

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

WRIT PETITION 8128 OF 2022

Petitioners : 1. Akshay s/o Kailas Donge,
 Aged 26 years, Occ. Student,
 R/o Khamgaon, District Buldhana.
 2. Aditya s/o Kailas Donge,
 Aged 19 years, Occ. Student,
 R/o Khamgaon, District Buldhana.
 – Versus –

Respondent : Scheduled Tribe Caste Certificate Scrutiny
 Committee, Through its Member Secretary,
 Chaprasipura, Amravati.

 Mr. R.S. Parsodkar, Advocate for the Petitioners.
 Mr. M.K. Pathan, A.G.P. for the Respondent.

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

DATE : **28th JULY, 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 23/11/2022 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, whereby the caste claims of the petitioners are invalidated and the caste certificates issued to the petitioners were cancelled and confiscated.

03] 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, Khamgaon. Since, the petitioners are aspirant of professional courses, their proposals were forwarded to the Committee for verification of their caste claims. The petitioners submitted all necessary documents showing their caste as “Thakur”. Even, they submitted the documents of their father, grandfather and great grandfather 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 23/11/2022, the present petition came to be filed.

04] The respondent 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 test 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 Counsel 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 Committee does not deny the existence of extract of

School Leaving Certificate of the year 1933 and School Leaving Certificate of of grandfather-Vishwanath Onkar denoting the caste as “Thakur”. There are extract of birth register of 1926, 1932, 1934, 1943 and 1946 registering the birth of children of Onkar Laxman, the great grandfather of the petitioner showing Onkar Laxman’s caste as “Thakur”. Even the Vigilance Cell found the pre-constitutional documents showing the caste of the children of the great grandfather of the petitioner 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. Particularly, when there is no any document showing contra entry in respect of caste of the petitioners or their forefathers, and the Committee erroneously has mentioned that though the documents filed by the petitioners show their caste as “Thakur”, but that does not show that they belonging to the Scheduled Tribe.

11] It appears that, the Committee has exceeded it’s jurisdiction and went on observing that the petitioners failed to prove that they belonging 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 principal 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 in pre-constitutional documents of great grandfather of the petitioners showing his caste as

“Thakur”. After the decision of the Supreme Court in the case of Maharashtra Adiwasī 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.

14] In view of above, the impugned order of the Committee is clearly erroneous arbitrary and capricious and, therefore, requires to be set aside. Hence, the following order is passed:

- 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 the petitioners, the judgment and order of this Court be relied by the Authority as caste validity of the petitioners 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.)