

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

WRIT PETITION NO.5719/2021

1. Sunil S/o Narayanrao Pawar,
aged 50 Yrs., Occ. Service.

2. Pranav S/o Sunil Pawar,
aged 18 Yrs., Occ. Student.

Both R/o Patwari Colony,
Murtizapur, Dist. Akola.

... Petitioners

- Versus -

1. The Vice-Chairman / Member
Secretary, Scheduled Tribe Caste
Certificate Scrutiny Committee,
Chaprashipura, Amravati Division,
Amravati.

2. The Superintendent of Police,
Akola.

... Respondents

Ms. Preeti Rane with Ms. Himani Kavi, counsel for the petitioners.
Ms. N.P. Mehta, A.G.P. for respondent Nos.1 and 2.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 23.6.2023

ORAL JUDGMENT (Per A.S. Chandurkar, J.)

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

Heard finally by consent of learned counsel for the parties.

2. The challenge raised in the present petition is to the order passed by the Scrutiny Committee dated 26.11.2021 thereby invalidating the petitioners' claim of belonging to Thakur Scheduled Tribe.

3. The petitioners to substantiate their claim of belonging to Thakur Scheduled Tribe sought to rely upon various documents, some of which were of the pre-independence era having the entry "Thakur". The Scrutiny Committee referred the proceedings to the Vigilance Cell and after considering its report found that though old documents referred to by the petitioners had the entry "Thakur", it proceeded to invalidate the claim on the ground that the entry "Thakur" was also found in persons belonging to higher castes. It held that the petitioners did not satisfy the affinity test and hence held against the petitioners.

4. The learned counsel for the petitioners invited our attention to the documents on record that were considered by the

Vigilance Cell as well as the Scrutiny Committee. Amongst the said documents, are the documents dated 5.1.1941 pertaining to their grand-father Narayan as well as their great-grand-father Gopal. It was submitted that the petitioners' grand-father was employed with the revenue authorities and his date of birth was recorded as 5.1.1941 in his service book. The Scrutiny Committee having found that the pre-independence documents had the entry "Thakur", it was not justified in turning down the claim of the petitioners. Placing reliance on the judgment of the Hon'ble Supreme Court in Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti V/s. State of Maharashtra and others reported in 2023(2) Mh.L.J. 785 it was submitted that the affinity test has been held to be not a conclusive test and that entire material on record is required to be taken into consideration while deciding a claim for grant of validity. Even the report of Vigilance Cell contained material in favour of the petitioners which was not considered by the Scrutiny Committee in the proper perspective. It was thus submitted that the claim of the petitioners ought to be

upheld and the order passed by the Scrutiny Committee was liable to be set aside.

5. The learned Assistant Government Pleader appearing for the respondents supported the impugned order. It was submitted that after considering the entire material on record it was found that the petitioners had failed to substantiate their claim of belonging to Thakur Scheduled Tribe. The petitioners were trying to take advantage of similarity of entries and on that basis their claim came to be rejected. It was submitted that there was no case made out to interfere with the order passed by the Scrutiny Committee.

6. Having heard the learned counsel for the parties and having perused the documents on record we are satisfied that on the basis of various pre-independence documents dated 5.1.1941 and 24.4.1947 it was clear that the said documents pertaining to the petitioner No.1's grand-father had the entry "Thakur". Even

the service book of the grand-father of petitioner No.1 had such entry of his date of birth as 5.1.1941. It is well settled that documents pertaining to the pre-independence era have great probative value and said old documents are entitled to due weightage. The same cannot be discarded easily. All the documents furnished by the petitioners that were considered by the Scrutiny Committee have the entry "Thakur". There is no document indicating any other entry. It is, thus, clear from the record that the documentary material unequivocally indicates that the petitioner No.1 and his forefathers belong to Thakur Scheduled Tribe. It cannot be disputed that the entry in question has to be read as it stands and same has to be given its due weightage. Thus the documentary material on record establishes the claim of the petitioners and their forefathers of belonging to Thakur Scheduled Tribe. In this regard a reference can be made to the observations in paragraph 20 of the decision in Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra).

7. Coming to the aspect of affinity test being satisfied by the petitioners, it can be seen that in view of the recent decision of the Hon'ble Supreme Court in Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra) such test cannot be treated to be a conclusive test either way. The material collected by the Vigilance Cell has to be considered with all other material on record. In the report of the Research Officer dated 4.10.2021 it has been categorically observed that the pre-independence documents indicate such entries. It is, however, been observed that the traits and customs of Scheduled Tribes belonging to Thakur community were not seen to be followed. Since the Vigilance Cell itself has observed that some members of the family were taking education even prior to independence said aspect would have material bearing on the weightage to be given to the observations of the Vigilance Cell. It has been held in clear terms in the aforesaid decision that the affinity test cannot be applied as a litmus test in such matters. We, therefore, find that when the report of the Vigilance Cell is considered with all other

material on record it is clear that petitioners have established that they belong to Thakur Scheduled Tribe.

8. Hence for the aforesaid reasons, the order dated 26.11.2021 passed by the Scrutiny Committee is set aside. It is declared that the petitioners have proved their claim of belonging to Thakur Scheduled Tribe. The Scrutiny Committee shall, within a period of four weeks from receiving copy of the judgment, issue validity certificate to the petitioners. Till the validity certificate is received, the petitioners are free to rely upon the judgment to indicate that they have been issued validity certificate. Rule is made absolute in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

Tambaskar.

Signed By: NILESH VILASRAO
TAMBASKAR

Private Secretary
Date: 27.06.2023 15:18