



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.7320/2023

1. Ganesh s/o Shridhar More
Aged about 31 yrs, Occ. Student,
2. Bhushan s/o Bharatrao More
Aged about 30 yrs, Occ. Student,

Both r/o At Post Wakad,
Tah. Risod, Distt. Washim.

...PETITIONERS

...VERSUS...

The Vice-Chairman Member-
Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Yavatmal.

...RESPONDENT

Ms Preeti D. Rane, Advocate for petitioners
Shri H.R. Dhumale, AGP for respondent/State

CORAM : ANIL S. KILOR AND
SMT. M.S. JAWALKAR, JJ..

DATE OF RESERVING THE JUDGMENT : 08/03/2024
DATE OF PRONOUNCING THE JUDGMENT: 13/03/2024

JUDGMENT (PER : SMT. M.S. JAWALKAR, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of Ms Preeti Rane, learned Counsel for petitioners and Shri H.R. Dhumale, learned AGP for respondent/State.

3. The petitioners are cousin brothers and their claim for validation was rejected by common order. The petitioners belong to 'Thakur' Scheduled Tribe. The Caste Claim of the petitioners towards 'Thakur' Scheduled Tribe came to be forwarded to the Scrutiny Committee along with necessary documents for the purpose of caste verification on 17/02/2020. The police vigilance report came to be submitted on 07/07/2023 in case of the petitioners. The petitioners submitted reply to the police vigilance report. The Scrutiny Committee invalidated the caste claim of the

petitioners on the ground of documentary evidence, affinity and area restriction and other grounds as mentioned in the column of issues framed by the Committee. Being aggrieved by the same, the petitioners filed present writ petition. There is no dispute in respect of relations and family tree. In addition to other documents, petitioners placed on record following documents which are of the period prior to 1947:

Name	Relation	Document	Date of document	Caste
Shivram	grandfather/cousin grandfather	School leaving Certificate	04/09/1999	Thakur
Shivram	grandfather/cousin grandfather	Dakhal Kharij Register	(1926/1932/1923) 05/02/2020	Thakur
Sitaram	Great grandfather	Extract	(D.O.B. mentioned as 16/04/1926) dated 06/02/2020	Thakur
Madhav	Cousin grandfather/ grandfather	Dakhal Kharij Register	(1923/1930/1933) dated 14/01/2020	Thakur
Narhari	Cousin grandfather	Dakhal Kharij Register	(1924/1931/1936) dated 20/12/2017	Thakur
Jairam	Great great grandfather	Extract of death	(date of death mentioned as 07/09/1928) dated 10/11/2022	Thakur
Mankabai @ Manki	Daughter of Great grandfather Sitaram	Extract of birth	(D.O.B. mentioned as 09/05/1930) dated 10/11/2022	Thakur

Mankabai @ Manki	Paternal side grand-mother	Dakhal Kharij Register	(1930/1938/1942) dated 23/01/2023	Thakur
Bajirao	Great grandfather	Extract of birth	(D.O.B. mentioned as 02/11/1926)	Thakur
Sheshrao	Cousin grandfather	Dakhal Kharij Register	(1926/1938/1941) dated 23/09/2023	Thakur
Pandurang	Cousin grandfather	Kotwal Book	(D.O.B. mentioned as 25/02/1933) dated 10/11/2022	Thakur
Pandurang	Cousin grandfather	Dakhal Kharij Register	(1933/1945/1948) dated 17/07/2023	Thakur
Dinkar	Cousin uncle	Kotwal Book	(D.O.B. mentioned as 16/06/1947) dated 17/07/2012	Thakur
Dinkar	Cousin uncle	Dakhal Kharij Register	(1946/1955/1965) dated 20/12/2017	Thakur
Vitthal	Cousin uncle	Dakhal Kharij Register	(1942/1948/1955) dated 29/11/2022	Thakur

4. Apart from these documents, there are already caste validity certificate issued in favour of,

- 1) Mohan cousin brother of petitioners dated 17/11/2004
- 2) Yogesh cousin brother of petitioners dated 09/06/2005
- 3) Nandkumar cousin brother of petitioners validity passed by the judgment dated 20/12/2012
- 4) Sheela cousin sister of petitioners dated 06/12/2013
- 5) Nirmala cousin sister of petitioners dated 29/09/2018

- 6) Swati cousin sister of petitioners dated 02/02/2019
- 7) Sakshi cousin sister of petitioners dated 18/07/2019
- 8) Radhika cousin sister of petitioners dated 18/07/2019

Nandkumar and Nirmala were granted validity certificates in view of the order passed in Writ Petition No.1602/1998 and Writ petition No.3552/2018 respectively.

5. From the above facts, it is clear that validity certificates are granted to the real blood relatives of the petitioners. The judgment passed in favour of Nandkumar was challenged by State of Maharashtra before the Hon'ble Apex Court and the same came to be rejected in case Diary No.11233/2013 on 21/08/2015. It needs to be noted here that the vigilance cell procured entire documents of pre-constitutional period of entry 'Thakur' and the petitioners also submitted the same.

6. On perusal of the order passed by the Scrutiny

Committee, it appears that the validity claim came to be rejected on the ground that vigilance cell procured some sale deeds wherein the land was sold to a person without obtaining permission under Sections 36 and 36A of the Maharashtra Revenue Code. As such, Caste Scrutiny Committee came to the conclusion that the persons in blood relations are not belonging to 'Thakur' Tribe. So also, many old documents of pre-independence era rejected on extraneous reasons.

7. Learned AGP supported the order passed by the Scrutiny Committee and it was pointed out that there is mentioned of birth of one male member however his name is not mentioned in the documents. With the assistance of learned Counsel for petitioner and learned AGP, we have perused the documents placed on record as well as record and proceedings of Scrutiny Committee. So far as objection in respect of transfer of land to non-tribe person without obtaining prior permission is concerned, is no

relevancy to conclude that petitioners are not belong to 'Thakur' Tribe. There are consequences laid down in the act itself and that will follow. However at any rate, this ground cannot be sufficient to hold that Tribe of the petitioners was not 'Thakur'.

8. So far as documents are concerned, it is observed by Caste Scrutiny Committee that - 1) Dajiba Thakur gave birth on 23/02/1933 namely Pandurang. However, there is no school record procured by the vigilance cell during the enquiry. On perusal of the document Annexure-14 is in respect of Pandurang Dajiba. His date of birth in the school record shown as 25/02/1933 admitted in the school on 01/02/1945. He shown belongs to 'Thakur'. As such, there is no substance in the observations by the Caste Scrutiny Committee in respect of these documents. 2) As per document of Narhari Sitaram Thakur gave birth of male child on 16/06/1947. If affidavit of Swati Ashok More and Rajendra Madan Ingale filed by the petitioners along with certificate of

validity, name of Narhari Sitaram is shown as well as his five sons names were also shown (page 92) wherein name of Dinkar appears. As such, this objection is also having no substance. 3) In respect of Bajirao Thakur, the said family tree produced (page 93), wherein Bajirao was having four sons namely Kisanrao, Shankarrao, Apparao, Sheshrao. If documents at page 151 is perused, it is extract of admission cancelled register. There are two sons namely Shankarrao, Bajirao and Sheshrao. Shankararo shown to be born on 19/12/1912, whereas Sheshrao Bajirao shown as borne on 22/11/1926 (page No.164 of the record) in respect of Sheshrao admission cancelled register is already on record. As such, the male child borne Bajirao was Sheshrao and not Shankarrao. Date of birth of Shankarrao is 19/03/1912. As such, report by the vigilance cell have no significance. 4) Sitaram Jairam Thakur, the Scrutiny Committee without applying its mind give weightage to the vigilance report having no substance. There is oldest document wherein date of birth of Shivram More shown

as 02/11/1926. He is shown to belongs to 'Thakur' (Annexure-3) (page 59). So, objections in respect to the documents is having no substance. The validity certificate issued to Swati Ashok More on the basis of these documents, she has placed on record along with her affidavit, detail family tree which clearly goes to show that she is cousin sister of petitioners. The validity certificate is at Annexure 23. So far as Manki is concerned, school leaving certificate produced at Annexure 10 (page 67) clearly goes to show that father of Manki and father of Sitaram, Jairam was 'Thakur'. Only her name was not shown in the family tree. It does not change the Tribe of the persons. Apart from these, there are validity certificate issued in blood relation of the petitioners i.e. namely Mohan, Yogesh, Nandkumar, Sheela, Nirmala, Swati, Sakshi and Radhika are the holders of validity certificate. This Court in Writ Petition No.2750/2009 (Sheela Gathe), considered the documents of pre-constitutional era and voluminous record in respect of blood relatives showing their castes as 'Thakur' held

that order passed by the Scrutiny Committee invalidating the caste certificate of the petitioner was liable to be quashed and set aside and accordingly set aside.

9. The learned Counsel for petitioners relied on *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others reported in 2023 (2) Mh.L.J. 785*, wherein it is held that affinity test or area restriction will not be applicable in the present set of facts. The Hon'ble Apex Court held paragraph No.20 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. 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."

10. There is no dispute about family tree or relations, the Scrutiny Committee must ascertain whether the certificate is genuine and will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him has been issued is his blood relative. In view of the validity certificates issued by the Court and by the Caste Scrutiny Committee and in view of the fact that there is no challenge to these validity certificates or order passed by this Court, the Scrutiny Committee ought to have granted validity certificate. The flimsy objections having no substance were raised, such as, no name mentioned in the extract of birth register. In fact, there is no column to describe name of a child borne. There is only column describing male or female issue. Secondly, the school leaving certificate as school record clearly shows the date of birth of the child and the name of child born on that date. The Scrutiny

Committee has not properly appreciated these documents and came to the erroneous conclusion which cannot sustain in the eye of law.

11. The Committee has observed that the socio cultural affinity and information furnished by the petitioners during the course of vigilance enquiry and the report submitted by the vigilance cell clearly shows that petitioners would not prove his socio cultural affinity with 'Thakur' Scheduled Tribe.

12. So far as affinity test is concerned, the Full Bench of this Court held in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*, as under:

"25. The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. If the applicant has stayed in bigger urban areas along with his family for

decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the applicant. But in a given case, even the parents may be unaware for the reason that for several years they have been staying in bigger urban areas. On the other hand, a person may not belong to the particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, Shri Shekhar Naphade, the learned senior counsel, is right when he submitted that the affinity test cannot be applied as a litmus test.

The affinity test could have got the importance if there were no documents to show the old documents of pre-independence era, the persons in blood relations belong to 'Thakur' Community.

13. In view of the above discussions, we are of the considered opinion that the Scrutiny Committee without applying its mind discarded the documents of pre-independence era having great probative value. The reasons given are also not justified for discarding the documents when there are so many validity

certificates issued in favour of blood relatives of the petitioners. There is no reason to deny the same to the petitioners, as held in *Apoorva d/o Vinay Nichale Vs. Divisional Committee, 2010(6) Mh.L.J. 401*. It is not the case that the Committee is claiming any fraud or suppression of any facts. The documents are duly considered by this Court as well as Scrutiny Committee while granting validity certificate. As such, we are of the opinion that petitioners duly established that they belongs to 'Thakur' Tribe. As such, we proceed to pass the following order:

ORDER

- i) The order dated 04/10/2023 passed by the respondent/ Schedule Tribe Certificate Scrutiny Committee, Yavatmal, in Case No. 5/502/Edu/022020/164214 and Case No. 5/502/ Edu/022020/164214 is hereby set aside.
- ii) It is declared that the petitioners belong to 'Thakur'

Scheduled Tribe which is entry No.44 in the Constitution (Scheduled Tribes) Order, 1950.

iii) The Schedule Tribe Caste Certificate Verification Committee, Yavatmal shall issue validity certificate to the petitioner within a period of four weeks from today.

14. Rule is made absolute in above terms. No costs.

JUDGE

JUDGE

R.S. Sahare