

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1790 OF 2019

Dattatray Shantaram Jadhav ... Petitioner

Versus

State of Maharashtra and Others ... Respondents

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Mr.R.K.Mendadkar for the Petitioner.

Mr.M.M.Pabale, AGP for the Respondent.

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

DATE : 19 APRIL 2024

P.C. :

. Heard the learned Counsel for the parties.

2. The Petitioner has challenged the order dated 29 October 2016 passed by Respondent No.2- Scheduled Tribe Certificate Scrutiny Committee, Pune.

3. The Petitioner had applied for caste certificate to Respondent No.4- Sub Divisional Officer, Pune and Respondent No.4- Sub Divisional Officer issued a caste certificate to the Petitioner as belonging to Thakar Scheduled Tribe. This caste certificate was sent for verification to Respondent No.2- the Scrutiny Committee.

Respondent No.2- the Scrutiny Committee directed an enquiry to be held through Vigilance Cell who submitted a report. The Petitioner has also submitted the documents in support of his caste claim. After examining the material on record and relying on affinity test, Respondent No.2- the Scrutiny Committee by the impugned order dated 29 October 2016 invalidated caste certificate.

4. The Vigilance Cell collected the documentary evidence in respect of the Petitioner's caste claim and placed the same before Respondent No.2- the Scrutiny Committee. In the school record, the date of birth of Dev Krushna Jadhav, uncle of the Petitioner, is mentioned as 1 January 1942 and the caste is shown as Hindu (Thakar). The date of birth of Aambu Krushna Jadhav, aunt of the Petitioner, is mentioned as 11 February 1926 and the caste is shown as Thakar. In the school record, the date of admission of the Petitioner's uncle Sukhdev Krushna Jadhav is mentioned as 14 June 1955 and the caste is shown as Hindu Thakar. Thereafter, from 1969 to 2005, there are various entries wherein the caste is shown as Hindu Thakar and Hindu Thakur.

5. Out of these thirteen documents, Respondent No.2- the Scrutiny Committee has highlighted the school record of Jyotiba Maruti Jadhav, cousin grandfather of the Petitioner, wherein the date of admission is mentioned as 23 January 1964 and the caste is shown as Hindu Maratha. The Petitioner has taken a stand that he is not

related to Jyotiba Maruti Jadhav and has also placed on record the validity certificate dated 6 July 2022 issued to his real brother Chandrakant Shantaram Jadhav.

6. Respondent No.2- the Scrutiny Committee has not considered at all the entries in case of the Petitioner's relatives above prior to 1964. The date 23 February 1964 being the date of entry of Jyotiba in the school record, all the entries which are favorable to the Petitioner prior to that date have been omitted from consideration. The proceedings on the basis that entries prior to 1950, pre-constitutional period are to be considered, still there are entries which would show the record as Thakar. There is also no satisfactory reason given regarding validity certificate of the Petitioner's brother.

7. Respondent No.2- the Scrutiny Committee has given less emphasis on examining the documents in detail because the Scrutiny Committee has primarily relied on the affinity test with the finding that the Petitioner is unable to show cultural affinity. That the affinity test is an important criterion to decide whether a person belongs to Thakar Scheduled Tribe or not, was the position of law prevailing for a substantial period of time and the impugned order is of that period. Subsequently, this issue is settled by the Hon'ble Supreme Court in the case of *Mah. Adiwasi Thakur Jamat Swarakshan Samiti Versus State of Maharashtra and Ors.*¹ It is an admitted position that Thakur, Thakar, Ka Thakur, Ka Thakar and

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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 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 *Mah. 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.

8. We find that in the present case the reasoning of the Scrutiny Committee is predominantly based on the outcome of the affinity test and in the light thereof, the 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 by the Hon'ble Supreme Court as stated above, and after considering the totality of the material on record.

9. In the result, the impugned order dated 29 October 2016 passed by Respondent No.2- the Scrutiny Committee 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.

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

11. While deciding the caste claim of the Petitioner, Respondent No.2-the Scrutiny Committee will keep in mind that the remand was necessary because of the above mentioned reasons and not for the fault of the Petitioner and give priority to the Petitioner's caste claim.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)