

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8579 OF 2023

Samiksha Sunil Thakur

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. S. S. Panchpor a/w. Mr. G.D. Tamboli for Petitioner.

Ms. Ashwini A. Purav, AGP for Respondent Nos. 1 and 2.

**CORAM: NITIN JAMDAR &
M.M. SATHAYE, JJ.**

DATE : 7 MAY 2024

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P.C.:

. By this Petition, the Petitioner has challenged invalidation of the caste certificate issued to the Petitioner as belonging to Thakar Scheduled Tribe by the Respondent No. 2 - Scrutiny Committee.

2. The Petitioner applied for and was granted caste certificate dated 6 December 2013 as belonging to Thakar Scheduled Tribe by the Competent Authority – Sub Divisional Officer, Kankavli, Dist. Sindhudurg. The caste certificate was referred by Respondent No. 3 for verification to the Scrutiny Committee. Before the Scrutiny Committee, the Petitioner produced evidence in support of the caste claim. The Scrutiny Committee directed an inquiry to be made by Vigilance Cell. Report of Vigilance Cell was placed on record. After considering the Vigilance Cell report and material on record the

Scrutiny Committee by the impugned order dated 14 June 2023 invalidated the caste claim.

3. We have heard learned counsel for the parties.

4. Perusal of the impugned order would show that though the Scrutiny Committee, in reasoning paragraph (ii) & (iii) referred to the documentary evidence produced in support of Petitioner's claim, finally has placed substantial emphasis, firstly on failure to pass affinity test and secondly on the basis of area restriction i.e. Petitioner hailing from Village Harkul Budruk, Kaletharwadi, Taluka Kankavli, District Sindhudurg. In view of these findings, the documentary evidence which is produced in support of the Petitioner has not been properly appreciated.

5. Firstly, as to how much emphasis can be given to affinity test while deciding the caste claim in respect of Thakur community had come up for consideration of the Hon'ble Supreme Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.*¹ It is an admitted position that Thakur, Thakar, Ka Thakur, Ka Thakar and Ma Thakur, Ma Thakar are also scheduled tribes and that Thakur is also in the open category. Therefore, to distinguish between the same, the Scrutiny Committee in the State of Maharashtra, would place substantial reliance in ascertaining whether the candidate has shown affinity to the scheduled tribe and even if the document produced by the candidate

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would show entry of Thakur/Thakar, on the basis of affinity test the Scrutiny Committee would negate the claim. The Hon'ble Supreme Court in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti's* decision, after considering the entire conspectus, recorded the conclusion in para 38 as under.

“38. Thus, to conclude, we hold that:

(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(b) For the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim; and

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case”.

The above conclusion is clear that the affinity test cannot be conclusive either way and it has to be considered along with all other

material on record.

6. The second stereotyped reasoning given in the impugned order is that the Petitioner's original residence is from District Sindhudurg and this is not the original residence of the Thakar Scheduled Tribe. It is as far back as the year 2004, that is, two decades ago, that this Court, in the case of *Amol Narayan Wakkar V. State of Maharashtra*² had set aside this reasoning, which was adopted by the the Scrutiny Committee. In this case, the petitioners belonged to the Thakar community. All the petitioners therein were from the Sindhudurg (erstwhile Ratnagiri) district. The Scrutiny Committee, relying on certain passages from R.E. Ethoven's "Tribes and Castes of Bombay Presidency" and extract from the Bombay Gazetteer, had held that traits of the Thakar community from the erstwhile Ratnagiri district had not matched with the Thakar Scheduled Tribe and, therefore, they (the petitioners therein) should be treated as Nomadic Tribes. The Division Bench noted the entries in Part-IX of the Second Schedule to the Scheduled Castes Scheduled Tribes Orders (Amendment) Act, 1976 and observed that there is no doubt whatsoever that by virtue of the said parliamentary enactment, a person who is either a Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur Ma Thakar has been declared to belong to a Scheduled Tribe within Article 342 of the Constitution. The Division Bench, then set aside the order of the Scrutiny Committee, holding that the observations of the Scrutiny Committee attempting to distinguish

2 2005 (1) Mh.L.J. 798

“Thakar” of erstwhile Ratnagiri District (Sindhudurg) from “Thakar Scheduled Tribe” are wholly erroneous. Special Leave Petition filed by the State of Maharashtra against this judgment and order in the case of Amol Narayan Wakkar was dismissed by the Hon'ble Supreme Court by order dated 25 August 2005. In the last two decades, the decision in *Amol Narayan Wakkar* (supra) has been consistently followed, and orders of the Scrutiny Committee holding that the Thakur community in Sindhudurg district cannot be considered a Scheduled Tribe have been set aside. Despite this position, the Scrutiny Committee has again in the year 2023, while passing the impugned order, has taken this ground, which is wholly unsustainable.

7. In light thereof, the other material which must be considered, has not been considered in the same rigour, as is expected of the Scrutiny Committee while deciding a caste claim. Therefore, the matter will have to be remanded to the Scrutiny Committee for reconsideration of the caste claim in the light of the law laid down as stated above, and after considering the totality of the material on record.

8. In the result, the impugned order dated 14 June 2023 passed by Respondent No. 2 – Scrutiny Committee, Kokan Division, Thane is quashed and set aside. The caste claim of the Petitioner is restored to the file of the Scrutiny Committee. The Scrutiny Committee will accordingly issue notice to the Petitioner to remain present on the

stipulated date, set a time table and subject to earlier time bound directions and urgent cases, will make endeavour to dispose of caste claim at the earliest. It is open to the Petitioner to apply to the Scrutiny Committee for expeditious disposal of the claim.

9. Writ Petition is disposed of in the above terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)