

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

WRIT PETITION NO. 5302 OF 2021

- PETITIONER** :-
1. Ku. Vedanti Chandrashekhar Bhuyar, aged 19 years, Occ. Student, r/o Tirupati City, Washim District Washim.
 2. Akash s/o Chandrashekhar Bhuyar, aged 23 years, occ. Student, r/o. Tirupati City, Washim, District Washim.

...VERSUS...

- RESPONDENTS** :-
1. The Scheduled Tribes Caste Certificate Scrutiny Committee, through its Member Secretary, Chaprasipura, Amravati.
 2. State of Maharashtra, through its Secretary, Department of Tribal Development, Mantralaya, Mumbai 400032.

Mr. R. S. Parsodkar, counsel for the petitioners.
Ms N.P. Mehta, AGP for the respondents.

**CORAM : A.S.CHANDURKAR &
ANIL L. PANSARE, JJ.**

DATE : 17.01.2022.

JUDGMENT (Per : Anil L. Pansare, J)

Heard.

1. **Rule.** Rule made returnable forthwith.
2. The writ petition is heard finally with the consent of the learned counsel for the parties.
3. The petitioners have challenged the order dated 29/11/2020 passed by respondent No.1-Scheduled Tribe Caste Certificate Scrutiny Committee invalidating the caste certificates issued in favour of the petitioners as belonging to Thakur Scheduled Tribe. According to the petitioners, they belong to Thakur Scheduled Tribe, which is enlisted in Constitution Scheduled Tribes Order, 1950. The petitioner No.1 is real sister of petitioner No.2. Both the petitioners are pursuing their studies under reservation to scheduled tribes.
4. The grievance of the petitioners is that the respondent No.1 has ignored documentary evidence and invalidated the caste certificate on the basis of the documents that were obtained by Vigilance Cell, so also on the basis of affinity test. The learned Advocate for the petitioners submits that the documents obtained by the Vigilance Cell were belonging to certain persons, who were

not relatives of the petitioners. Therefore, the respondent No.1 could not have relied upon those documents.

5. It is further the case of the petitioners that blood relatives of the petitioners were granted validity certificate of Thakur Scheduled Tribe, some of which were issued in terms of order passed by this Court. However, the respondent No.1 has ignored those documents without assigning any valid reason. The learned Advocate for the petitioners has taken us through various documents which according to him, were of prime importance, which respondent No.1-Committee has ignored. It is accordingly argued that the respondent No.1-Committee has committed serious error by invalidating the caste claim of the petitioners.

6. As against the learned AGP has supported the impugned order by contending that the respondent No.1-Committee was well within its jurisdiction to consider the documents obtained by Vigilance Cell and to reject the claim of the petitioners. The respondent No.1 has independently analyzed the claim on the basis of the documents tendered by the petitioners, documents obtained by Vigilance Cell and the result of affinity test.

The said order is in tune with the guidelines issued by this Court, so also the relevant Rules.

7. Having heard both sides, what transpires is that there is a document which shows that a son was born on 1st of March, 1915 to great great grandfather of the petitioners and the caste of the great great grandfather has been recorded as Thakur. There are documents of other relatives as well, which show their caste as Thakur. These documents including following important documents were placed before the respondent No.1-Committee. These documents belonged to six relatives of the petitioners in favour of whom the caste validity certificate was issued.

- (1) Swapnil Pradip Bhuyar (cousin uncle) – caste validity certificate has been issued by the Caste Scrutiny Committee, Nasik.
- (2) Tushar Pradip Bhuyar (cousin uncle) – caste validity certificate has been issued by the Caste Scrutiny Committee, Aurangabad.
- (3) Surendra Ajabrao Bhuyar (cousin uncle) – caste validity certificate has been issued by the Caste Scrutiny Committee, Nagpur.

- (4) Aalok Mangesh Bhuyar (cousin brother) – caste validity certificate has been issued by the Caste Scrutiny Committee, Amravati in terms of the order dated 02/08/2019 passed by this Court in Writ Petition No. 5186 of 2016.
- (5) Sarita Shankar Bhuyar (cousin aunt) – caste validity certificate has been issued by the Caste Scrutiny Committee, Amravati in terms of the order dated 28/08/2019 passed by this Court in Writ Petition No.4957 of 2019.
- (6) Avinash Shankar Bhuyar (cousin uncle) – caste validity certificate has been issued by the Caste Scrutiny Committee, Amravati in terms of the order dated 28/08/2019 passed by this Court in Writ Petition No.4957 of 2019.

8. These documents were ignored by the respondent No.1-Committee by assigning the reason that merely because some relatives are validity holders, the certificates to others may not automatically follow without going in the question and facts as to how the validity was issued and what lacunae resulted in issuing such validity certificates. The respondent No.1-Committee has then recorded various reasons like some facts were suppressed by

the respective relative in obtaining validity certificate etc. The respondent No.1-Committee, while dealing with the validity certificate issued in favour of Tushar Pradip Bhuyar, the certificate issued by Caste Scrutiny Committee, Aurangabad, observed that there should be at least three members in the quorum for a valid decision and that the order was passed by only two members. The scan copy of the said order is part of the order impugned before us. The said scan copy indicates that all the four members have signed the validity certificate. It is therefore, difficult to understand as to on what basis such finding has been rendered by the respondent No.1 that the validity claim of Tushar was not valid for want of quorum.

9. Thus, for one reason or the other, the respondent No.1-Committee has ignored six important documents. In our view, the Committee has travelled beyond its jurisdiction in recording such finding on the validity certificates issued by respective Caste Scrutiny Committees. It is so because, none of the caste validity certificates have been challenged by the Committee or any other person. In absence thereof, the Committee could not

have ignored these documents by assigning reasons, which the Committee was not empowered to. The respondent No.1-Committee was/is not an Appellate Authority to test the correctness of the decision of Caste Scrutiny Committee validating caste certificate of the relatives of the petitioners. The caste certificate having attained finality, the respondent No.1-Committee was under obligation to consider the same in favour of the petitioners.

10. In the case of *Apurva v. D.C.C.S. Committee*, reported in **2010 (6) Mh.L.J. 401**, the Coordinate Bench of this Court, has held that during the course of enquiry of 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 said candidate, the Committee may grant such certificate without calling for Vigilance Cell Report. It is further held that merely because the Committee has different view on the same facts, it would not entitle the Committee dealing with the subsequent caste claim to reject earlier caste certificate. The only exception carved out is that 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.

11. In the present case the Committee has not recorded the finding that the caste validity certificates granted to the relatives of the petitioners were obtained by fraud or were granted without jurisdiction. In the circumstances, the Committee was under obligation to consider the said certificates in favour of the petitioners. The Committee failed to do so.

12. On the point of documentary evidence, though the Committee has referred to the birth record of male child born to Ambadas Thakur (great great grandfather of the petitioners) on 1st of March, 1915, it has failed to give due weightage to the said document. Instead, it has referred to the documents obtained by the Vigilance Cell. The respondent No.1-Committee has relied upon those documents by mentioning that the said record has been suppressed by the petitioners. The said documents according to the respondent No.1 related to great great grandfather and

other relatives of the petitioners, showing their caste as Thakur Bhat and Bramhabhat.

13. These documents, in our considered view could not have been relied upon by the Committee. The Committee has sought say of the petitioners upon the said documents. The petitioners have filed their say before the Committee mentioning therein, with reasons, that those documents do not belong to their forefathers. The respondent No.1 has not dwelve upon the said reply and reasons assigned by the petitioners. There is no finding of the Committee that the say filed by the petitioners was incorrect or that the documents disputed by the petitioners were indeed belonging to the forefathers of the petitioners for some valid reasons. What respondent No.1 has done is that it has directly referred to those documents and then recorded a finding that the caste of the applicants' family has been recorded as Thakur Bhat and Bramhabhat.

14. In this regard, our attention is drawn by the petitioners to order dated 02/08/2019 passed by the Coordinate Bench of this Court in the case of *Aalok Mangesh Bhuyar v.*

Scheduled Tribes Caste Certificate Scrutiny Committee in Writ Petition No.5186 of 2019. As stated earlier, Aalok (petitioner therein) is cousin brother of the petitioners. The validity certificate has been issued in his favour in terms of the aforesaid order. In the said case also, the Caste Scrutiny Committee ignored valid documents, which includes document dated 1st March, 1915 mentioned above. In the said case also, the Scrutiny Committee gave weightage to the documents collected through the Vigilance Cell to arrive at a conclusion that the relatives of the petitioners belonged to caste Bhat. The Coordinate Bench of this Court observed in para-5 as under:

“5. The petitioner has produced in all 19 documents for the evaluation of Committee. These documents are including of School Leaving Certificate of petitioner’s grand father namely Panjabrao, dated 18.06.1942, birth date extract of petitioner great-grandfather – Narayan, dated 09.11.1933 and birth extract dated 01.03.1915 of petitioner’s great-great-grandfather namely Ambadas. All these pre-constitutional documents shows the entry of the caste “Thakur” to the record. The Vigilance Cell has not disputed the genuineness of the old documents produced by the petitioner showing entry of “Thakru” caste. On the other hand, the learned Assistant Government Pleader

submitted that the Vigilance Cell has collected two old documents showing that caste “Bhat” has been entered to the record of Ambadas and Lakshman who are petitioner’s parental relatives. However, the oldest document of the year 1915 is of “Thakur” caste carries much weight.”

15. The High Court has then refuted the findings of the Scrutiny Committee. Thus, the Committee was aware that Aalok, the cousin brother of the petitioners was granted caste validity certificate in terms of the aforesaid order. In that sense, it could be presumed that the Committee was aware of passing of the aforesaid order dated 02/08/2019 in Writ Petition No.5186 of 2019. Despite this, the respondent No.1-Committee has ignored the pre-constitutional and the oldest document produced by the petitioners, which is dated 1st March, 1915 showing caste of great great grandfather of the petitioners as Thakur.

16. The Committee has not only committed the aforesaid error, but has committed yet another patent mistake, when it ignored the validity certificate issued in favour of Aalok-cousin brother, Sarita-cousin aunt, Avinash-cousin uncle and Surendrakumar-cousin uncle on the ground that they have

obtained the orders from the High Court by suppressing the decision in the case of *Pushpasheela Panjabrao Bhuyar* in *Writ Petition No.726 of 2004*, *Vivek Vinayakrao Bhuyar* in *Writ Petition No.2959 of 2002* and *Bhagyashri Vinayakrao Bhuyar* in *Writ Petition No.2960 of 2002*, dated 01/08/2018. Pushpashila is the petitioners' aunt and Vivek is petitioners' cousin uncle. The reason why we have said that the respondent No.1 has committed patent mistake is because a categorical adverse finding has been recorded by the Coordinate Bench in *Aalok's* case supra in respect of similar such argument before it. In para-6, the Court has observed as follows:

“6. The learned Assistant Government Pleader brought to our notice that caste claims of the petitioner's real aunt Pushpasheela and cousin uncle – Vivek were rejected by this Court. The learned counsel for the petitioner is quick enough to inform that these decisions are subject matter of challenge before the Hon'ble Supreme Court of India in which, the matter is stayed. He produced copy of SLP (C) No.26471/2018 for that purpose.”

17. Thus, the Committee has relied upon the judgments

which have been stayed by the Hon'ble Supreme Court and has erroneously come to the conclusion that the relatives of the petitioners have obtained orders from this Court by suppressing the earlier decisions. Importantly, such error has been committed by the respondent No.1 when the aforesaid aspect was already considered by this Court in *Aalok's* case.

18. In the circumstances, what emerges is that there is a valid pre-constitutional document, as old as of the year 1915 in favour of petitioners showing caste of great great grandfather as belonging to Thakur. There are as many as six relatives of the petitioners in whose favour the caste certificate has been validated as belonging to caste Thakur. There is no challenge to issuance of said validity certificates. The Thakur, Scheduled Tribe is enlisted at Sr.No.44 in the Constitution (Scheduled Tribes) Order, 1950. The respondent No.1-Committee, therefore, could not have ignored these documents, rather was bound to follow these documents and issue validity certificate in favour of the petitioners. Having failed to do so, the respondent No.1 has committed an error in law.

19. So far as the affinity test is concerned, the law is well

settled on this point. In the case of *Anand v. Committee for Scrutiny and Verification of Tribe Claims and others*, reported in *2011 (6) Mh.L.J. 919*, the Hon'ble Supreme Court has specifically held and expressed that great reliance should be placed on pre-independence documents because they furnish high degree of probative value. It is further held that affinity test is merely to be used to corroborate documentary evidence and it is not to be used as criteria for rejection of claim. Thus, the respondent No.1 could not have ignored documentary evidence and could not have given weightage to affinity test by ignoring valid documents.

20. Put all together the respondent No.1-Committee's approach is against the well settled principles of law. The order impugned suffers from non-application of mind. It is liable to be set aside. Hence, we proceed to pass following order.

- (i) The order passed by the Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati, dated 29/11/2020, is set aside.
- (ii) It is declared that the petitioners belong to "Thakur"

Scheduled Tribe and the Scrutiny Committee shall issue validity certificate to both the petitioners within a period of of two weeks from today.

- (iii) Since the petitioners are pursuing their studies they are at liberty to produce copy of this judgment before the Competent Authority to indicate that a direction to issue validity certificate in their favour has been issued by the Court.

21. Rule is made absolute in the aforesaid terms. No costs.

(ANIL L. PANSARE, J)

(A. S. CHANDURKAR, J)