

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11842 OF 2023

Eknath Nana Thakur

Age- 50 Years, Occu. Service,

R/a. T/27, 111, Pratiksha Nagar,

Near Karmveer Bhaurao Patil High School,

Sion Koliwala, Mumbai

...Petitioner

V/s.

1. The State Of Maharashtra
Through its Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai.

2. The Schedule Tribe Caste Certificate
Verification Committee,
Kokan Division, Thane.

3. The Principal,
Saraswati Vidya Mandir Junior College,
Mahim, Mumbai – 400 016

...Respondents

Mr. S.S. Pachpor, for Petitioner.

Mr. V.M. Mali, AGP for Respondent/State.

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

DATE : 11 JUNE 2024

Digitally signed
HUSENBASHA
RAHAMAN
NADAF
Date: 2024.06.19
10:50:17 +0530

P.C.

. Heard learned counsel for the parties.

2. The Respondent No.2- Scheduled Tribe Caste Certificate Verification Committee, Kokan Division, Thane has invalidated the caste certificate issued to the Petitioner as belonging to the Thakar Community. Challenging this order dated 28 February 2023 the Petitioner has filed the present writ petition. The Petitioner is working with Respondent No.3- School as Peon.

3. The Petitioner had applied for a caste certificate to the Competent Authority as belonging to the Thakar Scheduled Tribe. The Competent Authority issued a caste certificate to the Petitioner as Thakar Scheduled Tribe on 19 December 2013. The Petitioner joined the services of Respondent No.3- School, whose Principal forwarded the certificate of the Petitioner to the Scrutiny Committee for verification of the claim of the Petitioner. The Petitioner appeared before the Scrutiny Committee and submitted the documents.

4. The Scrutiny Committee forwarded the Petitioner's application to the Vigilance Cell. The Vigilance Cell conducted the enquiry and submitted the documents. These documents were of Petitioner's father, cousin grand father and aunt. The Scrutiny Committee has noted these documents having 'Thakar' entry but has discarded the same, placing substantial emphasis on the ground of area restrictions and also that the Petitioner has failed to show affinity to the Thakur scheduled tribe.

5. The first reasoning is that the Petitioner's original residence is in village Chinchalvadi-Shindgaon, Taluka Kankavali, District Sindhudurg and that 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*¹, had set aside this reasoning, which the Scrutiny Committee adopted. Special Leave Petition filed by the State of Maharashtra against this judgment and order 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* 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. However, the Scrutiny Committee again in the year 2023 has taken this ground, which is wholly unsustainable.

6. The second reasoning given by the Scrutiny Committee is that the Petitioner has not been able to demonstrate his affinity to the Thakar Scheduled Tribe. How much emphasis can be given to affinity test while deciding the caste claim in respect of Thakur community had came up for consideration before the Bench of three learned Judges of the Hon'ble Supreme Court in a recent case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.*². After elaborate discussion, the Supreme

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

2 2023 SCC Online SC 326

Court has recorded its conclusion as follows:

“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 clearly states that the affinity test cannot be conclusive either way and must be considered along with all other material on record.

7. We find that in the present case, the reasoning of the Scrutiny Committee is predominantly based on the outcome of the affinity test and area restriction and therefore other material 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. As a result, the impugned order dated 28 February 2023 passed by the Respondent- Scrutiny Committee is quashed and set aside. The caste claim of the Petitioner is restored to the file. The Scrutiny Committee will accordingly issue notice to the Petitioner to remain present on the stipulated date, set a timetable and, subject to earlier time-bound directions and urgent cases, will endeavour to dispose of the 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 above terms. No costs.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)