

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 3643 OF 2016

Sanjay Shankar Pawar. ... Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

Mr.R.K.Mendadkar (through VC) with Ms.Komal Gaikwad
for the Petitioner.

Mr.B.V.Samant, Addl.GP with Ms.Pooja Joshi-Deshpande
for Respondent Nos.1 and 2.

SANJAY
KASHINATH
NANOSKAR

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

DATE : 29 April 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 Hindu Thakar Scheduled Tribe by the Respondent-Scrutiny Committee.

2. The Petitioner applied for and was granted caste certificate as belonging to Hindu Thakar 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 30 January 2016 invalidated the caste certificate.

3. We have heard learned counsel for the parties.

4. Before the Scrutiny Committee, the Petitioner had relied on documents of himself, his uncle, father, elder brother which showed the entry as Hindu Thakar. The Vigilance Cell produced certain documents before the Scrutiny Committee which had documents showing entries as Marathe, Hindu Maratha, Thakar and Hindu Thakar. These were the entries of prior to 1950. Hindu Maratha entry was of 1951. Hindu Thakar and Thakar entries were of 1938 and 1926. The validity certificate issued in favour of the Petitioner's paternal cousin was also placed on record. The Scrutiny Committee observed that even though there is validity certificate in favour of the Petitioner's paternal cousin, different view can be taken. However, after stating so, the Scrutiny Committee devoted rest of the discussion on the affinity test. Therefore, though there were documents prior to 1950 both, in favour of the Petitioner's claim as Thakar or other entries such as Maratha, predominantly the Scrutiny Committee relied on the affinity test.

5. 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 Thakar scheduled tribe. In view of this finding 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 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 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*

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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.

5. 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.

6. 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. The Committee will consider the matter as pending from the date it was initially referred and give it a priority accordingly.

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

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)