

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

WRIT PETITION NO.5606 OF 2021

Om S/o Rajesh Pise

Age : 18 yrs. Occ. Student,

R/o Toshniwal Layout, Akola,

Tq & Dist. Akola 444005

... Petitioner

-vs-

Schedule Tribe Caste Certificate Scrutiny

Committee, Old By pass, Chaprasipura,

Amravati, Through its Vice chairman/Jt.

Commissioner

... Respondent

Shri Ankush P. Kalmegh, Advocate for petitioner

Ms N. P. Mehta, Assistant Government Pleader for respondent.

CORAM : A. S. CHANDURKAR AND SMT M. S. JAWALKAR, JJ.

DATE : January 25, 2022

Oral Judgment : (Per A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard learned counsel for the parties.

The challenge raised in this writ petition is to the order passed by the Scheduled Tribe Certificate Scrutiny Committee, Amravati dated 27/10/2020 invalidating the tribe claim of the petitioner of belonging to Thakur Scheduled Tribe.

2. It is the case of the petitioner that he and his ancestors belong to 'Thakur' Scheduled Tribe which fact could be seen from various old

documents of the pre-independence era. The petitioner by relying upon such old school and revenue entries of his grand-fathers namely Pandharinath and Vishnupant as well as the old record of his great aunt Vimal pertaining to the period from 1935 to 1951 has raised the claim of belonging to Thakur Scheduled Tribe. The Scrutiny Committee in the impugned order accepted the relationship of the petitioner as indicated in the family tree but observed that since 'Thakur' community also exists in upper caste communities and there being no socio-cultural affinity with 'Thakur' Scheduled Tribe, the claim as made by the petitioner was not liable to be validated.

3. Shri A. P. Kalmegh, learned counsel for the petitioner submits that the petitioner relied upon various documents pertaining to the pre-independence era. All entries therein referred to caste of petitioner's relatives to be 'Thakur'. Since such entries were existing even prior to the issuance of the Scheduled Tribe Order, 1950, there was no reason to doubt such entries and refuse to grant validity certificate to the petitioner. Moreover, a validity certificate was granted to the petitioner's uncle namely Sanjay Pandharinath Pise which was however ignored by the Scrutiny Committee on the ground that petitioner's relationship was not established with said Sanjay. He submitted that even from the family tree that was prepared by the Vigilance Cell it was clear that the relationship with the relatives named therein had been duly proved. The learned counsel placed

reliance on the decision in *Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and ors. 2010(6) Mh.L.J. 401* and submitted that the order of the Scrutiny Committee was liable to be set aside and a validity certificate ought to be granted to the petitioner.

4. Ms N. P. Mehta, learned Assistant Government Pleader for the respondent opposed aforesaid submissions and supported the order passed by the Scrutiny Committee. She submitted that the Scrutiny Committee was justified in observing that the petitioner had failed to establish his relationship with the persons named in the family tree. The validity certificate issued to Sanjay Pise was rightly discarded by the Scrutiny Committee as there was no evidence to indicate his relationship with the petitioner. The observations as regards similarity of the name of the community-Thakur with persons belonging to the higher caste was also a relevant aspect and therefore the Committee was justified in invalidating the Tribe claim of the petitioner. There was no reason to interfere with the impugned order.

5. We have heard the learned counsel for the parties at length and we have also gone through the records maintained by the Scrutiny Committee that were produced for perusal of the Court. At the outset it may be stated that during the course of conducting Vigilance Cell enquiry a family tree was

prepared by the concerned Police Officer attached to that Cell. Perusal of that family tree alongwith the family tree relied upon by the petitioner indicates that there is similarity in the names of family members and there is no reason whatsoever to doubt the relationship of the petitioner with the persons named therein. The Vigilance Cell having verified the names of persons related to the petitioner, the Scrutiny Committee ought to have proceeded on the basis of such family tree prepared by its own Cell. Pertinently, the name of Sanjay Pandharinath Pise is also indicated in the said family tree and he is shown to be the uncle of the petitioner. It is further not in dispute that said Sanjay was issued a validity certificate by the Scrutiny Committee, Aurangabad on 31/05/2004. This was pursuant to the order dated 29/11/2003 passed in Writ Petition No.439/1995 at the Aurangabad Bench of this Court. Thus the relationship of the petitioner with said Sanjay being established and he having been issued a validity certificate, the ratio of the decision in *Apoorva Vinay Nichale* (supra) would apply to the case in hand. The Scrutiny Committee therefore was not justified in not giving due weightage to this validity certificate.

6. Even otherwise we find that there are numerous documents from the year 1935 and onwards pertaining to blood relatives of the petitioner wherein the entry 'Thakur' has been shown in the relevant column. The Vigilance Cell in its report has clearly observed that the authenticity of these

documents was not in doubt. Once the petitioner was able to establish relationship with such persons named in the family tree and was also able to produce documents of the pre-independence era, his claim ought to have been considered in the light of the great probative value of these documents. The Scrutiny Committee has not found any other records showing contrary entries other than 'Thakur' mentioned anywhere. It is well settled that if a claimant is able to establish presence of pre-independence documents along with relationship with the persons named therein, the same would have greater probative value and notwithstanding the fate of the affinity test, the claimant would be entitled to support his claim on the basis of such old documents. The impugned order does not indicate any justifiable reason for not applying this settled legal position.

7. In that view of the matter we find that the order passed by the Scrutiny Committee is without considering the probative value of pre-independence documents which consistently indicate the entry 'Thakur' mentioned therein. Similarly, the legal effect of issuance of a validity certificate to the petitioner's uncle has not been considered by the Scrutiny Committee. The impugned order being against the settled principles in the matter of issuance of validity certificate is thus liable to be set aside.

8. For aforesaid reasons, the following order is passed :

(i) The order dated 27/10/2020 passed by the Schedule Tribe Caste Certificate Scrutiny Committee, Amravati invalidating the Tribe claim of the petitioner is set aside.

(ii) It is declared that the petitioner belongs to 'Thakur' Scheduled Tribe which is Entry No.44 in the Constitution (Scheduled Tribes) Order, 1950.

(iii) The Scrutiny Committee shall within a period of four weeks from today issue validity certificate to the petitioner. The petitioner is free to rely upon and produce copy of this judgment in support of his claim that he belongs to 'Thakur' Scheduled Tribe till the validity certificate is issued to him.

Rule is made absolute in aforesaid terms with no order as to costs.

(Smt M. S. Jawalkar, J.)

(A. S. Chandurkar, J.)

Asmita