



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO.1956 OF 2006

Bharatsingh Shivsingh Bainade,
Age 43 yrs., Occ. Business,
R/o Palshi, Tq. Sillod,
Dist. Aurangabad.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through its Secretary,
Tribe Development Department,
Mantralaya, Mumbai – 32.
- 2 The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division, Aurangabad
Through its Member – Secretary.
- 3 The Tahsildar and
Taluka Executive Magistrate,
Sillod, Tq. Sillod,
Dist. Aurangabad.

... Respondents

...

Mr. V.R. Awate, Advocate h/f Mr. S.B. Talekar, Advocate for petitioner

Mr. P.S. Patil, AGP for respondent Nos.1 to 3

...

WITH

WRIT PETITION NO.1637 OF 2002

Santoshsingh Diwansingh Chavan,
Age 19 yrs., Occ. Student,
R/o N-11/E-126, Mayurnagar,
HUDCO, Aurangabad.

... **Petitioner**

... **Versus** ...

- 1 The State of Maharashtra
- 2 The Committee for Scrutiny and
Verification of Tribe Claims
Through its Member Secretary
Aurangabad.
- 3 The Government Engineering College,
Through its Principal,
Aurangabad.
- 4 The Taluka Executive Magistrate
and Tahsildar, Aurangabad.

... **Respondents**

...

Mr. V.R. Awate, Advocate h/f Mr. S.B. Talekar, Advocate for petitioner

Mr. P.S. Patil, AGP for respondent Nos.1 to 4

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 19th JANUARY, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The Tribe Claim of both the petitioners as belonging to 'Thakur' Scheduled Tribe has been invalidated and hence, both the petitioners are before this Court. The Committee by the impugned order, after considering the Vigilance Cell inquiry, giving opportunity to the petitioners to explain the contra entries has observed that the petitioners are 'Bhat' and not 'Thakur'.

3 The learned Advocate for the petitioners has vehemently submitted that the Committee ought to have considered that 'Bhat' or 'Bhats' Tribe was part and parcel of 'Thakur' community. 'Thakur' was also known as 'Bhat' or 'Brahma Bhat' or 'Gramjoshi'. The petitioners are relying upon certain authors' book to support their contention. Both the petitioners are contending that no proper personal hearing has been given after they had filed the reply to the show cause notice upon the basis of the Vigilance Cell report. Both of them are contending that the school records have not been considered properly by the Committee. According to the petitioners, the documents before the Scrutiny Committee show that they are 'Thakur' Scheduled Tribe community.

4 Learned Advocate for the petitioners in support of petitioner Santoshsingh Diwansingh Chavan has produced document of his relative i.e. the order passed by the Caste Scrutiny Committee in favour of Mr. Chandrakant Nathu Thakur granting him validity and also submitted that their ancestor Zipru Fattesingh Thakur's school record shows that he is 'Thakur' by Tribe and the date of his admission in the school was 01.07.1917. It is a pre-constitutional document. Their another relative Madhav Budha Wankhede, whose document is also pre-constitutional document regarding the school record i.e. 01.07.1922 shows that he was 'Hindu Thakur' and, therefore, by mere mention of 'Thakur' will not disentitle the petitioners from establishing their claim as belonging to 'Thakur' Scheduled Tribe.

5 Learned Advocate for the petitioners has relied on the decision in **Prakash Shrawan Deore vs. Scheduled Tribe Certificate Scrutiny Committee, Nashik and another** in Writ Petition No.2363 of 2013 decided by this Court at Principal Seat on 22.02.2019, wherein it has been observed that the decision in **Smt. Monika d/o Satish Thakur vs. The State of Maharashtra and others** in Writ Petition No.10123 of 2010 dated 04.05.2018 is *per incurium* in law. The Hon'ble Apex Court in **Anand vs. Committee for Scrutiny and Verification of Tribe Claims and others** [(2012) 1 SCC 113] has held that with the migrations, modernization and contact with other communities, the tribal

tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. The affinity test is not a litmus test for establishing the link of the applicant with a Scheduled Tribe.

5.1 He further relied on the decision in **Chaitanya Satish Dervre vs. The State of Maharashtra and others** in Writ Petition No.12574 of 2019 decided by this Bench on 03.01.2024, wherein the claim of the petitioner therein as belonging to 'Thakur' Tribe has been upheld. The writ petition was allowed and the Committee was directed to issue the validity certificate.

5.2 He further relied on the Three Judge Bench decision of Hon'ble Apex Court in **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. The State of Maharashtra and others** in Civil Appeal No.2502 of 2022 decided on 24.03.2023, wherein it has been held that each and every time the Vigilance Cell report is not required to be taken and if Vigilance inquiry is required to be ordered, it is only when the Committee is not satisfied with the material produced by the applicant. Again it has been stated that the affinity test cannot be conclusive either way and is not a litmus test.

6 Per contra, the learned AGP submitted that though opportunity was given to both the petitioners to establish their claim, they have not explained their contra entries. The oldest document is required to be

considered and the oldest document of the petitioner i.e. in respect of his own admission register in respect of petitioner Bharatsingh Bainade shows that he is 'Hindu Bhat'. Mere mention of caste/Tribe as 'Thakur' is also not sufficient, but it has to be then connected to show that it is 'Thakur' Tribe which has been protected and held to be Scheduled Tribe as per the Constitution of India. All the documents have been considered even in respect of their blood relatives. The candidate should establish his claim first and then only he can rely upon the documents of his blood relatives, if he establishes the relationship. Therefore, no fault can be found in the impugned Judgment and orders.

7 We have considered all the documents in both the matters and the original File in respect of both the petitioners. It is to be noted that both of them had not filed any pre-constitutional document. Of course, merely because it has not been filed, the claim cannot be denied, but if such document is available, then it should be placed before the Committee first. It will have more value than the other documents which are after the Constitution of India was adopted. In **Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Development and others** [(1994) 6 SCC 241] it has been observed that the documents which pertain to pre-constitutional period are having greatest probative value. Therefore, it ought

to have been considered by both the petitioners that they should search for such document and place it before the Committee to support their claim. Here, in case of petitioner Bharatsingh, no document is pre-constitutional and then as regards the other documents are concerned, it has been categorized; in some cases caste has been shown as 'Hindu Bhat' and in some documents caste/Tribe has been mentioned as 'Thakur'. To be precise, the documents at Sr.Nos.1 and 10 show caste as 'Hindu Bhat', documents at Sr.Nos.2, 3, 11 as mentioned in the impugned order show the caste as 'Thakur', but out of those, in documents at Sr.Nos.2 and 11 there is eraser of the word 'Bhat' and then 'Thakur' has been written. It is important to note that when the Vigilance Cell had submitted the report, the copy of the same was given to the said petitioner and his say was called. The petitioner Bharatsingh appeared and gave reply. Thereafter for personal hearing he was called and fully interviewed. But again he applied to the Committee to give him one more chance to submit more documents to support his Tribe claim. 15 days time was given, but he failed to produce any document. Therefore, the principles of natural justice are fully observed in the case. As regards affinity test is concerned, though it is not litmus test as held above in **Anand** (supra) as well as in **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (supra); yet, in the case of petitioner Bharatsingh he had not produced any validity certificate of his blood relative with necessary affidavits and the family tree.

Therefore, conducting Vigilance Cell inquiry cannot be said to be illegal. He has failed in proving the affinity and ethnic linkage to the Tribe. We do not find that the Committee has committed any kind of error or illegality in invalidating his claim.

8 In the case of petitioner Santoshsingh, affidavit-in-reply has been filed on behalf of respondent No.2, the Research Officer Ganesh Bhila Sonar, wherein it is said that the Vigilance Cell goes to show that the petitioner and his family belongs to 'Bhat', which is included in 'Other Backward Classes'. 'Bhats' are included at entry No.18 in the list of Other Backward Classes prepared by Government of Maharashtra, whereas 'Thakurs' are included in Scheduled Tribe at entry No.44 of presidential list of 1976. The oldest document in this case was of 09.10.1952 in respect of one Diwansingh Ayodhyasingh Chavan, who is the relative of the petitioner and it says, his caste as 'Hindu Bhat'. Even in case of father of petitioner Santoshsingh, in the record in respect of admission to the school on 09.10.1958 his caste is mentioned as 'Bhat'. We have confirmed those documents. When the old documents are showing that the relative of the petitioner Santoshsingh and his father's school record mentioned that they are 'Bhat' by caste, without there being explanation to the contra entry the Scrutiny Committee was justified in rejecting the claim of the petitioner. The caste certificates of the

relatives mentioning them as 'Thakur' are of subsequent years. It will not be appropriate to expect from the petitioner to produce pre-constitutional document or document prior to 1976 to show that he is or his family belong to 'Thakur' community, when the said Tribe has been included in the presidential list for the first time in 1976. But at least there should be specific mention of the Tribe or caste as 'Thakur' in all the documents prior to 1976. When there are contra entries and they have not been explained, we do not find that there is any illegality as regards invalidation of the claim of petitioner Santoshsingh by Committee. Therefore, both the petitions should fail. Hence, following order.

ORDER

1 Both Writ Petitions stand dismissed.

2 Rule is discharged.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)