



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

WRIT PETITION NO.1966/2018

Sumit S/o Suresh Geete,
aged 33 Yrs., Occ. Service,
R/o EWS 85, Darshan Colony,
Nandanwan, Nagpur.

... Petitioner

- Versus -

1. The Scheduled Tribes Certificate
Scrutiny Committee, through its
Member Secretary, Chaprashipura,
Amravati.

2. The State of Maharashtra,
through Secretary, Department of
Tribal Welfare, Mantralaya,
Mumbai 400 032.

... Respondents

Mr. R. S. Parsodkar and Mr. P.R. Parsodkar, Advocates for the
petitioner.

Mr. N.S. Rao, Assistant Government Pleader for respondent
Nos.1 and 2.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
CLOSED FOR JUDGMENT ON: 12.11.2024.
JUDGMENT PRONOUNCED ON: 26/11/2024.

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Rule. Rule made returnable forthwith. Heard finally

with consent of the learned Advocates for the parties.

2. The petitioner has challenged the order of invalidation of his tribe claim passed by respondent No.1 Committee of belonging to 'Thakur' Scheduled Tribe on the ground of affinity test on 1.3.2018.

3. The petitioner belongs to 'Thakur' Scheduled Tribe which is enlisted at Serial No.18 of the Constitution Order. The petitioner had filed total 20 documents in support of his tribe claim, out of which 10 documents were of pre-independence era. The documents which were filed by the petitioner consist (i) mark sheet of the grandfather of the petitioner of year 1929, (ii) the birth extract of grandfather where the caste is recorded as Scheduled Tribe on 30.12.1940, (iii) the death certificate of Sakhubai dated 10.5.1947 who is the petitioner's grand-mother, (iv) sale deed dated 15.6.1916 and (v) the school leaving certificate of uncle of petitioner Prabhakar Vitthalrao Geete dated 15.7.1953.

4. On 26.6.2006 the tribe claim of petitioner was invalidated on the ground of affinity test against which the petitioner had filed the Writ Petition bearing No.3670/2006. This Court had allowed the petition and remanded the matter to the Scrutiny Committee for its decision in accordance with law and thereafter respondent No.1 Committee decided the tribe claim after a long time in the year 2018 and rejected the tribe claim of the petitioner.

5. Learned Advocate for the petitioner has stated that though the petitioner had filed on record 20 documents which show that the petitioner belongs to 'Thakur' Scheduled Tribe the Scrutiny Committee has not considered 10 documents of pre-independence era which have higher probative value. The Police Vigilance Cell arrived at a totally incorrect conclusion that the caste, customs and tradition of petitioner do not have any resemblance with 'Thakur' Scheduled Tribe and, therefore, arrived at a conclusion that the petitioner is not a Scheduled

Tribe. It is submitted that the vigilance report and the impugned order passed by respondent No.1 Committee is totally illegal and liable to be quashed and set aside.

6. Learned Assistant Government Pleader for respondent No.1 has filed reply and denied the contents in the petition stating that in documentary record of the petitioner entries as 'Thakur' were found which were in existence as tribe as well as surname. The respondent Committee after considering the documents and the evidence on record has found that those entries are not related to 'Thakur' Scheduled Tribe. The order passed by the Committee is self-explanatory. Hence, he has prayed to dismiss the petition.

7. Heard both sides and perused the record.

8. This is the second round of litigation of invalidating the tribe claim of the petitioner as 'Thakur' Scheduled Tribe.

Initially the tribe claim of the petitioner was rejected on the ground of affinity. The reason given by the respondent Committee is that the tribe claim of the mother of the petitioner was invalidated on the ground of affinity and as per her statement the tribe claim of the petitioner does not match with the custom and traditions of the Scheduled Tribe. The main reason for rejecting the tribe claim of the petitioner is the affinity test.

9. In the recent judgment of the Hon'ble Apex Court in the case of Maharashtra Adiwasī Thakur Jamat Swarakshan Samiti (supra), it is held that the affinity test is not a litmus test to decide the tribe claim. It is further held as under:-

“The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. On the other hand, a person may not belong to the

particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, the affinity test cannot be applied as a litmus test. Question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with the material produced by the applicant.”

10. As per the aforesaid judgment, if the Scrutiny Committee is not satisfied with the documents filed by the petitioner then only vigilance report about the affinity test can be conducted.

11. In the case in hand, the petitioner has filed documents prior to independence in which the tribe is mentioned as ‘Thakur’. The petitioner has also relied on family tree to prove that all the documents placed on record are of his blood relatives, grandfather and father. While considering the documents respondent No.1 Committee has stated that though pre-independence documents are placed on record the entry is mentioned as ‘Thakur’ and not as Scheduled Tribe. The Scrutiny

Committee has observed that there are many castes of surname of Thakur and many people are taking advantage of the similarity of surname Thakur. Though the documents produced on record depicts entry as 'Thakur', nowhere it mentions that they belong to Scheduled Tribe, therefore, the respondent Scrutiny Committee has held that the said documents are of no use to draw conclusion in favour of petitioner.

12. On going through the record it appears that though the entry 'Thakur' is mentioned in pre-independence era documentary evidence, specific tribe is not mentioned. However, it also not mentioned that they belong to *Bhat* or any other caste of 'Thakur' community. The respondents have also given the list of the persons having similar name who have relinquished their claim as Scheduled Tribe. In in said cases, some of them, were found to be *Bhat* or *Kanjarbhat*. Only because of the same name, which the petitioners had mentioned while giving the statement that they belong to said community and some of them do not

belong to 'Thakur' Scheduled Tribe, the tribe claim of the petitioner cannot be rejected.

13. The guidelines of the Hon'ble Apex Court in Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti reported in **2023(2) Mh.L.J. 785** are as under:-

(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.

Thus, the caste claim cannot be rejected only on the ground of affinity test.

14. As per the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 (Act No.108 of 1976) which was published in the gazette on 20.9.2016 the area restriction of Scheduled Tribe in State of Maharashtra for the 'Thakur' community has been deleted and all members of 'Thakur' community are treated to be Scheduled Tribe. The petitioner has relied on the judgment in case of Jaywant Dilip Pawar V/s. State of Maharashtra and others reported in **2018 (5) ALL MR 975**.

15. In view of observations in foregoing paras, the tribe claim of the petitioner could not have been rejected on the

ground of affinity test only. Though the documents reflecting tribe entry of 'Thakur' are on record, they are not properly appreciated by respondent No.1. Hence the order passed by the Caste Scrutiny Committee is required to be quashed and set aside.

16. For the aforesaid reasons, the impugned order dated 1.3.2018 passed by respondent No.1 Scrutiny Committee is quashed and set aside.

The respondent No.1 Committee is directed to issue validity certificate to the petitioner within a period of three months from the date of production of this judgment.

Rule accordingly.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)