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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8161 OF 2020

Ratna d/o Bhatu Thakur,
Age-34 years, Occu-Village Panchayat Member,
R/o Salve, Tq.Sindkheda, Dist.Dhule,
presently residing at -
Plot No.16, Gurukripa Colony,
Sindkheda, Tq.Sindkheda,
Dist. Dhule

-- PETITIONER

VERSUS

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32,
Through it's Secretary

2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division,
Nandurbar,
Through it's Member Secretary,

3. The Collector,
Office of the Collectorate,
Dhule, Dist.Dhule,

4. The Tahsildar,
Sindkheda, Dist.Dhule

-- RESPONDENTS

Mr.S.C.Yeramwar, Advocate for the petitioner.
Ms.VN.Patil-Jadhav, AGP for respondent Nos. 1 to 4.

(CORAM : MANGESH S. PATIL AND
PRAFULLA S. KHUBALKAR, JJ.)

DATE : NOVEMBER 26, 2024

ORAL JUDGMENT : (Per Prafulla S.Khubalkar, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The petitioner assails the order dated 09.11.2020 passed by respondent No.2 / Caste Scrutiny Committee thereby invalidating her claim of “Thakur” Scheduled Tribe.

3. The petitioner claims to be an elected Member of the Gram Panhayat Salve, Tq.Sindkheda, Dist.Dhule from the Scheduled Tribe Category. Her caste claim was referred by respondent No.4, Talshildar to respondent No.2 / Scrutiny Committee. In support of her claim, the petitioner submitted before the Caste Scrutiny Committee 33 documents including various documents of pre-independence era. The Vigilance Enquiry was conducted and the Vigilance Cell submitted its report dated 07.10.2020. This report was served upon the petitioner with a show cause notice dated 17.02.2020. In response she submitted reply on 12.10.2020.

4. By order dated 09.11.2020, the Scrutiny Committee

invalidated the petitioner's caste claim by concluding that she failed to establish her claim on the basis of documentary evidence, affinity and also on account of her residence being not from the scheduled area.

5. The petitioner assails the order of the Scrutiny Committee before this Court by raising several grounds, including that the Committee failed to consider the pre-independence documents from the year 1918 onwards, which have high probative value and that the Committee has wrongly concluded about failure of the petitioner in clearing the affinity test.

6. We have heard both the parties eraboratively and perused the entire record of the case. It is undisputed that in support of her claim of "Thakur" Scheduled Tribe, the petitioner had submitted before the Committee total 33 documents, including 9 documents of pre-independence era. Thereafter, she again submitted 3 documents of pre-independence era. All these documents are with respect to the paternal side relatives of the petitioner. During the course of vigilance enquiry, the Vigilance Cell also obtained 10 documents related to her paternal side relative, which include 5 documents of pre-independence era. In

all these pre-independence documents, which are submitted by the petitioner and which are obtained by the Vigilance Cell, the caste of the paternal side relatives of the Petitioner is shown as “Thakur”. There is no document showing any entry other than Thakur. The Vigilance Cell has conducted enquiry and there is no dispute about the relationship of the Petitioner with the persons whose documents are submitted in support of her caste claim.

It is pertinent to note that the oldest document is of the year 1918, which is an extract of village form No.14 of Mahadu Mahipat Dabali, who was grandfather of the petitioner. Apart from this, there are documents of the year 1923, 1927, 1933 and 1942, which all consistently show that the petitioner’s paternal uncle, paternal grandfather belonged to Thakur caste. The documents submitted by the petitioner and the documents obtained by the Vigilance Cell are in the nature of extracts of birth and death registers, revenue entries and school leaving certificates. The Petitioner has also relied on caste validity certificate of her cousin Dilip Pundalik Thakur, which was granted on the basis of the orders passed by this Court.

7. It is interesting to note that as regards all these documents

submitted by the petitioner, the Committee has observed in the impugned order that although there are entries of the caste “Thakur”, but there was nothing to conclude that the paternal side relatives of the petitioner were belonging to a Scheduled Tribe. On this pretext, the Committee has discarded all these documents. While deciding the issue as to whether the petitioner has established her caste claim on the basis of the documentary evidence, the Committee has ignored the documents filed by her, mentioning caste as “Thakur”, but has given reference to the documents of other persons from Dhule District alleging that the persons belonging to the petitioner’s region have at some point of time filed some documents showing their caste as *Bhat*, *Bramhabhat* etc. We are of the view that while deciding the caste claim of a candidate, reference to the documents submitted by other candidates, inspite of their independent caste claims, need not have been referred to much less relied upon. As regards the documents submitted by the petitioner, it is clear that in all the documents of pre-independence era, there is consistent entry of “Thakur”. The Committee has not assigned any reason for disbelieving these documents and in view of the fact that the documents of pre-independence era have more probative value, the Committee ought to

have validated the caste claim on the basis of documentary evidence. The Committee has although referred to the validity certificate of her cousin Dilip Pundlik Thakur, it has wrongly discarded it by observing that the validity was given long back and on the basis of the circumstances existing at that time. We are of the view that the reasons to discard the validity certificate under this pretext is erroneous.

8. So far as affinity test is concerned, the Committee has observed that the petitioner has failed in the test, however, it may be seen that there is no reason stated in the impugned order specifically pointing out as to why and how the petitioner failed in the affinity test. The Vigilance Cell report shows that the petitioner had narrated customs and traditions about her caste and there is no precise reason to conclude that she had failed in the affinity test. By now, the position of Law is settled that affinity test is not the litmus test as laid down in **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others, reported at [(2012) 1 SCC 113]**. So also the three Judge Bench of the Hon'ble Supreme Court has reiterated the position in **Maharashtra Adiwasli Thakur Jamat Swarakshan Samiti Vs. The State of**

Maharashtra and others [2023 SCC Online 326], that affinity test cannot be considered to be conclusive. Thus, invalidation of caste claim only on account of failure of affinity test is not appreciated.

9. Although the Committee has observed that the petitioner's forefathers are not from scheduled areas, as regards the issue of area restriction, it is to be noted that the area restriction has been removed by the Amendment Act, 1976. Further in view of the authoraritive pronouncements of the apex Court in **Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another Vs. State of Kerala [1994 SCC (1) 359]** and **Jaywant Pawar Vs. The State of Maharashtra and others in Civil Appeal No.2336/2011, decided on 08.03.2017**, the caste claim could not have been invalidated on the ground of area restriction.

10. On the basis of objective scrutiny of the entire matter, we are of the view that the impugned order ignores the pre-independence documents, and illegally applies affinity test and area restriction and therefore, is not sustainable. For the reasons recorded above, the impugned order deserves to be quashed and set aside. Hence following order :-

- [a] The Writ Petition is allowed.
- [b] The impugned order dated 09.11.2020, passed by respondent No.2/Caste Scrutiny Committee is hereby quashed and set aside.
- [c] Respondent No.2 / The Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Division, Nandurbar is hereby directed to immediately issue the validity certificate of “Thakur” Scheduled Tribe to the Petitioner.
- [d] There shall be no order as to costs.
- [e] Rule is made absolute in above terms.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL, J.)