

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

Writ Petition No.2297 of 2023

Vaibhav Gopal Aher and others

Versus

Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri A.P Kalmegh, Counsel for Petitioners.

Shri S.A. Ashirgade, Additional Government Pleader for Respondent.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : 10th AUGUST, 2023.

1. Rule. Rule made returnable forthwith and heard the learned counsel appearing for the parties.
2. The petitioners are aggrieved by the order passed by the Scrutiny Committee on 27-9-2022 invalidating their claim of belonging to 'Thakur' Scheduled Tribe. In support of such claim, the petitioners relied upon various pre-Constitutional documents of their forefathers of the years 1926, 1929, 1939 and 1945 which had the entry 'Thakur'. These old documents were verified by the Vigilance Cell and in its report it was stated that such documents did exist. According to the Vigilance Cell, there was no affinity and the family members could not indicate their traits and customs similar to the members of 'Thakur' Scheduled Tribe. This was mentioned by the Vigilance Cell in its report. The Scrutiny Committee on the basis of the report of the Vigilance Cell proceeded to invalidate the petitioners' claim principally on the ground of absence of affinity and area restriction.
3. We have heard the learned counsel for the parties and we have perused the record of the Scrutiny Committee. It is not in dispute that the entire documentary material relied upon by the petitioners especially pre-Constitutional documents have the entry 'Thakur'. The only reason assigned by the Scrutiny Committee is the absence of affinity and the aspect of area restriction. We find that these issues have been considered by the Hon'ble Supreme Court in its recent decision. The question with regard to the weightage

to be given to the affinity test has been decided by the Larger Bench of the Hon'ble Supreme Court in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Versus State of Maharashtra and others* [2023(2) Mh.L.J. 785]. It has been held therein that the affinity test cannot be treated as a litmus test to decide a caste claim and it is not an integral part in process of determination of the correctness of a caste or tribe claim in every case. The material collected has to be considered with all other material on record that has probative value and then the claim has to be decided. This decision has been followed in *Priya Pramod Gajbe Versus The State of Maharashtra and others* [Civil Appeal No.7117 of 2019, decided on 11-7-2023]. It has been observed therein that with the passage of time, absence of old traits and customs cannot be a reason to discard the caste claim. It has also been observed that if a candidate is staying in an urban area, these factors cannot be a reason for disallowing his/her caste claim.

4. We find that these two decisions of the Hon'ble Supreme Court clarify the position in that regard. Insofar as the area restriction is concerned, the Hon'ble Supreme Court in *Jaywant Dilip Pawar Versus State of Maharashtra and others* [2018(5) ALL MR 975] has held that with the removal of area restriction, the said aspect is not relevant for determining the tribe status. In view of this settled position, when the order passed by the Scrutiny Committee is concerned, it is seen that the Committee misdirected itself by giving undue importance to the affinity test and the aspect of area restriction. The probative value of the pre-Constitutional documents has to be taken into consideration by the Committee which it failed to do. In that view of the matter, the following order is passed :

- (i) The order dated 27-9-2022 passed by the Scrutiny Committee is set aside.
- (ii) It is declared that the petitioners have proved that they belong to 'Thakur' Scheduled Tribe.
- (iii) The Scrutiny Committee shall within a period of three weeks from receiving the copy of this order issue a validity certificate in favour of the petitioners.

(iv) Till the Scrutiny Committee issues the validity certificate, the petitioners can rely upon this order to indicate that their claim of belonging to 'Thakur' Scheduled Tribe has been accepted.

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

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

LANJEWAR