



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

WRIT PETITION NO.7364/2022

Ku. Payoshni D/o Sudhir Wankhade,
aged about 18 Yrs., Occ. Student,
R/o Brahmanpura Surji, Anjangaon
Surji, Dist. Amravati.

... Petitioner

- Versus -

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

... Respondents

Ms. P.D. Rane, Advocate for the Petitioner.
Ms. R.V. Sharma, A.G.P. for the Respondent.

CORAM :- SMT. ANUJA PRABHUDESAI &
MRS. VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT :- 07.12.2023

DATE OF PRONOUNCING THE JUDGMENT :- 22.12.2023

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

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

Heard finally by consent.

2. The petitioner has challenged the order dated
4.11.2022 passed by the respondent Committee invalidating the

caste claim of the petitioner as belonging to “Thakur” (Scheduled Tribe).

3. The claim of the petitioner that she belongs to “Thakur” (Scheduled Tribe) which is enlisted at Sr. No.44 of The Scheduled Tribes Order, 1950 is based on the caste certificate dated 15.9.2015. She submitted the proposal before the Scrutiny Committee for caste verification along with various pre-constitutional documents, including school leaving certificates and revenue extracts, when the caste of her forefather is recorded as “Thakur”. The Caste Scrutiny Committee discarded the said documents and invalidated the caste claim of the petitioner mainly on the basis of the birth extracts of the great-great grand father of the petitioner and school leaving certificates of Punjab, Mukunda and Gulab Mukund, both grand uncles of the petitioner wherein the caste is recorded as “Bhat”. The petitioner claims that the Caste Scrutiny Committee has erred in relying upon these documents and discarded the pre-constitutional

documents when the caste of her forefathers is recorded as Thakur.

4. Per contra, it is the case of the respondent No.1 that the oldest entry of the year 1914 shows that Bhiwsan, who is the great great grand father of the petitioner was of 'Bhat' caste. The birth extract of the year 1931 records the caste of Mukunda, the grand father of the petitioner as 'Bhat'. Similarly, the school leaving certificate records caste of Punjab and Gulab both grand uncles of petitioner as 'Bhat'. It is therefore contended that the petitioner has failed to prove that she belongs to 'Thakur' caste.

5. We have heard learned counsel for the parties and have perused the records of the Scrutiny Committee. Undisputedly, the school leaving certificate dated 27.07.1926 records the caste of Balwant Bhiwsan, Vishwasrao, the great great uncles of petitioners, as 'Thakur'. The entries of the year 1926 are sought to be discarded on the basis of birth extract of the year

1914 of the son of Bhiwsan wherein the caste is recorded as 'Bhat'. The birth extract of the year 2014 relied upon by Caste Scrutiny Committee does not disclose the name of the son born to Bhiwsan.

6. It is not in dispute that Bhiwsan, who was the grand father of the petitioners grand father Gulabrao, had three sons Mukunda, Vishwas and Balwant. Mukunda is the great grand father of the petitioner and Vishwas and Balwant are the great grand uncles. The documents produced by the petitioner indicate that caste of Mukunda, Vishwas and Balwant is recorded as 'Thakur'. In such circumstances, it is difficult to accept that the said documents, which does not disclose the name of the son, relates to the birth entry of the forefather of the petitioner. Apart from the school leaving certificate of the year 1926, the petitioner has also relied upon property extracts of the year 1961, 1931, 1936, 1941, deed dated 19/02/1942 etc. wherein the caste of the petitioners forefather is recorded as 'Thakur'. These pre-

constitutional documents could not be discarded on the basis of 1914, birth entry, genuineness of which is disputed and/or on the basis of the documents of subsequent period.

7. Coming to the aspect of affinity test being not satisfied by the petitioner it can be seen that in view of recent decision of the Hon'ble Apex Court in Maharashtra Adiwas
Thakur Jamat Swarakshan Samiti V/s. State of Maharashtra and
others reported in **2023(2) Mh.L.J. 785** wherein it is held that affinity test cannot be treated as a conclusive proof and the material collected by the Vigilance Cell has to be considered with all other material on record. In report of Research Officer it has been categorically observed that pre-independence documents indicating the entries of "Thakur" would have a material bearing on the weightage to be given to the observations of 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 the report of the Vigilance Cell when

considered with other material on record it is clear that the petitioner has established that she belongs to “Thakur” (Scheduled Tribe).

8. Hence for the aforesaid reasons the order dated 4.11.2022 passed by the Scrutiny Committee is set aside. It is declared that the petitioner has proved that she belongs to “Thakur” (Scheduled Tribe). The Scrutiny Committee shall within a period of four weeks from receiving copy of this judgment issue validity certificate to the petitioner.

(MRS. VRUSHALI V. JOSHI, J.) (SMT. ANUJA PRABHUDESAI, J.)