



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

WRIT PETITION NO. 5580 OF 2017

Vandana d/o Pralhad Ingle,
Aged 41 years, Occupation – Service,
R/o IUDP, Gupta Layout, Mahakali
Road, Washim, District – Washim.

.... PETITIONER

VERSUS

1) The Scheduled Tribe Caste Certificate
Scrutiny Committee, Irvin Chowk,
Amravati.

2) The Chief Executive Officer,
Zilla Parishad, Washim.

.... RESPONDENTS

Mr. P.R. Parsodkar, Counsel for the petitioner,
Mr. N.R. Rode, A.G.P. for respondent No.1,
Mr. Amol S. Deshpande, Counsel for respondent No.2.

CORAM : A.S. CHANDURKAR
& ABHAY J. MANTRI, JJ.
DATED : 30th OCTOBER, 2023

ORAL JUDGMENT : (PER : ABHAY J. MANTRI, J.)

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

2. The petitioner has challenged the order dated
26-7-2017 passed by respondent No.1-Scrutiny Committee,

Amravati (for short-the “Committee”), thereby invalidating the claim of the petitioner belonging to the ‘*Thakur*’ Scheduled Tribe. The petitioner in support of her claim has relied on various pre-constitutional documents having entry ‘*Thakur*’. The Vigilance Cell conducted the enquiry and submitted the report on 10-1-2017 wherein they had considered the documents dated 10-6-1926, 09-2-1951, and 05-3-1958 of ancestors of the petitioner. All the entries denote that their ancestors belong to the ‘*Thakur*’ Scheduled Tribe. The Vigilance Report does not dispute the said entries. The petitioner has also relied upon the Validity Certificate issued in favour of Pralhad Ingle uncle of the petitioner. However, the Committee held that these entries cannot be treated in respect of ‘*Thakur*’ Scheduled Tribe and, therefore, on several counts, the claim of the petitioner came to be invalidated.

Being aggrieved by the said order of the Committee, the petitioner has preferred this writ petition.

3. On perusal of the record, at the outset, it appears that the petitioner has relied upon the documents of her ancestors Vithoba, Ramji, and Namdeo of the years 1926, 1931, and 1951 respectively. Namdeo is grandfather and Vithoba is great-

grandfather of the petitioner. These documents have been verified by the Vigilance Cell, Vigilance has not disputed those documents. Per contra, in the Vigilance Cell report it is observed that the documents produced by the petitioner showed the entries of 'Thakur' Scheduled Tribe. Also, other pre-constitutional documents have similar entries and hence these old entries carry great probative value.

4. The Committee while considering the claim of the petitioner observed that the petitioner failed to prove her caste by way of documentary evidence. In fact, the documents produced on record are pre-constitutional documents of her ancestors and the entries in the said documents carry great probative value. Therefore, the observation made by the Committee that the petitioner has not produced documentary evidence to prove her caste is not proper.

5. Secondly, the Committee has observed that the petitioner has failed to prove the affinity test. In that regard, we would like to refer, to the judgment of the Hon'ble Apex Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti v. State of Maharashtra and others*, 2023(2) Mh.L.J. 785

wherein it has been categorically observed that “*the affinity test cannot be applied as a litmus test and, therefore, question of conducting the affinity test does not require to prove the caste. Therefore, it cannot be said that the affinity test is the one of basis for rejecting the claim.*” In view of the same, it seems that the findings given by the Committee are not sustainable in the eyes of the law.

6. Thirdly, the Committee has observed that the petitioner has failed to prove that she was residing in the area where the scheduled tribe people were located, but the petitioner is taking undue advantage of the fact of the entries in the documents and trying to claim as she belongs to ‘Thakur’ Scheduled Tribe. It is pertinent to note that the Full Bench of this Court in the case of ***Ku. Yogita d/o Anil Sonawane v. State of Maharashtra and others, (2017) 1 Mh.L.J. 643*** has categorically observed that “*with regard to the area restriction is concerned, it could be seen that there is no area restriction with regard to any of the tribes mentioned therein*” (emphasis supplied). In view of the same, it emerges that the Committee has erred in observing that the petitioner failed to show that the area restriction is

removed. Therefore, the said finding could not be sustained in the eyes of the law. Likewise, the absence of following old traits and practices with the passage of time cannot be given undue importance.

7. Moreover, on perusing the Vigilance Cell report and considering the overall material on record, it will have to be held that the petitioner has proved that she belongs to the '*Thakur*' Scheduled Tribe.

8. By filing the affidavit-in-reply, respondent No.1 averred that the documents produced by the petitioner are in respect of the petitioner herself and her father describing their caste as '*Thakur*' and these entries cannot be treated as '*Thakur*' Scheduled Tribe, therefore, she is not eligible to get the benefits meant for the '*Thakur*' Scheduled Tribe. It cannot be expected that pre-constitutional documents would have reference to the words "Scheduled Tribe" since such recognition was granted only by the Scheduled Tribes Order, 1950. In view of the above discussion, we do not find the substance in the objection raised in the affidavit-in-reply by respondent No.1 in that regard.

9. Having considered the aforesaid discussion, we find substance in the contention of the learned Counsel for the petitioner that the Committee has not followed the guidelines, and the findings of the Committee are totally misconceived. For the aforesaid reasons, the order passed by the Committee is liable to be set aside and accordingly, we pass the following order.

The impugned order dated 26-7-2017 passed by the Committee is set aside. It is declared that the petitioner belongs to the '*Thakur*' Scheduled Tribe. Within a period of four weeks from receipt of a copy of this judgment, the Committee shall issue a Validity Certificate to the petitioner. In accordance with the said validity certificate, Respondent No.2 shall take further necessary steps in accordance with the law.

10. Rule is made absolute in aforesaid terms with no order as to costs. Pending Civil Applications, if any, disposed of accordingly.

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)