

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

WRIT PETITION NO.5649 OF 2021

Aniket s/o Dilip Lokhande,
 Age 18 years, Occ : Student,
 R/o. Shelu Bazar, Tq. Mangrulpir,
 District-Washim.

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Petitioner

..Versus..

Schedule Tribe Caste Certificate Scrutiny
 Committee, Old By-pass, Chaprashipura,
 Amravati, Through its Vice Chairman/Joint
 Commissioner.

..

Respondent

.....
 Shri Ankush P. Kalmegh, Advocate for the petitioner,
 Ms K.R. Deshpande, Assistant Government Pleader for the respondent.

Coram : A.S. Chandurkar and
Smt. M.S. Jawalkar, JJ.
Dated : 28th January, 2022.

Judgment (Per : Smt. M.S. Jawalkar, J.)

1. **Rule.** Rule made returnable forthwith by consent and request of the parties. The matter is heard finally at the stage of admission.

2. The present petition is filed by the petitioner challenging the order passed by the Scheduled Tribe Certificate Scrutiny Committee, Amravati (hereinafter referred to as 'committee') dated 29th October, 2020 thereby invalidated the claim of the petitioner. The petitioner claims to belonging to "Thakur" Scheduled Tribe, which is an entry at Sr.No.44 of the Constitution (Scheduled Tribes) Order, 1950.

3. The Sub-Divisional Officer, Mangrulpir, District-Washim has issued caste certificate dated 12.12.2018 of 'Thakur Scheduled Tribe' in favour of the petitioner. The petitioner's claim was forwarded for verification and issuance of validity to respondent-committee. The petitioner submitted all necessary documents including documents prior to year 1950. After forwarding the claim of the petitioner to vigilance cell for necessary enquiry, show cause notice enclosing vigilance cell report was served to the petitioner and the petitioner filed his submission/reply to the said show cause notice. Despite submission of all necessary documents and written submission to show cause notice, the respondent-committee, without considering the law laid down by the Hon'ble Apex Court and without considering the documents, invalidated the claim of the petitioner, as belong to "Thakur" Scheduled Tribe. The committee rejected the caste claim of the petitioner mainly on the ground that area restrictions, failure in affinity test and abnormal rise in the population after removal of area restriction.

4. Learned counsel for the petitioner submitted that the petitioner has challenged the impugned order passed by the committee on various grounds. The committee failed to appreciate probative value of the pre-constitutional documents showing entry of 'Thakur' caste, those are 1914 upto 1950. There is no dispute about family tree. Learned counsel for the petitioner relied on judgment of this Court in **Writ Petition No.8237/2018 Abhishek s/o Vijay Ingle .vs. Vice Chairman/Jt. Commissioner, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati**, by which order passed by the committee was quashed and set aside and the petitioner declared as belonging to caste 'Thakur Scheduled Tribe'. Learned counsel also relied on **Anand .vs. Committee for Scrutiny and Verification of Tribe Claims and others, 2011 (6) Mh.L.J. 919, Jaywant Dilip**

Pawar .vs. State of Maharashtra and others, 2018 (5) All MR 975, Prakesh s/o Shrawan Deore .vs. Scheduled Tribe Certificate Scrutiny Committee, Nashik and others, [2019 (5) Mh.L.J. 228 and the judgment of this Court in **Writ Petition No.6022/2017 with Writ Petition No.6475/2017 Ku. Pallavi d/o Shri Prakashrao Pawar .vs. Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati** in support of his contention that affinity test cannot be applied as litmus test while determining the tribe claim and aspect of area restriction is wholly irrelevant for determining the tribe claim in view of the judgment of the Hon'ble Apex Court. He further submitted that committee failed to appreciate relevant documents and gave importance to irrelevant consideration.

5. The Assistant Government Pleader appearing for the respondent-committee supported the impugned judgment and order and submitted that order passed by the committee is fully justified and committee has given detailed reason for invalidating the claim of the petitioner. Thus, no interference is called for under Article 226 of the Constitution of India.

6. We have heard both the parties at length, perused record maintained by the committee. The petitioner has produced following pre-constitutional documents which are as below :

- 1] Copy of birth extract register of son born to Dattu son of Fakira Thakur dated 7.1.1914 showing caste 'Thakur'.
- 2] Copy of birth extract register of Mangrulpir pertaining to daughter born to Ramchandra Dattu Thakur, namely Manjuri dated 5.11.1944.
- 3] Copy of birth extract register of Mangrulpir pertaining to son born to Ramchandra Dattu Thakur where the name of the son shown as Laxman showing caste 'Thakur' dated 19/30.10.1948.

7. Apart from these documents prior to 1950, he produced on record following documents :

- 1] Extract of birth register of daughter born to Ramchandra Dattu Thakur, namely Kamlabai, dated 1.2.1952.
- 2] Other documents pertaining to school record.
- 3] A school leaving certificate in respect of Manohar Ramchandra showing his date of birth 30.10.1948. In the same school leaving certificate, name of father of Manohar is shown as Ramchandra Dattuji and caste 'Thakur'.

8. Since the oldest undisputed documents produced by the petitioner relates back to 2014 and three more other documents of pre-constitutional years having probative value, the committee was not justified in invalidating the claim of the petitioner applying affinity test and area restriction. In view of the judgment of the Hon'ble Apex Court in the case of Anand .vs. Committee (Supra), the committee was not justified in invalidating the claim on the basis of affinity test. The Hon'ble Apex Court in the said judgment has held that affinity test is not a litmus test. In view of four pre-constitutional documents containing entry 'Thakur' of close relatives of the petitioner, the committee was not justified in invalidating the claim relying on affinity test.

9. In so far as area of restriction mentioned in the order by the committee is concerned, in view of the judgment of Hon'be Apex Court in Jaywant Dilip Pawar (supra), committee could not have invalidated the claim of the petitioner on the ground of area restriction. Hon'ble Apex Court in Jaywant Pawar (supra) held that, area restriction of scheduled tribe in State of Maharashtra, 'Thakur' community was

deleted after Amendment Act, 1976 was published and all members of 'Thakur' community are to be treated as Scheduled Tribe. Court further held that observation of scrutiny committee is wholly irrelevant. Appellant only to establish that they belong to community mentioned at Sr.No.44 of Part-9 of second Scheduled of Amendment Act.

10. In substance, there are four pre-constitution documents in the family of the petitioner showing 'Thakur' caste and the oldest document is of the year 1914. There exist several documents having probative value to show the consistent entry of 'Thakur' caste. For the reasons stated above, the petition is allowed and the following order is passed :

O R D E R

1] The order dated 29.10.2020 passed by the Scrutiny Committee is set aside.

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

3] The Scrutiny Committee shall issue validity certificate to the petitioner within a period of four weeks from today.

4] The petitioner is free to rely upon the copy of this judgment to indicate that his claim for grant of validity certificate of belonging to 'Thakur' Scheduled Tribe has been accepted.

5] Rule is made absolute in aforesaid terms. No costs.

(Smt. M.S. Jawalkar, J.)

(A.S. Chandurkar, J.)

Gulande