



Judgment

wp5663

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

WRIT PETITION No. 5663 OF 2021.

Anurag s/o Dattaraj Wankhade,
Age 18 years, Occupation - Student,
resident of Ganesh Nagari, Washim,
Taluq and District Washim.

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PETITIONER.

VERSUS

Schedule Tribe Caste Certificate Scrutiny
Committee, Amravati, Old By Pass
Chaprashipura, Amravati, Through
its Vice Chairman/Joint Commissioner.

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RESPONDENT.

Mr. A. Kalmegh, Advocate for the Petitioner.
Ms D. Sapkal, A.G.P. for the Respondent.

CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.

CLOSED FOR JUDGMENT ON
JUDGMENT PRONOUNCED ON

20.06.2024.
24.06.2024.

JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

Rule. Rule is made returnable forthwith and by consent of the learned Counsel for the parties and the matter is taken up for final disposal.

2. The petitioner claims to be belonging to 'Thakur' Scheduled Tribe which is enlisted at Sr.No.44 in the Constitution (Scheduled Tribes) Order, 1950. The Sub Divisional Officer, Karanja has issued a caste certificate dated 31.10.2019 of 'Thakur' Scheduled Tribe in favour of the petitioner. The petitioner was prosecuting his studies and for educational purpose his caste claim was forwarded to the respondent Committee for scrutiny and verification. The petitioner relied upon several pre-constitutional documents, as well as prior validity in the family. The Scrutiny Committee discarded the old documents by observing that they are not reliable, as well as the caste is not been referred as 'Thakur Scheduled Tribe' therein. The Scrutiny Committee also observed that the caste validity certificate issued in favour of cousin-cousin uncle namely Pramod

Rgd.

was rejected. The said rejection was challenged in Writ Petition No.3605/2004, which was also dismissed. The Committee also held that the petitioner failed in the affinity test and by citing several decisions the Committee rejected caste claim of the petitioner vide the impugned order dated 14.01.2021.

3. The learned Counsel appearing for the petitioner submits that the pre-independence documents furnished by the petitioner bears high degree of probative value to prove the caste claim, but, the said were sidelined. It is submitted that the caste validity was issued in favour of petitioner's cousin-cousin sister Sampada by virtue of order of the High Court, which was also produced before the Committee, however, the same was not considered. It is further submitted that though caste claim of Pramod was invalidated, a review petition in the matter is still pending. Moreover, while deciding the Writ Petition No.3605/2004 filed by Pramod, a bunch of writ petitions were decided, wherein there was no evaluation of pre-constitutional documents. Primely the petitioner has relied on pre-constitutional documents of his forefathers.

4. Per contra, the learned A.G.P. appearing on behalf of the respondent Committee submits that the caste claim of Pramod was rejected and the same was confirmed by this Court, and thus, the petitioner cannot claim validity on the basis of prior validity of Sampada, who is daughter of Pramod. It is submitted that the Committee has rightly declined to rely on the documents, as some entries are of Thakur Sadhu, which is not a scheduled tribe.

5. Perusal of the record indicates that petitioner has produced several documents in support of his caste claim. The petitioner particularly lay his hand on the birth extract of a male child born to petitioner's forefather Suryabhan. The said document of the year 1908 discloses the caste of Suryabhan as 'Thakur'. The petitioner then relied on the death certificate of Suryabhan of the year 1950. The Committee has declined those documents by suspecting about its genuineness. It is observed that Suryabhan's son was born in the year 1908, whilst in the year 1930 Suryabhan died at the age of 30 which is improbable. We have gone through the

death extract of Suryabhan where his age is mentioned in 'Moodi Script'. The petitioner has filed an affidavit explaining the said figure which denotes the age of Suryabhan as '50'. The said contention has not been countered by the respondent. Thus, the reason canvassed for rejection of pre-constitutional documents does not appear to be sound and proper.

6. The petitioner has filed school extract of his grand father Vishnu of the year 1948 which shows the entry of caste as 'Thakur'. The Committee has discarded this document by merely saying that the occupation of Vishnu's father was stated as 'business' and thus, he belongs to upper caste. The said reason assigned by the Committee is nothing but a guesswork, which cannot be accepted.

7. The petitioner has relied on the decision of Supreme Court in case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti .vrs. State of Maharashtra and others – 2023 [2] Mh.L.J. 785**, to contend that pre-constitutional documents showing caste bears high probative value. There is no reason to discard those documents

as prior to 1950 there were no reservations provided to the Tribes included in the Scheduled Tribe Order. Besides that the petitioner lays his hand on the caste validity certificate of his cousin-cousin sister Sampada. Petitioner has also produced copy of order passed by this Court on 24.01.2011 in Writ Petition No.9026/2010 showing that by virtue of said order, caste validity was issued in favour of Sampada. The petitioner has also produced documents to show that the said caste validity certificate was produced before the Committee, however, the same was not considered at all. On careful examination, we find that there is no whisper of said caste validity in the entire order. It reveals that the Committee was much swayed by rejection of caste claim of Sampada's father namely Pramod, and the order passed in Writ Petition No.2605/2004, by which caste claim of Pramod was rejected.

8. The learned Counsel appearing for the petitioner would submit that Pramod has filed a review petition bearing Misc. Application No.490/2019, which is under consideration. Besides that, it is submitted that while deciding a bunch of petitions, without

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considering the pre-constitutional documents, caste claim of Pramod was declined, and therefore, it cannot be considered. The learned Counsel for the petitioner has relied on the decision of this Court in case of **Rushikesh Madhukar Chavan .vrs. Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati – 2022 [2] Mh.L.J. 136**, wherein this Court was confronted with a similar situation. In said case also caste claim of applicant's relative namely Vijay was rejected by this Court while deciding bunch of petitions by common order. We have gone through the common judgment delivered by this Court on 01.08.2018. Existence of pre-constitutional documents have not been considered in the said decision. Since the claim of petitioner's cousin-cousin uncle Pramod was rejected, on that premise we cannot discard the pre-constitutional documents which have been tendered for our consideration.

9. Though the learned A.G.P. made a faint attempt to contend that the genealogy supplied by the petitioner does not contain name of Sampada, however, the Committee has relied on the caste claim of father of Sampada namely Pramod, therefore, the said

ground no longer survives. It is required to be noted that the caste claim of Sampada was validated by this Court way back in the year 2011, which is not challenged further.

In view of the decision rendered in the case of **Apporva Nichale .vrs. Divisional Caste Certificate Scrutiny Committee – 2010 [6] Mh.L.J. 401**, the said prior validity in the family needs to be considered unless a case of fraud or otherwise is made out. The pre-constitutional documents are having high probative value. The Committee has not doubted the other documents, though one document is doubted i.e. death extract of Suryabhan, however, the reason recorded for said purpose is not proper.

10. The Police Vigilance Cell has not collected any adverse documents. Considering the old record and prior validity, in our view the reasons recorded by the Committee for rejection of caste claim of the petitioner are untenable. Rather the Committee has passed a stereotype order by referring to several decisions, dehors its applicability. In view of above, we proceed to pass the following order.

ORDER

- (i) Writ Petition is allowed.
- (ii) The impugned order passed by the respondent - Schedule Tribe Caste Certificate Scrutiny Committee, Amravati dated 14.01.2021 is hereby quashed and set aside.
- (iii) The caste claim of petitioner pertaining to 'Thakur' Scheduled tribe is held to be valid. The respondent Scrutiny Committee is directed to issue caste validity certificate in favour of the petitioner within a period of two weeks.
- (iv) In the meantime, the competent/concerned Authority to act upon copy of this judgment.
- (v) Rule is made absolute in aforesaid terms, with no order as to costs.

JUDGE

JUDGE