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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.10913 OF 2019

1. Manthan s/o Rajendra Suryawanshi,
Age 18 years, Occu. Education
2. Pallavi d/o Narendra Suryawanshi,
Age 21 years, Occu. Education

Both R/o Wanegaon, Tal. Phulambri,
District Aurangabad

... **PETITIONERS**

VERSUS

1. State Common Entrance Test Cell,
Maharashtra, Mumbai
8th Floor, New Excelsior,
A.K. Nayak Marg, Fort, Mumbai
through its Commissioner and
Competent Authority
2. Director of Technical Education,
Maharashtra State, Mumbai,
3, Mahapalika Marg, Mumbai
3. Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Region, Aurangabad,
Plot No.10, E-9, Opposite
CIDCO Bus Stand, Town Center,
Aurangabad, Dist. Aurangabad,
through its Member Secretary

(Copies of Respondent No.1 to 3
to be served through office of
Government Pleader, Bombay High Court,
Bench at Aurangabad)

4. College of Engineering, Pune
Wellesley Road, Shivajinagar,
Pune, District Pune
through its Principal

5. Savitribai Phule Pune University,
Ganesh Khind Road, Pune – 411 007
Through its Registrar

6. Institute of Chemical Technology,
Nathala Parekh Marg, Matunga,
Mumbai – 400 019
Through its Principal

... RESPONDENTS

.....
Mr. M.S. Deshmukh, Advocate holding for
Mr. S.S. Phatale, Advocate for the petitioners
Mr. S.G. Karlekar, Advocate for respondent No.1
Mr. S.B. Yawalkar, A.G.P. for respondents No.2 and 3
.....

**CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.**

DATE : 3rd DECEMBER, 2020.

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, taken up for final hearing.

2. The petitioners have challenged the order dated 13/8/2019, passed by Caste/ Tribe Certificate Scrutiny Committee, Aurangabad (Scrutiny Committee for short), whereby the Tribe Certificates of the petitioners, indicating them to have belonged to Thakur – Scheduled Tribe have been invalidated. The petitioners have, therefore, sought for

a relief of setting aside the impugned decision dated 13/8/2019 with a direction to Scrutiny Committee to issue the petitioners the validity certificates, certifying them to have belonged to Thakur – Scheduled Tribe.

3. Mr. M.S. Deshmukh, learned counsel appearing for the petitioners would submit that the Scrutiny Committee did not consider documents of pre-independence period. The Scrutiny Committee also failed to consider the validity certificates issued in favour of blood relations of the petitioners. In spite of area restrictions having been no longer in vogue, the Scrutiny Committee gave undue importance to the area restriction. When affinity test is not the conclusive test to determine the caste/ tribe of a particular person, the Scrutiny Committee found the petitioners to have failed in affinity test and, therefore, invalidated the tribe certificates. According to learned counsel, there was no contra evidence. All the school records of the petitioners and their forefathers indicate their caste - 'Thakur'. The learned counsel has relied on the following authorities :

- (1) Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and ors. [(2012) 1 SCC 113]
- (2) Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 & ors. [2011 (2) Bom.C.R. 824]

Learned counsel for the petitioner ultimately urged for allowing the Writ Petition.

4. Mr. S.B. Yawalkar, learned Additional Government Pleader would, on the other hand, submit that, there is quite a distinction between caste and a tribe. Even though school record of the petitioners and their forefathers indicates their caste to be Thakur, the same will not ipso facto clothe the petitioners to be of Thakur – Scheduled Tribe. According to learned Additional Government pleader, even though area restrictions were no longer applicable, it is necessary to see whether the petitioners and their forefathers have really migrated from five scheduled districts, wherefrom members of Thakur – Scheduled Tribe hailed.

5. Turning to the validity certificates of the blood relations of the petitioners, learned Additional Government Pleader would submit that, a Law Officer of the Committee granting validity certificates to the relatives of the petitioners was one of the members thereof. A Law Officer should not have been a member of the Committee assigned with the task of scrutinising the caste certificates. He has relied on a decision of this Court (Nagpur Bench), dated 1/8/2018 in a bunch of Writ Petitions, one of which was Writ Petition No.4198/2005 (Ku. Chhaya d/o Jasvantsingh Hajari Vs. The

Committee for Scrutiny and Verification of Tribe Claims, Amravati & ors.). According to learned A.G.P., there were no vigilance reports in four of the six proceedings in which validity certificates have been granted. The vigilance report, in the present case, runs counter to the claim of the petitioners. They even did not pass affinity test.

6. The Scrutiny Committee, as usual, framed three points and answered them in the negative. As regards pre-constitutional school record of the grandfather of the petitioners, the Scrutiny Committee observed that the members of the Scheduled Tribe were uneducated and illiterate. When the great grandfather of the petitioners took school education in 1917, he must have belonged to upper caste - 'Thakur'. The Scrutiny Committee also observed that there was no evidence to indicate as to when and why the forefathers of the petitioners have migrated from their native in Buldhana district to Aurangabad. The Scrutiny Committee went on to observe that, the Thakur - Scheduled Tribe originally hailed from five scheduled districts in Maharashtra. Forefathers of the petitioners could not be traced to any of those districts. In the vigilance enquiry, the entries in the school record of the blood relations of the petitioners indicate their caste to be Thakar. The petitioners also failed in affinity test and home enquiry. Their traits and cultural activities are

found to be inconsistent with that of the members of the Thakur – Scheduled Tribe. Some information had been suppressed during enquiry regarding granting of validity certificates to the blood relations of the petitioners. The Scrutiny Committee has, therefore, issued show-cause-notices to the concerned relations with a view to reopen their cases.

7. In our view, the Scrutiny Committee did not give due importance to pre-constitutional documents. It gave undue importance to area restrictions. The Scrutiny Committee ought to have granted the petitioners validity certificates when their blood relations do have validity certificates.

8. The petitioners are cousins inter-se. The competent authority granted them certificates of 'Thakur – Scheduled Tribe'. The certificates were submitted to the Scrutiny Committee for its scrutiny. During the enquiry before the Scrutiny Committee, the petitioners relied on school record of themselves and their forefathers. Admittedly, late Haribhau Shravan was great-grandfather of the petitioners. There is on record an extract from the school admission register, indicating him to have been admitted to school in 1917. This school record is pre-independence document. The Scrutiny Committee ought to have relied on this document

wherein caste of the great-grandfather of the petitioners is shown as Thakur.

9. The Apex Court in case of Anand (supra), observed as under :-

“While dealing with documentary evidence, greater reliance may be placed on the pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant.”

10. The very record indicates, Haribhau, the great-grandfather of the petitioners left the school in March 1919. The Scrutiny Committee, instead of relying on the said document, has observed that, since the great-grandfather of the petitioners was taking education in 1917, family must not have been a Scheduled Tribe. The Scrutiny Committee appears to have ignored the fact that the great-grandfather of the petitioner was a drop out of the school within two years of his admission. The inference drawn by the Scrutiny

Committee can only be said to have been based on surmises and conjectures.

11. There are two extracts of the school admission register of the fathers of the petitioners. First one is of Narendra. The same indicates him to have been admitted to school in 1972 while Devendra's admission to the school was in 1983. In Narendra's school record, his caste is shown as Thakur while in Devendra's case, it is Thakur (Hindu). Hindu is not a caste, but a religion. The petitioners also relied on school record of their blood relations, wherein their caste has been shown as 'Thakur'. The Scrutiny Committee did not place reliance on the school record on the ground that during vigilance enquiry, in the school record of two of the relations of the petitioners, their caste was found to have been recorded as 'Thakar'. It needs no mention that, Thakar has also been recognised as a Scheduled Tribe. The said record was very much available with the concerned schools. The petitioners could not be said to have suppressed the same from the Scrutiny Committee, still the Scrutiny Committee went on to observe the same to have been suppressed.

12. The petitioners have also relied on validity certificate granted in favour of their fathers and other close blood relations. A person derives/ inherits his caste from his

father. The vigilance enquiry had been held during proceedings for tribe validity certificate of petitioners' uncle Devendra. The vigilance report is on record. The report is in favour of the petitioners. The vigilance officer found that, information collected during home enquiry, school enquiry and affinity test was consistent with traits and lifestyle of the persons belonging to Scheduled Tribe. During enquiry held for granting validity to the tribe certificate of Rajendra, cousin of the petitioners, the Research Officer found him to have passed the affinity test. Rajendra has also been granted tribe validity certificate. Same is the case about vigilance report submitted during enquiry held for validation of certificate granted in favour of Narendra. One of the blood relations of the petitioners had been granted the validity certificate way back in 2001.

13. Instead of relying on the validity certificates of the fathers of the petitioners and other close relations, the Scrutiny Committee observed that some of the validity certificates were obtained by suppression of material facts. It, however, did not specify what kind of information had been suppressed. It has already been observed that the school record of the petitioners' relations was very much available with the concerned schools. The same could not be said to have been suppressed during the enquiry held before the

present Scrutiny Committee. One of the reasons assigned for invalidating the tribe certificate of the petitioners is that, the validity certificates relied on by the petitioners were granted by the Committee of which one of the member was a Law Officer. The Scrutiny Committee has relied on a judgment of this Court in case of Vishwanath Johari to observe that, since a Law Officer was one of the members of the Scrutiny Committee granting validity to the certificates, the same is unsustainable in law. We do not propose to make any observations in this regard. Suffice it to say that, it was a three member Committee, the decision whereof was unanimous.

14. The area restrictions have been removed way back in 1976. The Scrutiny Committee has still observed that, neither the petitioners nor their forefathers hail from five scheduled districts namely, Thane, Nasik, Pune, Alibag and Ahmednagar wherefrom Thakur – Scheduled Tribe originates. It also found that the surnames of the relations of the petitioners are not that of generally found in case of members of Thakur – Scheduled Tribe. The vigilance enquiry report was found to have not been consistent with the case of the petitioners. The Scrutiny Committee also observed that, service record of the father of the petitioner No.1 indicates him to have secured the job as an open category candidate.

This inference has been drawn merely on the ground that there was no entry in the service book of the petitioner No.1's father, indicating him to have belonged to Thakur – Scheduled Tribe. This inference is far fetched and based on no material.

15. In our view, the Scrutiny Committee ought to have relied on the pre-independence school record of the great-grandfather of the petitioner. It should have also relied on the school record of fathers of both the petitioners, which dates back to 1972 and 1983, wherein their caste is shown as Thakur. There is no contra evidence suggesting the petitioners or their fathers to have belonged to caste other than Thakur.

16. The fathers of the petitioners, their brother Devendra and three cousins of the petitioners have been granted validity certificates. Those certificates ought to have been relied upon by the Scrutiny Committee.

17. In case of **Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 & ors. [2011 (2) Bom.C.R. 824]**, (Nagpur Bench), the Division Bench of this Court observed in paragraph No.7 as under :

“7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying

that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.”

18. Moreover, in case of Prathamesh Ravindra Thakur : Through his father & natural guardian Vs. The State of Maharashtra (Writ Petition No.8298 of 2019 at principal seat at Bombay), the Division Bench of this Court observed that, so long as the certificate of validity has not been doubted or suspected and held to be vitiated by fraud or misrepresentation of facts, after a show-cause-notice being issued to the certificate holder, a due inquiry as contemplated by law held and the certificate confiscated and cancelled, the same could not have been omitted from consideration or the same could not have been termed as having no probative value.

19. In view of there being old record indicate the petitioners' forefathers to have belonged to Thakur, and the fact that the parents of the petitioners, their brother Devendra and cousins of the petitioners have been granted validity certificates, the petitioners are entitled for grant of validity certificates. The Writ Petition, thus, succeeds in terms of the

following order :-

20. The impugned order dated 13th August, 2019 passed by respondent No.3 – Scheduled Tribe Certificate Scrutiny Committee, Aurangabad is quashed and set aside. It would be appropriate that the Committee issues validity certificates to the petitioners of being Thakur – Scheduled Tribe, within a period of one week from today which shall be subject to the result of the proceedings stated to be moved in respect of validity holders relied on by the petitioners.

21. Rule made absolute accordingly.

(R. G. AVACHAT)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

fmp/-