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

WRIT PETITION NO. 3073 OF 2013

Kumari Nilima d/o. Sunil Rajwade

... Petitioner

V/s.

The State of Maharashtra and Ors.

... Respondents

Mr. R.K. Mendadkar with Ms. Priyanka Shaw for the Petitioner
Mr. S.B. Kalel, AGP for the Respondent - State

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

DATE : 22 MARCH 2024

P.C. :-

By this Petition, the Petitioner has challenged invalidation of the caste certificate issued to the Petitioner as belonging to Hindu Thakur Scheduled Tribe by the Respondent - Scrutiny Committee.

2. The Petitioner applied for and was granted caste certificate as belonging to Hindu Thakur Scheduled Tribe by the Competent Authority. The caste certificate was referred 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 5 July 2019 invalidated the caste.

3. We have heard the learned Counsel for the parties.

4. Perusal of the impugned order would show that the Scrutiny Committee has placed substantial emphasis on the fact that the Petitioner has failed to show affinity to the Thakur Scheduled Tribe. The Petitioner has furnished the school records in respect of her, her father, grandfather and brother, wherein the caste is recorded as "Hindu Thakur" and the said records pertaining to period 1994, 1967, 1936 and 1991 respectively. Therefore, if the Petitioner who claims himself/herself as belonging to Thakur Scheduled Tribe, it is very important to verify whether the Petitioner proves his/her claims as belonging to Thakur Scheduled Tribe listed at Sr.No.44 in the list of Scheduled Tribes of Maharashtra. Therefore, it is not possible to reach any conclusion by merely relying on the documentary evidence alone. It is to be mentioned here that, as the Thakur Caste is also found in other categories also, the Petitioner's claim towards Thakur Scheduled Tribe should be considered only after taking into consideration the affinity test. After perusing the information

furnished by the Petitioner during the course of hearing, the Scrutiny Committee has come to the conclusion that, the Petitioner is not hails from the area scheduled for the Thakur Scheduled Tribe community appeared at Sr. No. 44. Moreover, the Petitioner has failed to establish her affinity and ethnic linkage towards the Thakur, Scheduled Tribe Community appears at Sr. No. 44. The information furnished by the Petitioner during the course of hearing as well as during the enquiry with respect of traits, characteristics, custom, and place of residence is not associated with Thakur Scheduled Tribe Community appeared at Sr. No. 44. It is submitted that while verifying the tribe claim the affinity factor which is most important cannot be ignored, so far as similarity of nomenclature is concerned. The necessity of the affinity test in the similarity of nomenclature is also upheld by the Hon'ble High Court as well as Supreme Court in number of cases.

5. In view of the above findings the documentary evidence which is produced in support of the Petitioner has not been properly appreciated. 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

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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, 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”.

6. 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.

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 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.

8. In the result, the impugned order dated 5 July 2019 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, and the Scrutiny Committee will consider that this is a caste claim of the year 2012 and accordingly, give it a priority for disposal.

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

M.M. SATHAYE, J.

NITIN JAMDAR, J.