

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

WRIT PETITION NO. 10590 OF 2016

Ram Pandurang Maske. ... Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

**WITH
WRIT PETITION (ST.) NO. 20895 OF 2018**

Saishri s/o Ram Maske and another. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

Mr.R.K.Mendadkar with Ms.Komal Gaikwad for
the Petitioner in WP-10590/2016.

Mr.S.C.Yeramwar for the Petitioner in WPST-
20895/2018.

Mr.B.V.Samant, Addl. G.P. with Mr.M.M.Pabale,
AGP for Respondent Nos.1 to 5 in WP-
10590/2016 and for Respondent Nos.1 and 2 in
WPST-20895/2018.

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

DATE : 2 April 2024.

P.C.:

The Petitioners in these petitions have challenged the
orders passed by the Scheduled Tribe Certificate Scrutiny Committee,

Konkan Division, Thane, invalidating their caste certificates. The Petitioner in Writ Petition No.10590/2016, Mr.Rama Pandurang Maske is the father of Mr.Saishree Maske and Ms.Poonam Maske, the Petitioners in Writ Petition (S.T.) No.20885/2018. These petitions being connected, having heard from time to time, are disposed of by this common order.

2. The Petitioner Rama Maske had applied for and was granted a caste certificate as belonging to Thakar Scheduled Tribe by the Deputy Collector, Sindhudurg, on 31 May 2001. Rama Maske was working with Respondent No.3, Commissioner of Sales Tax, and he retired from service on superannuation on 30 September 2013. Saishree Maske applied for and was granted a caste certificate as belonging to Thakar Scheduled Tribe by the Deputy Collector, Sindhudurg, on 31 May 2001. Saishree Maske was seeking an appointment for the post of Senior Clerk in the Co-operation Department. The caste certificates of both the Petitioners were referred to the Scrutiny Committee for verification. In both cases, a Vigilance Cell inquiry was carried out. The Petitioners submitted documents in support of their claim. Vigilance Cell also placed documents on record. The caste certificate of Rama Maske was invalidated by an order dated 30 November 2015, and the Respondent-Scrutiny Committee invalidated the caste certificate of Saishree Maske by an order dated 4 January 2018. Challenging these orders, both the Petitioners are before us.

3. In Writ Petition (S.T.) No.20895/2018 of Saishree Maske, the Division Bench, by way of an interim order dated 22 December 2023, taking note of the communication received from the employer where Saishree Maske had applied, directed the employer that the Petitioner's candidature should not be rejected for failure to produce caste validity certificate.

4. When both petitions came up on board on 23 January 2024, the Petitioner Rama Maske filed an additional affidavit placing on record that the Scrutiny Committee has granted caste validity certificates to Petitioner's niece, nephew and brother ranging from the year 2018 to 2021. The learned AGP had taken time to consider whether the Scrutiny Committee was apprised of the invalidation of the caste certificate of Rama Maske in 2015 when the validity certificates were issued thereafter to the Petitioner's relatives. The matter was adjourned from time to time.

5. Today, the learned AGP placed on record a copy of the show cause notice issued to those relatives who were granted caste validity certificates on the grounds that they had suppressed the invalidation of the Petitioner's caste certificate.

6. On merits, we have examined both the impugned orders. The Scrutiny Committee, in the case of both Petitioners, has accepted

the position that there are entries from the period prior to 1950 showing the entry of caste Thakar in respect of the Petitioner's relatives. However, the Scrutiny Committee has negated the claim primarily on the grounds of area restriction and affinity test.

7. The documentary evidence that was produced in support of the Petitioner has not been properly appreciated. As to how much emphasis can be given to the affinity test while deciding the caste claim in respect of Thakar community had come up for consideration of the Hon'ble Supreme Court in the case of *Maharashtra Adiwasī 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 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 on ascertaining whether the candidate has shown affinity to the scheduled tribe and even if the document produced by the candidate showed the entry of Thakur/Thakar, based on affinity test, the Scrutiny Committee would negate the claim. The Hon'ble Supreme Court in the case of *Maharashtra Adiwasī Thakur Jamat Swarakshan Samiti*, after considering the entire conspectus, recorded the conclusion in paragraph- 38 as follows:

“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”.

8. The above conclusion clearly states that the affinity test cannot be conclusive either way and must be considered along with all other material on record.

9. 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.

10. As a result, the impugned orders dated 30 November 2015 and 4 January 2018 passed by the Respondent- Scrutiny Committee have been quashed and set aside. The caste claims of the Petitioners are restored to the file of the Scrutiny Committee. The Scrutiny Committee will accordingly issue notice to the Petitioners to remain present on the stipulated date, set a timetable and, subject to earlier time-bound directions and urgent cases, will make an endeavour to dispose of caste claims at the earliest.

11. Since show cause notices are issued to the relatives of the Petitioner as above, the proceedings pursuant to the show cause notices will have to be and can be heard along with caste claims of the Petitioners, which are remanded. The learned counsel for the Petitioners submitted that as far as the Petitioner- Saishree Maske, is concerned, he is desirous of taking employment where he is selected, and by interim order, his claim is still retained. The learned counsel prays that this position be continued till the disposal of the proceedings by the Scrutiny Committee. The request made is reasonable. The learned counsel also submits that a time limit be fixed for the disposal of the proceedings before the Scrutiny Committee.

12. Since we would be directing that the position under the interim order be continued till the disposal of the proceedings, we

direct that the Scrutiny Committee, upon remand will endeavour to dispose of the proceedings within three months, subject to all procedural compliance and the Petitioners' co-operating with the enquiry.

13. Till the proceedings before the Scrutiny Committee upon remand are disposed of, the position as envisaged in the order dated 22 December 2023 passed in Writ Petition (St.) No.20895/2018 be continued.

14. Both the writ petitions are accordingly disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)