



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

WRIT PETITION NO. 6105 OF 2023

1. Ashish S/o Ravindra Ghosalkar
Aged about 21 years, Occ. Student,
2. Ashwin S/o Pradip Ghosalkar
Aged about 23 years, Occ. Student,

Both R/o Ward No. 6, Sai Nagar,
Ghugus, Chandrapur,
Distt. Chandrapur

...PETITIONERS

...VERSUS...

The Vice-Chairman/Mamber-
Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Yavatmal

...RESPONDENT

Ms Himani Kavi, Advocate with Ms P.D. Rane, Advocate for Petitioners.
Shri N. R. Patil, A.G.P. for respondent/State

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

RESERVED ON : 22/03/2024.
PRONOUNCED ON : : 23/04/2024.

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

Heard finally by consent of the learned Counsel for both the parties.

2. The Petitioners have challenged the order dated 24/07/2023 of invalidation of the Caste claim of the petitioner by the Caste Scrutiny Committee, Yavatmal. The petitioners claim to be belonging to 'Thakur' Scheduled Tribe, which is recognized at Sr. No. 44 in the Schedule Tribe Order, 1950 in the State of Maharashtra.

3. The petitioner No. 1 is pursuing his education in B.Tech 1st year course from open category and the petitioner No.2 is pursuing his education in B. Sc. Final year course. The petitioners are in need of caste certificate for education purpose, therefore, the Principle of Rajiv Gandhi College, Chandrapur forwarded their caste claim validity proposal

dated 27/11/2020, to the Scrutiny Committee, Amravati. The Scrutiny Committee handed over the proposal to the Vigilance Cell. The police vigilance cell found some adverse entries and remarks on some documents relied on by the petitioners. On the basis of said vigilance cell report, the Respondent/Scrutiny Committee invalidated the caste claim of the petitioners by common order dated 24/07/2023, on the ground of the documentary evidence, affinity test and area restriction.

4. It is contention of the learned Counsel for the petitioners that there are Four Validity Certificates issued by the Caste Scrutiny Committee of Amravati to the close relatives of the petitioner; one to the petitioner's real uncle namely **Rajendra** on 06/12/2013 issued in view of this Court's decision in Writ Petition No. 4859/2000 and other to the petitioner's uncle namely **Pradip** on 28/10/2015 and the

third one is granted to the petitioner's cousin brother namely **Sanath Rajendra Ghosalkar** on 28/10/2015 and the fourth one is granted to the petitioner's real cousin brother namely **Roshan Ghosalkar** on 12/07/2019, by Amravati Committee.

5. It is further contended that the respondent/Scrutiny Committee has wrongly taken into consideration the pre-adverse entries of "Bhat" viz. 1929/1931/1932. The petitioners in this regard submitted pre-constitutional documents of the year 1928 of the same person which is an oldest document and which has higher probative value as compared to the years mentioned in the other contra entry documents which are not even related to the petitioners and petitioners denied the same. The old documents which are relied by the petitioners are as under :

Name	Relation	Document	Date of document	Caste
Son name - Ramrao Father name- Mahadev Dattu Thakur	Grandfather of the petitioner	Extract of birth	Date of birth 18/03/1941	Thakur
Mahadev Dattu Thakur	Great Grandfather of the petitioener	Birth certificate (Shown as one male child born to Mahadev Dattu Thakur)	Date of birth 06/03/1941	Thakur
Champat Mahadev Ghosaikar	Cousin Grandfather of the petitioner	Dakhal Kharij Register	Date of birth 05/07/1933 Date of admission - 02/08/1941	Thakur
Champat Mahadev Ghosaikar	Cousin Grandfather of the petitioner	School transfer certificate	Date of birth 05/07/1933 Date of admission - 02/08/1941 Date of leaving - 16/06/1942	Thakur
Indu D/o Mahadev Dattu Thakur	Cousin Grandmother of the petitioner	Extract of Birth Register	Date of birth 22/03/1939	Thakur

Ramrao Mahadev Thakur	Grandfather of the petitioners	Extract of School Register	Date of Birth 06/03/1941 Date of School Entry 09/08/1950 School leaving Date 20/01/1951	Thakur
Mahadev Thakur	Great Great Grand father of the petitioner	Extract of Birth	29/09/1928	Thakur

6. It is further contended that all the questions put forth as regards the affinity and filed detailed reply on it, before the Caste Scrutiny Committee, still the Committee failed to discuss the same and arrived at a conclusion that the claim of the petitioners by way of affinity test is also not proved. Such a technical approach on the part of vigilance cell as well as the Committee is liable to be deprecated and the impugned order is liable to be set aside.

7. It is submitted by learned Counsel for the Petitioner

that there are four validity certificates in favour of their blood relatives which are issued by the Scrutiny Committee. As such, it is not open to the Scrutiny Committee to discard those validity certificates unless procedure prescribed in the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (VimuktaJatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, 2000, has been followed. So far as, validity issued in favour of Rajendra Ghosalkar is concerned, i.e. elder uncle of the petitioners, this Court in Writ Petition No. 4859/2000, directed to issue the Caste Certificate in favour of uncle of the petitioners. The said judgment challenged by the State of Maharashtra by way of Special Leave Appeal (Civil)(CC) No. 14166/2010. The said Special Leave Appeal was dismissed on 20/09/2010. Once order declaring elder uncle of the petitioner as 'Thakur', is there, the Caste Scrutiny

Committee cannot discard this evidence. It is submitted by learned Counsel that in view of Caste Validity Certificates in favour of blood relatives of the petitioners, it is not open for Caste Scrutiny Committee to discard the same.

8. Learned Counsel for the petitioners relied on following citation :

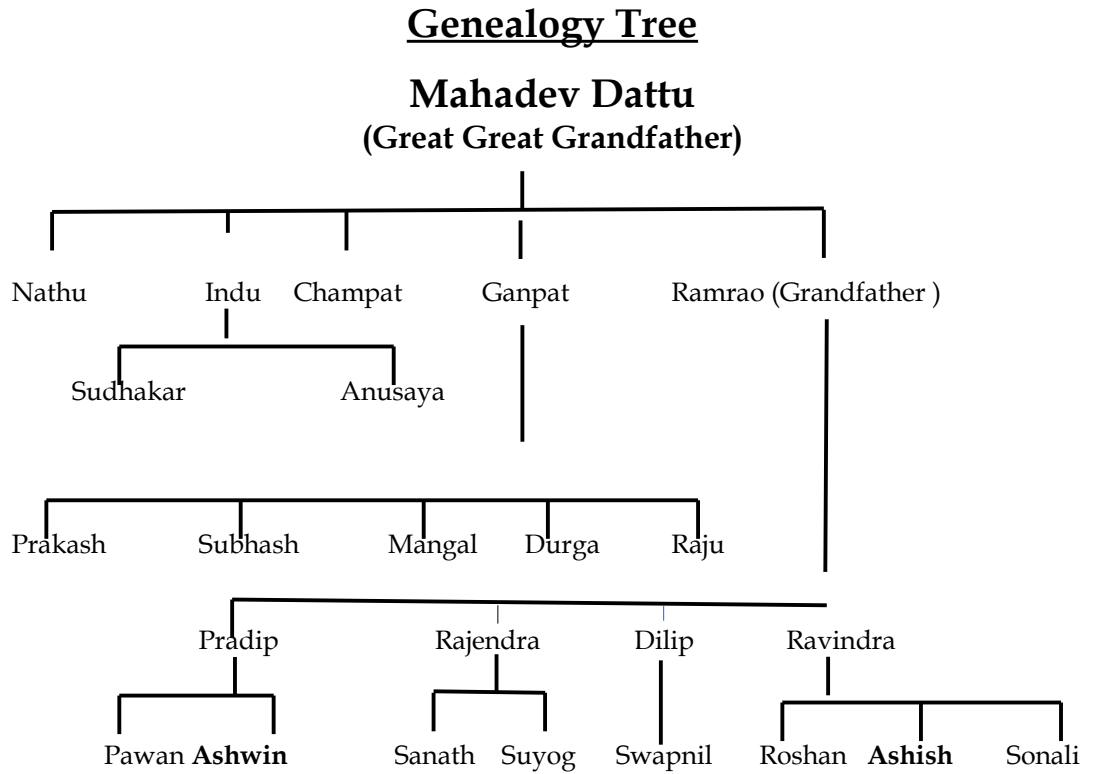
1. *Anand vs. Committee for Scrutiny and Verification of Tribe Claim and others*, 2011(6) Mh.L.J. 919
2. *Jaywant Pawar vs. State of Maharashtra and ors*, 2018(5) All MR 975 (S.C.)
3. *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and others*, 2023(2) Mh.L.J 785
4. *Ruchita Harish Gaikwad Vs. Vice-Chairman/Member Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli*, AIRONLINE 2021 BOM 3644

5. *Sanjay Bajirao More and another Vs. State of Maharashtra and others, 2015(6) Mh.L.J. 822*

6. *Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee, Nagpur and others, in Writ Petition No. 1504/2010.*

9. As against this learned Assistant Government Pleader submitted that there are contrary entries showing relatives of the petitioners as 'Bhat'. The Caste Scrutiny Committee has right in holding that the petitioners are not 'Thakur' but 'Bhat'. It is submitted that in answer to the issue that whether validity certificate issued in favour of relatives of the petitioners give right to the petitioners to issue validity certificate in favour of petitioners is in the negative. The said entries 'Bhat' were not before the Court or before the Committee, therefore, Scrutiny Committee has rightly rejected the claim.

Word
'Nathu' is
substituted
for
'Bandhu'



10. I have heard both the parties at length. Perused the record and proceedings of the Scrutiny Committee. The genealogy tree of the petitioners is not disputed by the Scrutiny Committee. It appears that Caste Scrutiny Committee discarded the certificate, issued in favour of blood relatives of the petitioners on the ground that the contrary entries were not before the Court or Committee at the relevant time. What is held in *Apoorva Vinay Nichale*

(supra) “there is, however, no doubt as observed by us earlier that if a Committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition to initiate proceedings for cancellation of the earlier order.”

11. It appears that after receipt of notice, the petitioners filed their detailed reply to the said notice. They have duly explained that person before whose name caste is shown as ‘Bhat’ are not in relation with the petitioners. The petitioner placed on record the old documents of prior to 1950. From these documents the full identity of the person reveals, whereas, the document showing entry ‘Bhat’ full identity is not disclosed. The petitioner pointed out that in Writ Petition No. 4859/2000, in the case of his father’s elder brother Rajendra Ramrao Ghosalkar as well as Shri Pradip,

Shri Sanath, Shri Roshan were issued certificates after conducting vigilance enquiry and similar objections were taken which was duly replied by the applicants and after satisfaction of the Committee, Committee issued the validity certificates. In the present matter, there are no allegation of fraud or misrepresentation. As held in ***Ruchita Harish Gaikwad (supra)***, wherein, it is held that :

“where committee gives a finding about validity of the caste of candidate, another committee ought not to refuse the same status to a blood relative who applies. It has also been held that merely because different view on the same fact is possible that by itself would not entitle the committee dealing with the subsequent caste claim to reject it.”

12. In the present matter, Scrutiny Committee rejected validity existing in the paternal family member of the petitioner without issuing notice to the beneficiary before discarding validity certificate in favour of uncle, brother. Till the cancellation of earlier validation certificate it will hold

the field and Caste Scrutiny Committee is duty bound to issue validity certificate validating the caste of petitioner. It is not the case that no vigilance enquiry was conducted while issuing validity certificates to the blood relatives of the petitioner. As such, no contrary view can be taken unless it is shown that certificate is obtained by playing fraud. Here, the claim of petitioner's elder uncle was confirmed by the Hon'ble Apex Court, as such, no contrary view can be taken by the Caste Scrutiny Committee.

13. The learned Counsel for petitioners placed reliance on *Sanjay Bajirao More and another (supra)*, wherein, this Court held as under :

"8. The Caste Scrutiny Committee, therefore, based upon then existing provisions and the material available, has granted such Caste Certificate/Validity Certificate to one of the paternal side family member. Unless the said Certificate is set aside and/or declared null and void by the Competent Court/Authority, based upon mere allegations, the Caste Scrutiny Committee is

under legal obligation not to disrespect such Caste Scrutiny Committee Validity Certificate and on the contrary, bound to grant the Caste Validity Certificate, in accordance with law to such claimant. The caste claim of the person, unless case is made out of fraud and misrepresentation, the Scrutiny Committee cannot re-open and/or disregard the Caste Validity Certificate already issued to the paternal relatives. There is no such case of fraud or misrepresentation. On the contrary, there are consistent orders passed in favour of Petitioners' paternal relatives and even confirmed by the Supreme Court and the High Court."

14. So far as, affinity test is concerned, learned Counsel for the petitioners relied on **Anand (supra)**, wherein, it is held as under :

"18. ..

(i) ..

(ii) *While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and*

adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

15. In the case of *Mah. Adiwasi Thakur Jamat Swarakshan Samiti (supra)*, the Constitution Bench of three judges of the Hon'ble Supreme Court referred the judgment in the case of *Anand (supra)*.

16. There are documents which are prior to 1950 and having full details of Mahadev his father's name Dattu and Caste 'Thakur' whereas, the Committee relying on the

document, wherein, no further details of Mahadev is given nor he is shown belonging to Falegaon. As such, it is the Committee, who has to explain how this Mahadev is related to the petitioners. It is a common knowledge that in the villages there may be many persons by one name. Therefore, Scrutiny Committee is required to consider this Mahadev, whose details are given as the great grand father of the petitioner. The document which are giving detailed description are unnecessarily discarded by the Caste Scrutiny Committee.

17. Once uncle, cousin, elder brother is awarded with validity certificate, it is not possible that petitioners belong to other caste than the caste of their blood relatives.

18. Learned Counsel also relied on *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*,

wherein, it is held that :

“(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(b).....

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case.”

19. In view of the above discussion, the order passed by learned Caste Scrutiny Committee is unjustified, erroneous and illegal and therefore, it is liable to be set aside. Accordingly, we pass the following order :

ORDER

- (i) Writ Petition is allowed.
- (ii) The order in Case Nos. 5/510/Edu/122019/160886 and 5/510/Edu/012019/116678 dated 24/07/2023, passed by respondent No.1, Scheduled Tribe Caste Certificate Scrutiny Committee, Yavatmal, is hereby quashed and set aside.
- (iii) It is declared that petitioners belongs to 'Thakur' Scheduled Tribe.
- (iv) Respondent No.1 is directed to issue Tribe Validity Certificate to the petitioner as belonging to 'Thakur' Scheduled Tribe within a period of four weeks from the date of receipt of the order.

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

Sd/-
JUDGE

Sd/-
JUDGE

Correction is carried out as per Court's Order dated 10/06/2024 in Civil Application No.1431/2024 and corrected order be .

(SMT.M.S. JAWALKAR, J.)

(VINAY JOSHI, J.)

Jayashree..