

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 13652 OF 2022

Devendra Bharat Thakur. ... Petitioner.

V/s.

State of Maharashtra and others. ... Respondents.

Mr.R.K.Mendadkar with Ms.Komal Gaikwad for the Petitioner.

Ms.P.N.Diwan, AGP for Respondent Nos.1 and 2.

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

DATE : 26 April 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 15 November 2022 invalidated the caste of the Petitioner.

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

4. Before the Scrutiny Committee, the Petitioner had produced various documents. These were the documents in respect of school records of the Petitioner's grandfather, uncle grandfather which showed the entries of Hindu Thakur. Vigilance Cell enquiry was conducted and Vigilance Cell produced several documents on record. These documents included the school records of Petitioner's grandfather Jagannath Damodar Ahire and cousin great grandfathers Mahipati and Pundlik of the period when they were admitted in the school in 1917 and 1914 respectively, which showed entries as Thakur. Petitioner's grandfather's school record of 1938 showed entry as Hindu Thakur. The Scrutiny Committee also placed on record the Petitioner's father's school record which showed that he joined the school in 1975 with entry as Hindu Thakur. Series of documents were placed which showed entries of Hindu Bhat as well as Hindu Thakur in respect of Petitioner's aunts of the years 1929 and 1936 with entry as Hindu Thakur. Revenue entries in respect of Petitioner's some of the relatives showed the entries as Bhat.

5. The impugned order notices the evidence of both entries. After noticing these different entries of Bhat and Thakur, the Respondent- Scrutiny Committee, without any discussion as to the old school records in respect of Petitioner's grandfather, aunts and other closed relatives, only stated that though it is correct that there are entries in favour of the Petitioner, the claim cannot be ascertained only based on the documents and cultural affinity is of great significance.

6. So the position is that the Scrutiny Committee has not doubted the entries in favour of the Petitioner of pre-constitution period but focused mainly on the contrary entries on the premise that in any case documentary evidence cannot be conclusive as in the cases of Thakur tribe the cultural affinity is of importance than the documentary evidence.

7. 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 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

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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 Adiwasī Thakur Jamat Swarakshan Samiti's* decision, after considering the entire conspectus, recorded the conclusion in paragraph- 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”.

(emphasis supplied)

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.

8. 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.

9. In the result, the impugned order dated 15 November 2022 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 and, preferably, within a period of eight weeks.

10. Rule is made absolute in the above terms. Writ Petition is disposed of accordingly.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)