

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

WRIT PETITION NO. 4357 OF 2019

Kishor Yashwant Pawar ... Petitioner
versus
State of Maharashtra and Others ... Respondents

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Mr. R.K.Mendadkar for the Petitioner.
Mr. S.H.Kankal, AGP for Respondent Nos. 1, 2 and 4-State.
Mr.Suhas S. Inamdar for Respondent No.3.

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

DATE : 22 March 2024.

P.C. :

Heard the learned Counsel for the parties.

2. The Petitioner has challenged the order passed by Respondent No.2 –Scrutiny Committee dated 6 February 2019 invalidating the caste certificate issued to the Petitioner on 24 June 1977 by the Tahsildar as belonging to Thakar Scheduled Tribe.

3. On 17 September 1991, the Petitioner joined the services of Respondent No.3 –Municipal Corporation as a watchman in the reserved category of Scheduled Tribe. He has now retired on superannuation on 31 December 2017.

4. The Petitioner's caste certificate was sent for verification to Respondent No.2-Scrutiny Committee by his employer. The Vigilance Cell enquiry was conducted. The documents collected during the field visit were placed on record. The Petitioner submitted evidence in support of his caste claim. The Petitioner was given an opportunity to file reply to the Vigilance Cell Report. The Scrutiny Committee, after considering the material on record, concluded that the documentary evidence produced by the Petitioner does not support the caste claim of the Petitioner and the Petitioner has not shown affinity to the Thakar Scheduled Tribe. It was also stated that in view of the area restriction, only in particular region, Thakar community was recognized as Scheduled Tribe.

5. As regards the aspect regarding affinity test is concerned, in view of the decision of the Hon'ble Supreme Court in the case of *Mah. Adiwasi Thakur Jamat Swarakshan Samiti Versus State of Maharashtra and Others*¹, this ground taken in the impugned order does not survive. The Hon'ble Supreme Court in the said decision observed 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

¹ 2023 SCC OnLine SC 326

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. As regards the documentary evidence is concerned, the Vigilance Cell placed before the Scrutiny Committee a chart regarding school entries in respect of two persons, that is, Yashwant Narayan Thakar of 6 January 1915 as Marathe and Yashwant Narayan Suravashi of 18 April 1925 as Thakar. The Vigilance Cell has mentioned that both these persons as father.

7. We have seen the original register which is shown to us by the learned AGP where the names of two students' one after one are mentioned. These are two different students. The Petitioner in the reply to the Vigilance Cell Report has taken a stand that Yashwant Narayan Thakar is not his father, but it is Yashwant Narayan Suravashi.

8. We do not find any specific discussion on this aspect by the Scrutiny Committee. The Scrutiny Committee, in fact, referred to 1925 which is in respect of Yashwant Suravashi. The Scrutiny Committee then stated that though this entry of 1925 is of Thakar community, there is an entry of 1915 of Petitioner's father as "Marathi", the entry of 1925 is doubtful. But as pointed out earlier, the entry of 1915 is of Yashwant Narayan Thakar. If it was one student, as to how the entry in respect of two students appearing in one register is not considered by the Scrutiny Committee. In the chart reproduced in the impugned order, eleven persons were shown as the Petitioner's sisters, two persons were shown as the Petitioner's father and four persons were shown as relative.

9. It is clear that the evidence produced by the Petitioner has not been examined by the Scrutiny Committee in proper perspective and the reasoning is clearly vague. Each piece of evidence should have been considered with an appropriate degree of seriousness. It is not explained if the Petitioner has eleven sisters, it is not stated that they are cousin sisters.

10. In light thereof, we are of the opinion that the Scrutiny Committee has not considered the evidence in proper perspective and therefore, the Scrutiny Committee has committed a fundamental error. The impugned order is required to be quashed and set aside.

11. Accordingly, we dispose of the writ petition by quashing and setting aside the order dated 6 February 2019 passed by Respondent No.2- the Scrutiny Committee. The caste claim of the Petitioner stands restored to the file considering that the Petitioner has retired from services and pensionary benefits have been withheld. If the Petitioner makes a request for early disposal of the caste claim, then Respondent No.2- the Scrutiny Committee will consider the same sympathetically and make an endeavour to dispose of the same within a period of six weeks from the date order is uploaded.

12. The writ petition is accordingly disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)