

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

WRIT PETITION NO.5652 OF 2021

Rohini D/o Hari Gite
Age 18 yrs. Occ. Student,
R/o Kaulkhed, Mhada Colony,
Akola, Tq. And Dist. Akola

... Petitioner

-vs-

Schedule Tribe Caste Certificate Scrutiny
Committee, Old By Pass, Chaprashipura,
Amravati, Through its Vice Chairman/Jt.
Commissioner

... Respondent

Ankush P. Kalmegh, Advocate for petitioner.
Ms N. P. Mehta, Assistant Government Pleader for respondent.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.

DATE : January 31, 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 dated 27/10/2020 passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati (for short, the Scrutiny Committee) invalidating the petitioner's claim of belonging to "Thakur" Scheduled Tribe.

2. It is the case of the petitioner that she and her forefathers belong to "Thakur" Scheduled Tribe and this claim is sought to be substantiated by various old documents. The petitioner is in possession of documents in the

form of birth extracts and school entries dated 01/02/1869, 07/07/1888, 02/01/1910, 08/04/1917, 18/02/1934, 28/07/1942 and 20/07/1946. The petitioner by relying upon the family tree has sought to indicate her relationship with the persons with regard to whom such old revenue entries/ extracts have been produced. By the impugned order the Scrutiny Committee has held that the document dated 08/04/1917 is not found to be a genuine document and as the petitioner had failed to satisfy the affinity test, the claim made by her was liable to be rejected.

3. Shri A. P. Kalmegh, learned counsel for the petitioner by inviting attention to various pre-independence documents along with the family tree prepared by the Vigilance Cell submits that in view of consistent old entries indicating the tribe "Thakur" therein, the Scrutiny Committee ought to have considered the probative value of old documents and issued the validity certificate. There were no contrary entries indicating any different tribe/caste except the document of 1917 wherein the entry "Thakur/Bhat" was found. He therefore submitted that since the earlier documents dated 01/02/1869, 07/01/1888 and 02/01/1910 consistently show the entry "Thakur", much importance was not liable to be given to the later entry made in the year 1917. Placing reliance on the decision in *Prakash s/o Shrawan Deore vs. Scheduled Tribe Certificate Scrutiny Committee, Nashik and ors.* 2019(5) *Mh.L.J.* 228, it was submitted that old entries could not have

been ignored in preference to the affinity test. Hence, there was no reason to deny the petitioner the validity certificate. On these counts it was submitted that the order passed by the Scrutiny Committee was liable to be set aside.

4. Ms N. P. Mehta, learned Assistant Government Pleader for the Scrutiny Committee supported the impugned order. She referred to the adjudication by the Scrutiny Committee in the proceedings initiated by the petitioner's uncles Shri Vinayak Gite and Shri Suresh Gite. On 13/07/2004 the Scrutiny Committee had rejected their claim of belonging to "Thakur" Scheduled Tribe and those orders were confirmed by this Court in Writ Petition Nos.3463/2004 and 5433/2004. This Court had referred to the document of 1917 while rejecting such claim. The order of this Court was challenged before the Honourable Supreme Court but the Special Leave Petition had been dismissed. It was thus submitted that since the petitioner was related to the aforesaid two persons, there was no reason to interfere with the order passed by the Scrutiny Committee invalidating her tribe claim

4. In reply the petitioner has placed on record the orders passed by the Scrutiny Committee dated 13/07/2004 to demonstrate that the old documents prior to 1917 were not the subject matter of consideration in those proceedings. Since there were three documents prior to 1917,

importance would have to be given to the older documents, authenticity of which has not been disputed.

5. We have heard the learned counsel for the parties at length and we have also perused the records maintained by the Scrutiny Committee that were made available for perusal. It is a fact that as per the family tree prepared by the Vigilance Cell, Vinayak Gite and Suresh Gite are shown to be uncles of the petitioner. Their claim of belonging to “Thakur” Scheduled Tribe was negated by the Scrutiny Committee and that adjudication was maintained throughout. This Court observed that since the entry in the document of 1917 was “Thakur alias Bhat” same was sufficient to hold against the claim as made. A perusal of the report dated 05/10/2020 of the Vigilance Cell in the present proceedings indicates that the Vigilance Cell prepared the family tree indicating the family members and ancestors of the petitioner. The document dated 01/02/1869 refers to one Chimna Krushna who is the great-great-grandfather of the petitioner and his school records bear the entry “Thakur”. The document dated 07/07/1888 is of Sitaram who is also related as great-grandfather of the petitioner and his school records bear the entry “Thakur”. The document dated 02/01/1910 is also of the great-grandfather of the petitioner and the school records show the entry “Thakur”. The fourth document is of 1917 which has been referred to earlier. Perusal of the order passed by the Scrutiny Committee while

considering the claim of Vinayak Gite and Suresh Gite indicates reference to the document of 1917 and that is the basis for rejection of their claim. This Court has considered the document of 1917 and though subsequent documents were sought to be relied upon, this Court held that since the oldest document produced was of 1917, same would be decisive.

6. It would have been a different matter if on the same set of documents a similar claim was being made by the petitioner here. However in the present case the petitioner has sought to rely upon three earlier documents dated 01/02/1869, 07/07/1888 and 02/01/1910. The report of the Vigilance Cell dated 05/10/2020 indicates that these documents have been verified by it and the entries are found to be genuine. Further in the family tree of the petitioner as prepared by the Vigilance Cell, the names of the persons to whom these old documents pertain to are also found therein. In other words, the relationship of the petitioner with these persons and consequently the three old documents prior to 1917 stands substantiated. Since these three documents indicate the entries "Thakur", there would be no reason to deny the probative value carried by them. On the same analogy the entries in these documents would have to be accepted in preference to the documents of 1917. It may be noted that even the subsequent documents dated 18/02/1934, 28/07/1942 and 20/07/1946 also bear the entry "Thakur".

7. The other grounds that had weighed with the Scrutiny Committee are with regard to the area restrictions and the petitioner's ancestors being found in areas where the "Thakur" Scheduled Tribe community members were not found in large number. The area restrictions having been removed, this aspect would not be very material. Similar is the case with regard to the affinity test inasmuch as the probative value of old and pre-independence documents has to be given more importance than relying upon only the affinity test as held in *Anand vs. Committee for Scrutiny and Verification of Tribe Claims and ors. 2011(6) Mh.L.J. (SC) 919*.

8. For aforesaid reasons we are satisfied that on the strength of pre-independence documents the petitioner is entitled to a declaration that she belongs to "Thakur" Scheduled Tribe. Hence the following order is passed :

- (i) The order passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati dated 27/10/2020 is set aside.
- (ii) It is held that the petitioner has proved that she and her forefathers belong to "Thakur" Scheduled Tribe which is Entry No.44 under the Constitution (Scheduled Tribes) Order, 1950.
- (iii) The Scrutiny Committee shall issue Validity Certificate to the petitioner within a period of four weeks from today.

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

(Pushpa V. Ganediwala, J.)

(A. S. Chandurkar, J.)