apex Court in the matter of *Jaywant Dilip Pawar Vs. State of Maharashtra and Ors.* reported in 2018 (5) ALL MR 975, has already observed that the area restriction of the Scheduled Tribe in the State of Maharashtra for “Thakur” community was deleted after Amendment Act of 1976.

20. In that view of the matter, the observations of the Scrutiny Committee for the purpose of rejection of the tribe claim are completely irrelevant, as the said observations have no live link with the cause to be decided.

21. On facts, even if the petitioner’s parent viz., his father and his uncle have not opted the service benefits under the provisions of the Scheduled Tribe Order or the constitutional reservation, that by itself cannot be formed to be the basis for rejection of the claim. Whether a person belonging to a reserved category and is entitled for the benefits of the constitutional reservation can opt for such benefits is based on his sweet

choice. Merely because he has not opted for such benefits of the constitutional reservation by itself will not put an embargo on the right of such person to claim the validity. Non-claiming of reservation by itself will not put an embargo in law on the right of such person to claim the validity.

22. In this background, we are of the view that the order impugned cannot be said to be sustainable in law. That being so, the order dated 17th January, 2021 passed by the respondent no.1 is hereby quashed and set aside.

23. We declare that the petitioner belongs to “Thakur” Scheduled Tribe.

24. We direct the respondent no.1 - Committee to issue caste validity certificate in favour of the petitioner as he belonging to “Thakur” Scheduled Tribe within a period of eight weeks from today.

25. Rule is made absolute in the above terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Ambulkar