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

WRIT PETITION NO.9576 OF 2021

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Ranjit Chandrakant Pawar

....Petitioner

V/s.

The State of Maharashtra & Ors.

....Respondents

Mr. R.K. Mendadkar with Ms. Komal Gaikwad for the
Petitioner.

Ms. R.A. Salunkhe, AGP for Respondent Nos.1 to 3 – State.

**CORAM : NITIN JAMDAR &
AMIT BORKAR, JJ.**

DATE : 8 APRIL 2024

P.C. :-

Heard learned Counsel for the parties.

2. The Petitioner has challenged order passed by the Respondent No. 2- Scheduled Tribe Certificate Scrutiny Committee, Pune dated 27 January 2020. By the impugned order, the Respondent No. 2 – Scrutiny Committee has invalidated the caste certificate issued to the Petitioner by the Sub-Divisional Officer, Karad dated 7 June 2013 as belonging to Thakar, Scheduled Tribe.

3. The Petitioner applied for and was granted caste certificate as Thakar, Scheduled Tribe by the Respondent No.3 – Sub-Divisional Officer. The Petitioner was desirous of appointment in public service and, therefore, his caste certificate was sent for verification. The Vigilance Cell conducted inquiry and report was submitted. The Petitioner submitted his explanation. The Petitioner was given an opportunity in respect of the report of the Vigilance Cell and also during the proceedings before the Committee. The Scrutiny Committee after considering the material on record and affinity test conducted concluded that the Petitioner has not been able to prove his claim as belonging to Thakar, Scheduled Tribe.

4. Before the Scrutiny Committee, the Petitioner relied on the validity certificates in respect of Namdeo Bajirao Pawar and Ramesh Bajirao Pawar issued on 20 July 2002 and 23 January 2002 stating that they are his paternal cousins. The Vigilance Cell produced on record ten documents, which included the School Register entries in respect of Pandurang Sitaram Pawar on 16 August 1940 and 9 August 1944; of Bajirao Sitaram Thakar of 14 July 1941. In the Report, it was stated that these were paternal uncle (twice removed). The entries were of Hindu Thakar. Also the entries in respect of Laxmibai Bajirao Pawar, Ramesh Bajirao Pawar, Shanta Bajirao Pawar and

Namdeo Bajirao Pawar ranging from 1960 to 1969 as Hindu Maratha were placed on record. The entry of Satish Pandurang Pawar of Thakar as of 1967 and Subhash Pandurang Pawar as Hindu as of 1972 were also part of the Report. The Report also placed on record entry in the Death Register of Sitaram Nagu Thakar of 1935 as Marathe.

5. The Committee, after considering these documents, concluded that there are entries both of Thakar and Marathe prior to 1950 and the Petitioner's claim can neither be rejected nor accepted. The Committee thereafter stating that since this being the position, reliance will be placed on the affinity test and based on the affinity test, the Committee invalidated the caste claim of the Petitioner. There is no specific comment or discussion on the validity certificate issued to the Petitioner.

6. Therefore, what we find is that this Committee has primarily relied on the affinity test and since that was made the basis of the order, there is no effort taken as to analyze the documentary evidence properly.

7. As to how much emphasis can be given to affinity test while deciding the caste claim in respect of Thakur community had came 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 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,

¹ 2023 SCC Online SC 326

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 27 January 2020 passed by Respondent – 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. No costs.

11. If an application is made to the Scrutiny Committee for expeditious disposal of the claim, the committee will keep in mind that the Petitioner might get age barred and accordingly take up the matter for consideration at an early date.

(AMIT BORKAR, J.)

(NITIN JAMDAR, J.)