

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9273 OF 2021

Om Sanjay Chavan

...Petitioner

Versus

State of Maharashtra and Ors.

...Respondents

Mr. Rahul Kadam i/b Tejsweeta Bhosale for the Petitioner.

Mr. K.S. Thorat, AGP for the Respondent/State.

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

DATE : 11 JANUARY 2024

P.C. :

. Heard learned counsel for the parties. Perused record.

2. The Petitioner has filed this petition challenging the impugned order dated 9 December 2021 passed by Respondent No.2/ Schedule Tribe Certificate Scrutiny Committee, Pune Division, Pune (for short '**Scrutiny Committee**') in Case No. 109 of 2021, under which the Petitioner's tribe certificate has been invalidated.

3. The Petitioner is a student who was granted caste certificate as belonging to Thakar (Schedule Tribe). Respondent No.4 Educational Institute in which the Petitioner has sought admission,

sent the Petitioner's caste certificate for validation to the Respondent No.2 Scrutiny Committee vide its letter dated 23 January 2021. The Scrutiny Committee referred the matter to Vigilance Cell for inquiry, who submitted its report on 22 July 2021. After hearing the Petitioner, the Scrutiny Committee has passed the impugned order.

4. Learned counsel for the Petitioner submitted that the Scrutiny Committee has invalidated the tribe certificate without considering two pre-constitutional documents, viz. of his cousin grandfather Vithal Pitambar Chavan and great grandmother Rakhama Ko Pila Thakar. He submitted that the said two pre-constitutional documents are dated 10 July 1938 and 2 September 1947 respectively. He submitted that apart from not considering these important documents, the Scrutiny Committee has proceeded mainly on the basis of affinity test which is held against the Petitioner. Relying on the recent Judgment of the Hon'ble Supreme Court's in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti v/ s. State of Maharashtra and Ors.*¹, the learned counsel for the Petitioner submitted that the affinity test is no more a test to decide a caste claim and the same cannot be conclusive either way. He therefore submitted that the impugned order needs to be interfered with. The learned AGP, on the other hand supported the impugned order.

5. Perusal of the judgment of *Maharashtra Adiwasi Thakur Jamat*

1 2023 SCC Online SC 326

Swarakshan Samiti (supra) shows that three Judges Bench of the Hon'ble Supreme Court has clearly ruled that during inquiry before the Scrutiny Committee, affinity test cannot be considered as conclusive either way, and other material on record having probative value will have to be taken into consideration for deciding the validation claim. It is further clearly held by the Hon'ble Supreme Court that affinity test is not a litmus test to decide caste claim and is not essential part in the process of determining correctness of the caste claim, in every case.

6. Perusal of the impugned order shows that there is no discussion about the aforesaid two alleged pre-constitutional documents of the Petitioner's relatives. The impugned order apparently proceeds on the basis of the affinity test and vigilance report and discussion about caste validity certificate issued to Petitioner's 2 uncles and mother only.

7. In that view of the matter, we find it appropriate to remand the matter to the Scrutiny Committee for reconsideration. Hence, the following order is passed.

(i) The impugned order dated 9 December 2021 passed by Respondent No.2 Scrutiny Committee, is quashed and set aside. The Petitioner's case No. 109 of 2021 for validation of the tribe certificate, is restored to the file of Respondent No.2.

(ii) The Respondent No.2/Scrutiny Committee is directed to re-consider the matter with other material available on record apart from the affinity test, including the documents related to Petitioner's cousin grandfather and great grandmother as indicated above and pass appropriate order, within a period of 3 months, subject to other time bound directions.

(iii) This Court has not considered the Petitioner's caste claim on merits and the same shall be decided on its own merits in accordance with law and in light of the aforesaid judgment of the Supreme Court of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra).

10. Writ Petition is disposed of in the aforesaid terms.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)