



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

WRIT PETITION NO. 5662 OF 2021

Yash s/o Manik Ingle,
Age 19 years, Occupation – Student,
R/o Shyam Sundar Lahriya Sankul,
Kaulkhed, Akola.

.... **PETITIONER**

VERSUS

Scheduled Tribe Caste Certificate
Scrutiny Committee, Old Bypass,
Chaprashipura, Amravati, through
its Vice-Chairman/Joint Commissioner.

.... **RESPONDENT**

Mr. A.P. Kalmegh, Counsel for the petitioner,
Ms. Ritu Sharma, AGP for the respondent.

CORAM : A.S. CHANDURKAR
& ABHAY J. MANTRI, JJ.
DATED : 27th OCTOBER, 2023

ORAL JUDGMENT : (PER : A.S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith. Heard the learned Counsel for the parties.

2. The claim of the petitioner belonging to 'Thakur' Scheduled Tribe stands invalidated by the order dated 18-12-2020. This order is the subject matter of challenge in the

present writ petition.

3. The petitioner in support of his claim of belonging to 'Thakur' Scheduled Tribe has relied on various pre-constitutional documents of the years 1923, 1925, 1929 and 1942 with the entry "Thakur". The Vigilance Cell in its report dated 26-10-2020 has recorded that these old entries from 1925 to 1975 were found to be existing. It also referred to the revenue record of the year 1970-71 which had the entry "Marathe Thakur". On the basis of this document and absence of affinity the petitioner's claim was invalidated.

4. We have heard the learned Counsel for the petitioner as well as the learned Assistant Government Pleader for the respondent. We have also perused the record of the Scrutiny Committee. At the outset, it may be submitted that the pre-constitutional documents from the years 1925-1949 have been verified by the Vigilance Cell and their existence along with the relevant entries has not been doubted. It is well settled that the pre-constitutional documents carry great probative value and they

have to be given due importance. This aspect has been considered by the Hon'ble Supreme Court in *Civil Appeal 7117/2019 (Priya Pramod Gajbe v. The State of Maharashtra and others)* decided on 11-7-2023. Further in so far the relevance of the affinity test is concerned, this issue has also been considered by the Larger Bench in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti v. State of Maharashtra and others, 2023 (2) Mh.L.J. 785*. It has been stated therein that the affinity test is not litmus test and the Scrutiny Committee has to consider the overall material on record while adjudicating the claim.

5. When the material on record is considered in the light of the aforesaid law, it becomes clear that the pre-constitutional documents support the claim of the petitioner. It was not permissible for the Scrutiny Committee to ignore pre-constitutional documents and give weightage to the document of 1970-71. Similarly, the aspect of affinity has to be considered in the present context. With passage of time, it is not expected that the old traits and customs would be continued to be followed. We, therefore, find on considering the overall material on record

that the petitioner has made out the claim of belonging to 'Thakur' Scheduled Tribe. The Scrutiny Committee was not justified in ignoring the pre-constitutional documents and giving undue importance to the document of 1970-71.

6. For aforesaid reasons, the order dated 18-12-2020 passed by the Scrutiny Committee is set aside. It is declared that the petitioner has proved that he belongs to 'Thakur' Scheduled Tribe. The Scrutiny Committee shall within a four weeks of receiving copy of this judgment issue validity certificate to the petitioner.

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

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)

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