



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

WRIT PETITION 6015 OF 2022

Petitioners : 1. Dipak Laxman Pawar,
Aged 49 years, Occ. Working as Pharmacy Officer,
Primary Health Center, Tadali, Chandrapur, R/o
Zingabai Takli, Nagpur.
2. Ku. Shobha Laxman Pawar,
Aged 53 years, Occ. Assistant Teacher,
Teacher in Saraswati Kanya Vidyalaya,
Wana Dongri, Tq. Tumsar, District Bhandara.
3. Prathmesh Deepak Pawar,
Aged 21 years, Occ. Student,
R/o Zingabai Takli, Nagpur.

– Versus –

Respondents : 1. The Scheduled Tribe Caste Certificate Scrutiny
Committt, through its Member Secretary,
Amravati.
2. The Chief Executive Officer,
Zilla Parishad, Chandrapur.
3. The Chief Executive Officer,
Zilla Parishad, Bhandara.

Mr. R.S. Parsodkar, Advocate for the Petitioners.
Mr. M.K. Pathan, A.G.P. for Respondent No.1.
Mr. P.K. Raulkar, Advocate for Respondent No.2.
Mr. N.S. Khubalkar, Advocate for Respondent No.3.

CORAM: **ROHIT B. DEO AND M.W. CHANDWANI, JJ.**

DATE : **1st AUGUST, 2023.**

J U D G M E N T : *(Per M.W. Chandwani, J.)*

Rule. Rule made returnable forthwith. Heard finally by the consent of the learned Counsel for the parties at the stage of admission.

02] The petition challenges the order dated 05/09/2022 passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati (hereinafter referred to as “Committee” for short) in the proceeding under Section 7 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (hereinafter referred to as “Act” for short), whereby the caste claims of the petitioners are invalidated and the caste certificates issued to the petitioners were cancelled and confiscated.

03] Petitioner No.2 and petitioner No.3 are the sister and the son of petitioner No.1 respectively. The petitioners claim that they belong to “Thakur” caste, which is included in the schedule as tribe by The President Order of 1950. The petitioners obtained caste certificates of “Thakur Scheduled Tribe” issued by the Sub-Divisional Officer, Tivsa-Bhatkuli. Their proposals were forwarded by the Committee for verification of the petitioners’ caste claims. The petitioners submitted all necessary documents showing their caste as “Thakur”. Even, they submitted the documents of their father and

forefathers showing their caste as “Thakur”. In spite of having pre-constitutional documents indicating the petitioners’ great grandfather’s caste as “Thakur”, the Committee invalidated the caste claims of the petitioners. Being aggrieved by the impugned order dated 05/09/2022, the present petition came to be filed.

04] Respondent No.3 has filed its reply, *inter alia*, contending that apart from “Thakur” tribe, there exists of “Thakur” caste as upper caste. To ascertain the “Thakur” tribe, socio-cultural affinity plays a very important role, particularly, in the cases, where there are synonymous caste names. The report submitted by the Vigilance Cell Officer shows that the petitioners could not prove their socio-cultural affinity with “Thakur Scheduled Tribe”.

05] The learned Counsel for the petitioners vehemently submits that the petitioners have submitted all relevant documents including the pre-constitutional documents in the name of their great grandfather, which denotes his caste as “Thakur”. The learned Counsel for the petitioners submitted that there is no contra entry in any of the documents of the petitioners nor the vigilance enquiry refers to contra entry. He submitted that the Committee has erroneously rejected the caste claims on the ground of area restriction and affinity test. He would submit that in the wake of judgment of

Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and others (2023) SCC Online SC 326, the affinity test is not a litmus test and only in cases when the documents are doubtful and/or there are contra entries in that cases, only the affinity test has to be considered. According to him, this aspect has not been considered by the Committee.

06] The learned Counsel for the petitioners submits that after the judgment in the case of Adiwasi Thakur Jamat (supra), the coordinate Benches at Nagpur as well as Aurangabad have passed various judgments and also decided the issue. He relied on the following cases decided by the coordinate Benches of this Court at Nagpur as well as Aurangabad :

- I. Pandurang Rangnath Chavan vs. State of Maharashtra and others - (1998) 2 Mah. L.J. 806.
- II. Raju s/o Pundlikrao Burde vs. Establishment Officer (II-B), Maharashtra State Electricity Board, Mumbai and another – 2003(4) Mh.L.J. 780.
- III. Narendra Dhudku Thakur vs. Scheduled Tribe Certificate Scrutiny Committee, Pune and others.
- IV. Priya s/o Pravin Parate vs. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur and others – 2013(1) Mh.L.J. 180.
- V. Prakash s/o Shrawan Deore vs. Scheduled Tribes Certificate Scrutiny Committee, Nashik and others – 2019(5) Mh.L.J. 228.

- VI. Saurabh s/o Rajendra Wardekar vs. The Scheduled Caste Certificate Scrutiny Committee, Amravati in Writ Petition No.5805/2017.
- VII. Ravindra Pralhadrao Khare vs. The State of Maharashtra and others in Writ Petition No.6224/2015.
- VIII. Smt. Sarita Shankarrao Bhuyar and another vs. The Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati and another in Writ Petition No.4957/2019.
- IX. Aalok Mangesh Bhuyar vs. Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati and another in Writ Petition No.5186/2019.
- X. Harshal s/o Rajendra Thakur vs. The State of Maharashtra in Writ Petition No.11342/2019.
- XI. Rushikesh Madhukar Chavan vs. The Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati in Writ Petition No.3269/2021.
- XII. Ku. Vaishnavi d/o Vijay Chavan vs. The Scheduled Tribes Caste Certificate Scrutiny Committee and others in Writ Petition No.2773 /2022.
- XIII. Ku. Shravani d/o Ganesh Wankhede vs. State of Maharashtra and others in Writ Petition No.2685/2022.
- XIV. Anurag s/o Gajendra Pawar and others vs. The Scheduled Tribe Caste Certificate Scrutiny Committee and another in Writ Petition No.6670/2022.

07] Per contra, the learned Assistant Government Pleader Mr. Pathan vehemently submits that merely because there were entries of “Thakur”, no

inference could have been drawn that what was meant as “Thakur Scheduled Tribe”. The petitioners ought to have led evidence to show that their forefathers were tribal. It was, therefore, imperative to apply the principle of migration from the original place to which the “Thakur Scheduled Tribe” belongs. Hence, he opposes the writ petition.

08] We have carefully considered the rival submissions and perused the record of the Scrutiny Committee.

09] One need not overemphasize the trite legal position that the oldest entry of “Thakur”, particularly which are entered into before The Presidential Order had come into, would carry greatest evidenciary value. There is no dispute, rather even the Committee does not deny the existence of School Leaving Certificate of the father of petitioner Nos. 1 and 2 and Dhakhil Kharij Uttara (दाखिल खारिज उत्तारा) of the uncle of petitioner Nos. 1 and 2 of the years 1944 and 1943, respectively. Apart from it, there is an Extract of Birth of the year 1916 showing the caste of great grandfather of petitioner Nos.1 and 2 as “Thakur”. The Committee, relying on the retyped document of the same Birth Extract of the year 2016, wherein the name of great grandfather of petitioner Nos.1 and 2 is written as ‘Bawlya Hari’ instead of ‘Balkrishna Hari’, erroneously held that the petitioners could not prove relations with ‘Bawlya

Hari'. In fact, it is 'Balkrishna Hari', which can be seen from the copy of original Birth Extract, wherein the name of the great grandfather is shown as 'Balkrishna Hari'. Therefore, we find support in the argument of the learned Counsel for the petitioners that instead of 'Balkrishna Hari' while retyping the Birth Extract, the Revenue Authority has mentioned 'Bawlya' instead of 'Balkrishna'. No doubt, there is one contra entry in the name of 'Balkrishna Hari' showing his caste as "Bhat" in the year 1990. Since, the earlier entry of 1916 showing the caste of great grandfather of the petitioners as "Thakur", which is earlier in point of time, the subsequent entry in the document of the year 1919 showing caste as "Bhat" loses significance. How the caste of a person within three years will be changed from "Thakur" to "Bhat". The Committee has not considered this aspect of the case, particularly when all other documents except the document of the year 1919 consistently showing the caste of the petitioners and their forefathers as "Thakur".

10] Conspicuously, the Committee in the impugned order has not objectively appreciated such oldest entries. It has not mentioned, why those entries cannot be relied upon to draw inference in favour of the petitioners. Only on the basis of one document subsequent to the Birth Extract of the year 1916 in respect of the caste of the great grandfather of the petitioners, the Committee erroneously held that though the documents filed by the

petitioners showing their caste as “Thakur”, but that does not show that they belonging to the Scheduled Tribe.

11] It appears that, the Committee has exceeded its jurisdiction and went on observing that the petitioners failed to prove that they belong to “Thakur Scheduled Tribe”. It is to be mentioned here that when in The Presidential Order, the Thakur Caste is included in the Scheduled Tribe, there was no reason for the Committee to go beyond The Presidential Order and to enquire whether a particular group was the part of the Scheduled Tribe as prescribed in the list of the Scheduled Tribe. In the cases of Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another vs. State of Kerala and another – (1994) 1 SCC 359; the Apex Court has held that the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence led in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Article 341, is valid.

12] It also appears that the Committee has applied the principle of area restriction, even when the efficacy of area restriction has been stated to have very little relevance, more so when there is documentary evidence in support of the claim, as laid down in the case of Palghat Jilla Thandan Samithi.

13] Notably, the Committee was aware of the fact that the issue regarding validity to affinity test is pending before the Larger Bench of the Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat (supra). Since, the Supreme Court has decided the reference and we are bound by the decision, we would conclude that the attempt by the Committee to apply affinity test even though there exists oldest entries of the years 1916, 1943 and 1944 in respect of father and uncle of petitioner Nos.1 and 2. After the decision of the Supreme Court in the case of Maharashtra Adiwasi Thakur Jamat (supra), the coordinate Benches of this Court in the above referred cases have also decided the issue discussed above and granted validity certificate to the respective petitioners. Therefore, the impugned order of the Committee is clearly erroneous, arbitrary and capricious and, therefore, requires to be set aside. Hence, the following order :

- I. The Writ Petition is allowed.
- II. It is declared that the petitioners belong to “Thakur Scheduled Tribe”.
- III. The Committee shall issue validity certificates to the petitioners as “Thakur Scheduled Tribe”, immediately.
- IV. Till the Committee issues validity certificates to petitioner No.3,

the judgment and order of this Court be relied by the Authority as caste validity of petitioner No.3 as “Thakur Scheduled Tribe” for the purpose of counselling process for medical course or any other professional course.

- v. Rule is made absolute with no order as to costs.

(M.W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

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