

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

WRIT PETITION NO.5101/2013

Shrikrishna S/o Ambadas Somwanshi,
aged about 44 Yrs., Occ. Service,
R/o Ganesh Nagar, Tahsil Road Daryapur,
Dist. Amravati.

... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary,
Department of Tribal Development,
Mantralaya, Mumbai-32.
2. The Committee for Scrutiny and
Verification of Tribal Claims
Amravati, through its Chairman.
3. Municipal Council, Daryapur,
Dist. Amravati, through its Chief
Officer.

... Respondents

Mr. R. M. Ahirrao, Counsel for the Petitioner.
Ms. N.P. Mehta, Assistant Government Pleader for Respondent Nos.1
and 2.
Mr. R.J. Kankale, Counsel for respondent No.3.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 4.7.2023

ORAL JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

The petitioner has challenged the order dated 12.6.2013 passed by the respondent Scrutiny Committee invalidating the tribe claim of the petitioner of belonging to Thakur Scheduled Tribe.

2. The petitioner claims to belong to Thakur Scheduled Tribe within the meaning of Entry 44 of Part IX of the Constitution (Scheduled Tribe) Order, 1950. The Caste Scrutiny Committee respondent No.2 has rejected the caste claim of the petitioner. Though the Committee has admitted that the documents which the petitioner has filed on record have the entry “Thakur”, the documents have not been considered stating that the nomenclature is similar to the Thakur in Open Category, Other Backward Classes apart from Thakur in the Scheduled Tribe Category and invalidated the tribe claim of the petitioner. Another ground for rejecting the claim of the petitioner is that the petitioner failed to prove the affinity test.

3. We have verified the documents filed on record. The petitioner has filed total 14 documents. Document dated 7.7.1970 of Nagar Parishad, Daryapur, copy of Kotwal Book of the Talathi dated 19.8.1936 birth of son to one Yashwant, leaving certificate of Deorao Narayan dated 7.3.2001 and birth entry dated 13.3.1946 of girl to Yashwant and other relevant documents. All these documents bears the entry "Thakur". The genealogical tree also shows that the persons whose documents are filed on record are relatives of the petitioner. The Committee has not denied the documents that it bears entry Thakur. Only on the ground that there is possibility of similar nomenclature in Open Caste, they are taking the advantage and therefore the documents are not considered. The Committee has also relied on the affinity test to invalidate the caste claim of the petitioner. As per the latest judgment of the Hon'ble Supreme Court in the case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti V/s. State of Maharashtra and others reported in **2023(2) Mh.L.J. 785**

it is observed that the affinity test is not a litmus test to reject the caste claim.

4. The petitioner has relied on the judgment in the case of Anand V/s. Committee for Scrutiny and Verification of Tribe Claim and others reported in **2012(1) SCC 113** wherein it is held that while dealing with the documentary evidence, greater reliance may be placed on pre-independence documents because they furnish higher degree of probative value to the declaration of status of a caste, as compared to the post-independence documents. It holds that the affinity test may not be recorded as litmus test for establishing the link of the applicant with Scheduled Tribe. The affinity is to be used to corroborate the documentary evidence and it is not to be used as the sole criteria to reject a claim. As all the documents prove that the petitioner is from Thakur Caste there is no reason to invalidate the caste claim of the petitioner.

5. Perusal of the report of the Vigilance Cell does indicate that there was a practise of burial of the relatives who had expired. Though all traits and characteristics may not be now present, the said report cannot be the sole basis for disallowing the claim. On considering the overall material on record, we find that the Committee erred in giving undue importance to the affinity test thereby ignoring the probative value of the pre-constitutional documents.

6. For the aforesaid reasons, the order dated 12.6.2013 passed by the Scrutiny Committee is set aside. It is declared that the petitioner has proved that he and his forefathers belong to Thakur Scheduled Tribe. The Scrutiny Committee shall within a period of four weeks of receiving copy of the judgment issue validity certificate in favour of the petitioner. Respondent No.3 shall take necessary steps in the light of the said adjudication.

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

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

Tambaskar.