



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

WRIT PETITION NO.5175/2021

Rajendrasingh Sardarsingh Thakur,
Aged about 34 Yrs., Occ. Service as
Constable, Central Prison Chandrapur,
R/o Futana Oli Square, Beside Shiv Mandir,
Kamptee, Tah. Kamptee, Dist. Nagpur. ... Petitioner

- Versus -

1. The State of Maharashtra,
through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai - 32.
2. The Scheduled Tribe Caste Certificate
Scrutiny Committee, Nagpur, through
its Deputy Director and Member
Secretary, Giripeth, Amravati.
3. The Superintendent, Chandrapur,
Central Prison, Dist. Chandrapur. ... Respondents

Mr. J.C. Shukla, Counsel for the Petitioner.
Mr. Amit Madiwale, Assistant Government Pleader for the
Respondents.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 7.10.2023

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

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner has challenged the order dated 3.9.2021 passed by the Scheduled Tribe Caste Scrutiny Committee, Nagpur Division, Nagpur invalidating the tribe claim of the petitioner belonging to Thakur Scheduled Tribe.

3. The petitioner is working under the jurisdiction of respondent No.3 Central Prison, Chandrapur as a Constable. The claim of the petitioner was referred by the respondent No.3 Superintendent, Central Prison, Chandrapur for verification of his tribe claim as Thakur Scheduled Tribe. The petitioner has submitted various documents of his relatives. He has filed documents such as (i) the copy of primary school leaving certificate of the year 1993 of cousin grandfather of petitioner namely Shivilal Kashiram, (ii) copy of school admission register extract dated 21.6.1933 of cousin grandfather of petitioner namely Shivilal Kashiram, (iii) primary school leaving certificate dated 29.6.1937 of real grandfather of petitioner namely Kunjilal Kashiram (iv) primary school leaving certificate dated 24.7.1946

of cousin grandfather of petitioner namely Harisingh Kashiram, all the documents mention caste as Thakur.

4. The respondent No.2 Committee has observed that petitioner has failed to prove his claim by way of documentary evidence and affinity test. The learned counsel for petitioner has submitted that the respondent Committee ought to have appreciated that the affinity test alone cannot be taken as a litmus test to determine the link of the applicant with Scheduled Tribe. Only on the report of the Vigilance Cell that the record is not traceable can be the ground to give the benefit of doubt. The petitioner has submitted that with the passage of time, modernization, migration it may not be possible for candidate to know traits of the original tribe to which he belongs as Thakur Scheduled Tribe. The approach of the respondent Committee has been totally erroneous and, therefore, the petitioner has prayed to set aside the order passed by the Scrutiny Committee.

5. The learned Assistant Government Pleader has opposed the application stating that though the documents filed on record are of Thakur, surname of cousin grandfather Shivilal Kashiram Thakur is mentioned as Verma. During the enquiry the Vigilance Cell has obtained the death notice and death register extract of the applicants father. In death register extract the name of applicants father has been recorded as Sardarsingh Kunjilal Raghuwanshi Thakur. Subsequently the word Raghuwanshi has been scored out. The information of social cultural traits, characteristics, traditions, traditional health and customs furnished by the applicant in application form E during the Vigilance Cell Enquiry on 14.6.1996 and during hearing was not matched hence prayed to dismiss the petition.

6. Heard both sides. Perused the record.

7. All the documents which the petitioner has filed on record of caste Thakur are not denied by the Committee. Only because the persons having similar names are taking the

advantage of the same tribe is the reason given by the Committee to invalidate the tribe claim of the petitioner. The name of the cousin grandfather Shivilal Kashiram Thakur is mentioned as Verma but the explanation is given by the petitioner that the said Shivilal was orally adopted by Verma family and his name is mentioned in the family tree.

8. The pre-constitutional documents relied upon by the petitioner are dated 21.6.1933, 29.6.1937 and 24.7.1946. These documents carry great probative value and as held by the Hon'ble Supreme Court in Priya Pramod Gajbe V/s State of Maharashtra and others - Civil Appeal No.7117/2019 decided on 11.7.2023 due weightage would have to be given to said documents. These documents have been dully verified by the Vigilance Cell and their existence is not in doubt.

9. Insofar as the aspect of affinity is concerned, this issue has now been decided by the Hon'ble Supreme Court in its decision in Maharashtra Adiwasi Thakur Jamat Swarakshan

Samiti V/s. State of Maharashtra and others reported in **2023(2)**

Mh.L.J. 785. It has been held therein that report of the Vigilance Cell cannot be treated as a litmus test. The entire material on record has to be considered while verifying the tribe claim of a candidate.

10. Considering the entire material placed on record and the pre-constitutional entries of Thakur which are verified by the Vigilance Cell it is proved that the petitioner belongs to Thakur Scheduled Tribe. For the aforesaid reasons the order passed by the Scrutiny Committee on 3.9.2021 is set aside. It is declared that the petitioner has proved that he belongs to Thakur Scheduled Tribe. Within a period of four weeks of receipt of copy of this judgment, the Scrutiny Committee shall issue validity certificate to the petitioner. Necessary consequential steps shall be taken by the respondent No.2 in the matter of the petitioner's employment.

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

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)