



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

Writ Petition No.2711 of 2022

Ramhari S/o Baburao Chavhan and others Versus The State of Maharashtra and others

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.C. Yeramwar, Counsel for Petitioners.

Ms Tejwar Khan, Assistant Government Pleader for Respondent Nos.1 to 3.

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

DATE : 18th MARCH, 2024

1. Heard.

2. The challenge raised in this petition is to the order dated 4-3-2022 passed by the respondent No.2-Caste Scrutiny Committee, whereby the caste claim of the petitioners as that of belonging to 'Thakur' Scheduled Tribe came to be rejected.

3. The petitioner No.1 is the father of the petitioner Nos.2 and 3. All these three petitioners, based on their respective caste certificates issued by the Sub-Divisional Officer, Washim, approached the respondent No.2-Committee for issuance of validity certificate. Alongwith the caste claim and the affidavit, the petitioners have submitted in all 39 documents. Having noticed that in some of the documents caste is not mentioned, the matter was referred to the Vigilance Cell. The Vigilance Cell accordingly conducted a home enquiry and submitted its report dated 26-6-2019 thereby placing on record the entries in relation to the persons which are of 1956, 1958 and 1960 as that of belonging to 'Marathe'/'Maratha'. These three persons in regard to whom the Vigilance Cell has brought on record of the Committee the details were allegedly great grandfather and cousin uncles. The petitioners were thereafter served with a show cause notice alongwith the report of the Vigilance Cell and in response to the same, they had submitted their reply to the respondent No.2-Committee on 22-12-2021 stating therein that these three persons are not their blood relatives.

4. The Committee thereafter adjudicated the claim of the petitioners for issuance of validity certificate and passed the impugned order rejecting the same. As such, this petition.

5. The learned counsel for the petitioners has made two-fold submissions – (a) that in support of the tribe claim, the documents produced on record depict that all the ancestors of the petitioners belonged to ‘Thakur’ and such entries could be noticed in the record which was existing prior to the Independence era and will have more evidentiary value, and (b) that the Committee has not dealt with the issue so also the objection raised by the petitioners about these adverse entries in relation to alleged great grandfather and cousin uncles, having denied blood relations.

6. The learned counsel for the petitioners would claim that in the aforesaid background, it was for the respondent-Committee to not only deal with the issue so also the objection raised by the petitioners to the Vigilance Cell report but also to record a specific finding as to why the evidence which was in existence prior to the Independence era was rejected.

7. As against above, the learned Assistant Government Pleader for the respondent Nos.1 to 3 would support the order passed by the respondent-Committee based on the Vigilance Cell report and the findings recorded. The learned Assistant Government Pleader would urge that the petitioners have failed to satisfy the affinity test.

8. We have considered the submissions of the learned counsel for the parties.

9. In support of the tribe claim, the petitioners have produced in all 39 documents. The oldest document on which the petitioners have placed reliance is of 8-12-1919 in relation to the great grandfather- Naru Thakur. The said entry is of a daughter being born to said Naru who happens to be the great grandfather of the petitioner No.1. An entry to that effect about birth of a female child to Naru is mentioned in the revenue record. Similarly, another

document of March 1927, which is in relation to the cousin grandfather of the petitioner No.1, speaks of the revenue entry about death. The other entry of 14-3-1944 in relation to Narayan Kadtuji, great grandfather of the petitioner No.1, reflects mention of 'Thakur' in the sale-deed.

10. All these pre-constitutional entries were further carried forward in another 35 documents which were part of the record of the scrutiny produced by the petitioners.

11. The Committee may be justified in calling for the Vigilance Cell report in the matter, however the Vigilance Cell has noticed three adverse entries in relation to such persons, namely Kadtuji, Waman and Tukaram of 1956 to 1960. The said entries were pertaining to such relations of the petitioners, as has been alleged by the Committee, namely great grandfather and cousin uncles. The petitioners while responding to the Vigilance Cell report have categorically come out with a case of denial of blood relations with the said persons.

12. In such an eventuality, the least that was expected of the Committee was to record a finding as to the objection which is raised by the petitioners of denying the relationship with these persons about whom the Committee has made available the adverse entries. The perusal of the impugned order does not reflect that the stand taken by the petitioners about denial of relationship with these three persons, the details of whom were supplied by the Scrutiny Committee, has been looked into and dealt with. The Committee has rather formed a basis on the aforesaid adverse material, even though the same is said to be not related to the petitioners, to reject the tribe claim of the petitioners.

13. Since 1919, as is discussed hereinabove, there is a consistency in the entries in relation to caste/tribe of the petitioners and their relations of belonging to 'Thakur', which is not disputed.

14. While brushing aside such old entries of 1919 onwards, the least that was expected of the Committee was to furnish sound and good reasons to overlook

the evidence which was brought on record by the petitioner, which is having more probative/evidentiary value.

15. The perusal of the impugned order depicts that the Committee so as to avoid the adjudication of the claim of the petitioners as regards denial of relationship with these undisputed entries has evaded to record the findings and also fail to consider the entries which are undisputed, namely 'Thakur', which are of 1919 onwards, and effect of same on the claim of the petitioners.

16. The respondent-Committee has also negated the claim based on the failure of the petitioners to satisfy the affinity test. The Apex Court time and again has observed that the affinity test cannot be termed as a litmus test to negate the claim, particularly when the pre-constitutional era entries reflect the caste in relation to which validity is claimed.

17. That being so, we are left with no other option but to quash and set aside the impugned order passed by the Committee, as the Committee cannot negate the claim of the petitioners on such documents, which are about the alleged relatives who have no blood relations with the petitioners in view of the denial expressed by them and also the failure of the petitioners to satisfy the affinity test.

18. That being so, the impugned order dated 4-3-2022 passed by the respondent No.2-Caste Scrutiny Committee is hereby quashed and set aside.

19. In view of existence of the consistent entries of 'Thakur' in the record of the petitioners, we deem it appropriate to declare the petitioners as belonging to 'Thakur' Scheduled Tribe. We direct the respondent No.2-Committee to issue such certificate in favour of the petitioners within a period of four weeks from the date of production of this order.

20. The petition is allowed in the aforesaid terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

LANJEWAR