



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

WRIT PETITION NO.1467 OF 2023

Ashok s/o Narayan Tayade,
Aged about 53 years,
Occupation – Service,
R/o Sagad, Post – Nimba, Tahsil-
Balapur, District – Akola.

.... PETITIONER

VERSUS

- 1) Scheduled Tribe Certificate Scrutiny
Committee, Amravati, District -
Amravati, through its Deputy Director/
Member Secretary.
- 2) Additional Police Commissioner,
Protection and Security, 28, Vaju
Kotak Marg, Mumbai – 400 001.
- 3) Commissioner of Police,
Bruhanmumbai, DN Road, Opp.
Crawford Market, Crawford Market,
Dhobi Talao Fort, Mumbai – 400 001,
Maharashtra.

.... RESPONDENTS

Mr. R.D. Karode, Counsel for the petitioner,
Mr. H.R. Dhumale, A.G.P for the respondents/State.

CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.

DATE : 19th DECEMBER, 2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

Heard. **RULE.** Rule is made returnable forthwith. Heard finally
with consent of the learned Counsel for the parties.

2. The petitioner challenged the order dated 28-12-2022 passed by respondent No.1-Scheduled Tribe Certificate Scrutiny Committee, Amravati (for short, '*the Committee*'), thereby rejecting the petitioner's claim that he belongs to the '*Thakur*' Scheduled Tribe.

3. The petitioner claims that he belongs to the "*Thakur*" Schedule Tribe. On 20-04-1988, the Executive Magistrate, Balapur, issued a Caste Certificate in his favour. Based on the Caste Certificate, he was appointed as a Police Constable vide appointment order dated 15-12-1990.

4. In 2010, the Caste Certificate of the petitioner was forwarded to respondent No.1-Committee by respondent No.2-Additional Police Commissioner, Protection and Security, Mumbai, for verification along with the documents. The Committee was dissatisfied with the documents produced by the petitioner and, therefore, forwarded the proposal of his caste claim to the Vigilance Cell for detailed enquiry. The Vigilance Cell has thoroughly enquired into the matter and submitted its report to the Committee on 08-01-2019, observing that the petitioner failed to satisfy the affinity test and was hit by the area restriction imposed by the Parliament. Since the vigilance cell report was not in consonance with the claim of the petitioner, the Committee issued a show cause notice to the petitioner and called upon him to explain the adverse observations about the affinity test and area restriction found during the vigilance cell

enquiry. The petitioner appeared before the Committee and submitted his explanation.

5. Mr. Ram Karode, learned Counsel for the petitioner, vehemently contended that the petitioner, in support of his claim, has produced eighteen documents; out of them, two documents are from the pre-constitutional era and pertain to his grandfather for the years 1913 and 1932 wherein his caste was recorded as '*Thakur*' and other documents also demonstrate that he and his ancestral belong to the '*Thakur*' caste. However, the Committee, without considering those documents, erred in rejecting the claim of the petitioner on the ground that he failed to satisfy the affinity test and demonstrated that he is a resident of the area mentioned in the Presidential Order where the Thakur community resides.

To substantiate his claim, he has relied on the judgment of the Hon'ble Apex Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti V. State of Maharashtra, and Others* reported in *2023 SCC OnLine SC 326*. Therefore, he urges the petition to be allowed.

6. Per contra, Mr. H.R. Dhumale, learned Assistant Government Pleader, resisted the petition on the ground that the petitioner failed to satisfy the affinity test nor demonstrate that he is a resident of the area mentioned in the Presidential Order where the 'Thakur' community resides. Therefore, the observations made by the Committee are just and

proper, and no interference is required. Hence, he urges the dismissal of the petition.

7. We have appreciated the rival contentions of the learned Counsel for the parties and perused the impugned order and record. We have also gone through the original record produced by the learned Assistant Government Pleader and returned the same.

8. Having considered the rival contentions, the short point that arises for consideration is “*whether the dissatisfaction of the affinity test and area restriction would disentitle the petitioner to claim the Thakur caste.*”

9. At the outset, it appears that the petitioner, in support of his claim, has produced eighteen documents; out of them, two documents are of the pre-constitutional era, i.e. 16-11-1913 and 28-11-1932 pertain to his grandfather, wherein his caste was recorded as ‘*Thakur*’. The said documents are extracts of the Birth and Death Register. Notably, neither the Committee nor the Vigilance Cell has disputed those entries; therefore, there is no reason to disbelieve them. The other documents produced by the petitioner also demonstrate that he and his ancestral belong to the ‘*Thakur*’ community. The petitioner's claim was rejected only on the grounds that he failed to satisfy the affinity test and also failed to demonstrate that he is a resident of the area mentioned in the Presidential

Order where the '*Thakur*' community resides.

10. The Hon'ble Apex Court, in the case of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra), has categorically held that "*the document of the pre-constitutional era has got highest probative value than the subsequent documents*", "*likewise the affinity test cannot be termed as a litmus test*". It is further observed that *the area restriction is no longer in force and has been removed*. Therefore, in our opinion, the case in hand is squarely covered by the mandate laid down in the case of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra).

11. As a result, in view of the mandate of the Hon'ble Apex Court, the finding recorded by the Committed that the petitioner failed to satisfy the affinity test and demonstrates that he is a resident of the area mentioned in the Presidential Order where the Thakur community resides, cannot be sustained in the eyes of the law and same is liable to be set aside. On the contrary, it appears that based on the oldest pre-constitutional era entries/documents, the petitioner established that he belongs to the '*Thakur*' Scheduled Tribe and, therefore, entitled to a Validity Certificate.

12. In the wake of the above, we deem it appropriate to allow the present petition and pass the following order.

- (i) The impugned order dated 28-12-2022 passed by respondent No.1-Committee is hereby quashed and set aside.
- (ii) It is hereby declared that the petitioner belongs to the '*Thakur*' Scheduled Tribe.
- (iii) Respondent No.1-Committee is directed to issue the Validity Certificate in favour of the petitioner within a period of four weeks from the date of production of a copy of this judgment.

13. Rule is made absolute in the above terms. No order as to costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

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