



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

WRIT PETITION 8353 OF 2022

Petitioner : Vighnesh Datta Wankhade,
 Aged about 18 years, Occ. Student,
 R/o Trimurty Bhawan, Ranpise Nagar, Akola.
 – Versus –

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

 Mr. R.S. Parsodkar, Advocate for the Petitioner.
 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 15/11/2022 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 (hereinafter referred to as “Act” for short), whereby the caste claim of the petitioner is invalidated and the caste certificate issued to the petitioner was cancelled and confiscated.

03] The petitioner claims that he belongs to “Thakur” caste, which is included in the schedule as tribe by The President Order of 1950. The petitioner obtained caste certificate of “Thakur Scheduled Tribe” issued by the Sub-Divisional Officer, Akola. Since, the petitioner is one of aspirant of the medical course, his proposal was forwarded by the Principal, Mouli Jr. College of Science, Tahsil and District Akola to the Committee for verification of the petitioner’s caste claim. The petitioner submitted all necessary documents showing his caste as “Thakur”. Even, he submitted the documents of his father and grandfather showing their caste as “Thakur”. In spite of having pre-constitutional documents indicating the petitioner’s great grandfather’s caste as “Thakur”, the Committee invalidated the caste claim of the petitioner. Being aggrieved by the impugned order dated 15/11/2022, 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 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 petitioner could not prove his socio-cultural affinity with Thakur Scheduled Tribe.

05] The learned Counsel for the petitioner vehemently submits that the petitioner has submitted all relevant documents including the pre-constitutional documents in the name of his great grandfather, which denotes his caste as “Thakur”. The learned Counsel for the petitioner submitted that there is no contra entry in any of the documents of the petitioner nor the vigilance enquiry refers to contra entry. He submitted that the Committee has erroneously rejected the caste claim 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 petitioner 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 petitioner ought to have led evidence to show that his 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 years 1916 and revenue record of 1948 as well as sale-deed of the year 1931. These documents are in the name of Avdhoot Ganpatrao, the great grandfather of the petitioner showing his caste as “Thakur”. Even the Vigilance Cell found the pre-constitutional documents of years 1937, 1948 and 1928 showing the caste of Avdhoot Ganpatrao, 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 petitioner. Particularly, when there is no any document showing contra entry in respect of caste of the petitioner or his forefathers, and the Committee erroneously has mentioned that though the documents filed by the petitioner shows his case as “Thakur”, but that does not show that they belonging to the Scheduled Tribe.

11] It appears that, the Committee has exceeded it jurisdiction and went on observing that the petitioner 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 let 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 of the years 1916, 1928, 1937 and 1948 in respect of great grandfather of the petitioner. 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 petitioner belongs to “Thakur Scheduled Tribe”.
- III. The Committee shall issue validity certificate to the petitioner as “Thakur Scheduled Tribe”, immediately.
- IV. Till the Committee issues validity certificate to the petitioner, the judgment and order of this Court be relied by the Authority as caste validity of the petitioner 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.)