



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

WRIT PETITION NO. 2097 OF 2022

Gopal S/o Suresh Bansod Aged about 19 years, Occ. Student, R/o – Mukkam Post, Chikhali, Taluka – Risod, Dist. Washim	}	.. Petitioner
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Versus

The Vice-Chairman / Member-Secretary of Scheduled Tribe Caste Certificate Scrutiny Committee, Chaprashipura, Amravati	}	.. Respondent
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WRIT PETITION NO. 5827 OF 2022

Pooja D/o Ganesh Bansod Aged about 22 years, Occ. Student, R/o – Mukkam Post Chikhali, Taluka – Risod, Dist. Washim	}	.. Petitioner
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Versus

The Vice-Chairman/Member Secretary Scheduled Tribe Caste Certificate Scrutiny Committee, Chaprashipura, Amravati	}	.. Respondent
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Ms. Himani Kavi with Ms. Preeti Rane, Advocates for petitioner.

Mr. N.S. Rao, Assistant Government Pleader for respondent.

CORAM : NITIN W. SAMBRE AND
ABHAY J. MANTRI, JJ.

RESERVED ON : 20/06/2024

PRONOUNCED ON : 22/07/2024

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

Rule. Rule made returnable forthwith. Heard finally,
 by consent of the learned counsel appearing for the parties.

(2) The challenge is raised to the order dated 03/01/2022 passed by the respondent Caste Scrutiny Committee (for short- "*the Committee*"), whereby the tribe claim of the petitioners came to be negated by a common order. The petitioners are in blood relation and as such, both the petitions are disposed of by this common judgment.

(3) On 06/03/2018 and 14/05/2018, petitioners Gopal and Pooja obtained caste certificates respectively, that they belong to '*Thakur*', Scheduled Tribe. Both have forwarded their caste certificates and relevant documents to the Committee for verification.

(4) The Committee was dissatisfied with the documents and forwarded them to the Vigilance Cell for a detailed inquiry. Accordingly, the Vigilance Cell submitted its report to the Committee. The Committee, after scrutinizing the said report and documents on record, by the impugned common order rejected their Tribe's claims. Hence, the petitioners have filed this petition.

(5) Ms. Himani Kavi, learned Counsel for the petitioners, vehemently argued that the petitioners in support of their claim had produced as many as 31 documents; out of which 04 documents from 1938 to 1944 are of pre-constitutional era pertains to their grandfather

and great-great grandfather, wherein their caste is shown as '*Thakur*'. So also, in the rest of the documents, their caste is shown as '*Thakur*'. However, without considering these oldest documents, the Committee rejected the Tribe's claims as the petitioners failed to prove the affinity test and demonstrate that they reside in the area mentioned in the order where the '*Thakur*' community resides. Therefore, the learned Counsel canvassed that as per the law laid down by the Apex Court and this Court, 'the affinity test cannot be termed a litmus test', so also area restriction was removed. Therefore, she urged to allow these petitions.

(6) As against this, the learned Assistant Government Pleader Mr. Rao, resisted the petition on the grounds that the petitioners failed to substantiate their claims as of '*Thakur*', Schedule Tribe and were also unable to prove the affinity test. Therefore, he urged that passing of the impugned order is just and proper, and no interference is required in it.

(7) We have considered the rival contentions of the learned Counsel for the parties and perused the record.

(8) At the outset, it is revealed that the petitioners to substantiate their claims, filed 31 documents on record, out of which 04 documents are pre-constitutional era documents from 1938 to 1944 pertaining to their great-grandfather and great-great grandfather, wherein their caste is shown as ‘*Thakur*.’ Neither the Vigilance Cell nor the respondent Committee has disputed the entries made in those documents; therefore, there is no reason to discard these documents. It is pertinent to note that those documents are school, revenue, and birth and death register records from the pre-constitutional era. Therefore, they have more probative value than other documents.

(9) It seems that only on the grounds of affinity test and area restriction, the claim of the petitioners was rejected. The Hon’ble Apex Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others AIR 2023 SC 1657* has held that “*the pre-independent era documents have more probative value*”. Likewise, the “*affinity test cannot be termed as a litmus test*”. In addition, it is observed that “*the area restriction is removed*.” As a result, in view of the above observations, in our view the rejection of the claim of the petitioners only on the said ground cannot be sustained in the eyes of the law and liable to be set aside.

(10) Thus, it is evident that the pre-constitutional era documents depict the caste of the ancestors of the petitioners as 'Thakur'. As such, once it is held that the petitioners have discharged their burden, this Court is required to accept the evidence that the petitioners brought on record. This demonstrates that the entry of '*Thakur*' has existed since 1938. Hence, they are justified in claiming entitlement to such a status.

(11) In this background, we deem it appropriate to allow these writ petitions and pass the following order:-

ORDER

1. The Writ Petitions stand allowed.
2. The impugned order dated 03/01/2022 passed by the respondent Committee is hereby quashed and set aside.
3. It is hereby declared that the petitioners belong to '*Thakur*,' Scheduled Tribe and are entitled to get such validity certificates.
4. The respondent Committee is directed to issue validity certificates in favour of the petitioners within four weeks from the date of production of the copy of this Judgment.

(12) Rule is made absolute in the above terms. No costs.

[Abhay J. Mantri, J.]

[Nitin W. Sambre, J.]