



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2374 OF 2006

Dinesh Nathu Thakur,
age 20 yrs, Occ. Education
R/o Dhekusim Road, Renunagar,
Plot No.10/1, Amalner,
Dist. Jalgaon.

Petitioner

VERSUS

1. The State of Maharashtra,
through the Secretary,
Tribal Development Department
Mantralaya, Mumbai.
2. The Scheduled Tribe Caste
Certificate Verification Committee,
Through it's Chairman/Director,
Nasik Division, Nasik.
3. The Sub Divisional Officer,
Amalner, Dist. Jalgaon.
4. The Collector,
Collectorate, Jalgaon.

Respondents

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Advocate for the Petitioner : Mr. A S Golegaonkar
AGP for Respondents : Mr. P S. Patil

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

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Reserved on : January 19, 2024
Pronounced on : February 01, 2024

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JUDGMENT : (Per S.G. Chapalgaonkar, J.)

1. Rule. Rule made returnable forthwith. With consent of the parties, heard finally.

2. The petitioner approaches this Court under Article 226 of the Constitution of India impugning the order dated 31.12.2005 passed by Scrutiny Committee thereby rejecting Tribe Claim of the petitioner for “Thakur Scheduled Tribe”.

3. Mr. A.S. Golegaonkar, learned advocate appearing for the petitioner would submit that the petitioner belongs to “Thakur Scheduled Tribe”. Caste certificate has been issued to him by the competent authority. Same was referred for verification to the Committee on 19.12.2003. The petitioner supported his caste claim by documents in the form of his own school record as well as school record of his father Nathu, grand father Mahadu, wherein the entry of the caste as ‘Thakur’ can be seen. The entry in the grand father’s school record was recorded on 1.7.1922. The Scrutiny Committee has already conferred validity in favour of real brother i.e. Chandrakant Nathu Thakur vide order dated 15.6.2002. However, the Scrutiny Committee ignored aforesaid material and rejected claim of the petitioner observing that the claimant has failed to establish his affinity and ethnic linkage towards “Thakur Scheduled Tribe” and family of the petitioner is not resident of the area of origin in respect of “Thakur Scheduled Tribe”. Mr. Golegaonkar learned advocate for the petitioner took us through the order dated 28.5.2002 thereby validating claim of

his brother Chandrakant. He points out the school record entry depicting caste 'Thakur' in respect of Dangal Budha Wankhede and Madhav Budha Wankhede. Both these documents are pertaining to pre-constitutional Era. He would therefore submit that the impugned order is liable to be quashed and set aside and further directions needs to be issued to the Committee for validating caste claim of the petitioner.

4. Mr. P.S. Patil, learned AGP, however, strongly opposes the prayers in the writ petition. He would submit that merely because the petitioner's brother is granted validity, petitioner cannot claim similar treatment. The Committee is entitled to take fresh decision based on the evidence tendered into service. In support of his submissions, he relies upon the observations of the Supreme Court of India in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and others in Civil Appeal No.2502 of 2022 dated 24.3.2023 [reported in 2023 (2) Mh.L.J. 785]**.

5. Mr. Patil would further submit that entry in the caste column as 'Thakur' itself does not raise presumption that the petitioner belongs to 'Thakur Tribe'. The petitioner is entitled to conferment of caste validity as 'Thakur' Tribe; only if he could establish social cultural traits and association of his family with the 'Thakur Scheduled Tribe'. As such, justified the order passed by the Committee.

6. We have considered the submissions advanced by the learned advocates appearing for the respective parties. We have perused the documents tendered into service alongwith the petition. It is not in dispute that real brother of the petitioner namely Chandrakant has been conferred with validity certificate to be belonging to "Thakur Tribe" vide order dated 28.5.2002 issued by the Committee for Scrutiny and verification of Tribe Claims, Nashik. The validity certificate issued in favour of the petitioner's brother is still intact. That has never been subjected to review or revocation. Even, it is not the case of the respondents that any show cause notice is issued to the petitioner's brother for revocation of the caste validity. In this background, the petitioner places heavy reliance on validity granted in favour of his brother while pursuing his claim.

7. We find that the Committee while dealing with the aforesaid material evidence merely observed that each of the case will have to be independently established. However, no reason is given as to why the Committee discards said evidence from consideration. The Committee has nowhere observed that the petitioner's brother exercised fraud or misrepresentation while obtaining validity from the concerned Committee. We are not oblivious of observations made by the Supreme Court of India in the case of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and others (supra)***. The caution is given that surname Thakur need not connote link with 'Thakur Tribe' and only mention of 'Thakur' in the school record cannot be con-

strued as 'Thakur Tribe'. Similarly, in paragraph no.23 of the said judgment, it is observed that if it is established that father or grand father of the applicant has been given caste validity certificate after holding lawful inquiry in accordance with law, the caste scrutiny committee cannot hold that grandfather or father of the applicant, as the case may be, belong to 'Scheduled Tribe', but the applicant does not belong to 'Scheduled Tribe'. In the facts of the case, we find that real brother of the petitioner is conferred validity more than 21 years ago and the same is still intact. No cloud of doubts can be raised in respect of such validity particularly, when no contra material is pressed into service before us.

8. Pertinently, apart from the validity granted in favour of Chandrakant, the petitioner has placed on record documents pertaining to admission of petitioner's grand father i.e. Dangal Budha and Madhav Budha, which are of pre-constitutional Era i.e. before 1.4.1933. Although, such documents are on record, Committee has not made any comment regarding said correctness of the entries.

9. So far as observations of the Committee as regards to failure of the petitioner in affinity test, suffice to note here that 'affinity test' is not the 'Litmus Test' for determining the Tribe Status of the petitioner when the claim is based on the documentary evidence, due weightage must tilt to such evidence. In the present case, petitioner is coming with significant and flawless evidence in the nature of validity granted in favour of his real

brother more than 21 years ago, which is still intact and there is no material to infer that such validity was outcome of fraud, misrepresentation or procedural lapse. Admittedly, no show cause notice is issued to the brother of the petitioner.

10. In view of the aforesaid discussion, we hold that the Committee was in patent error while rejecting caste claim of the petitioner. Hence, we proceed to pass the following order.

ORDER

- i. Writ Petition is allowed.
- ii. The impugned judgment and order dated 31.12.2005 passed by the Scheduled Tribe Caste Certificate Verification Scrutiny Committee, Nasik Division, Nasik is hereby quashed and set aside.
- iii. The Respondent No.2-Committee shall issue certificate of caste validity in favour of the petitioner for "Thakur Scheduled Tribe" within a period of one (1) month from the date of this order, which shall be subject to any inquiry, show cause notice or proceeding for revocation, if any, initiated in respect of the caste validity granted to petitioner's brother Chandrakant Nathu Thakur.
- iv. Writ Petition stands disposed off in aforesaid terms. Rule is made absolute accordingly.

(S. G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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aaa (F).