



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

Writ Petition No.2765/2022

Raju Shankarrao Khartadkar,
Aged about 57 years, Occ.-Service,
R/o "Dwarkai" near Chintamani School,
Mahalakshmi Nagar, Alodi, Wardha, District Wardha Petitioner.

Versus

1. Scheduled Tribe Caste Certificate Scrutiny Committee,
Amravati Division, Irwin Chowk, Amravati
through its Assistant Commissioner/Vice Chairman.
3. Directorate of Libraries,
Maharashtra State, Town Hall, Shahid Bhagat Singh Road,
Fort, Mumbai- 400023.
3. District Librarian,
Office of the District Library Officer,
Wardha, Dist. Wardha-442001. Respondents.

Writ Petition No.1120/2020

Shubham Raju Khartadkar,
Aged 27 years, Occ.-Service,
Residing at Mahalakshmi Nagar, behind Chintamani School,
Alodi, Tal. Wardha, Dist. Wardha Petitioner.

Versus

1. State of Maharashtra,
through its Tribal Development Department,
Mantralaya, Mumbai.
2. Scheduled Tribe Certificate Scrutiny Committee,
Amravati through its Member Secretary,

having its office at Amravati, Dist. Amravati.

3. Maharashtra State of Transport Corporation
through its General Manager (P & IR)
having its office at Vahatuk Bhavan, Nair Marg,
Mumbai Central, Mumbai- 400008.

3. Sub-Divisional Officer (Revenue),
Murtijapur, Dist- Akola. Respondents.

Mr. A.J. Gilda, Advocate for petitioner.
Mr. P.R. Raulkar, Advocate for petitioner (WP 1120/2020)
Mr. S.M. Ukey, Additional Government Pleader for respondent/State.

CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ
DATE : 27-02-2024

Oral Judgment (Per Nitin W. Sambre, J.)

Rule. Rule returnable forthwith. Heard finally by consent of learned Counsel appearing for the parties.

2. The challenge in both the petitions is to the order of rejection of the prayer of the petitioners for issuance of validity as that of belonging to 'Thakur' Scheduled Tribe.

3. In both these matters learned Counsel for the petitioners, have placed reliance on the orders delivered in Writ Petition No.2725/2022 decided on 21-12-2023 and in Writ Petition No.2726/2022 decided on very same date. It is the contentions of Mr. Gilda, learned Counsel appearing for petitioner in Writ Petition No.2765/2022 and Mr. Raulkar, learned Counsel appearing for petitioner in Writ Petition No.1120/2020, that the

petitioners have produced the documents in support of their tribe claim which speaks of the petitioners belonging to 'Thakur'.

4. According to them, the petitioners have also answered the affinity test. In such an eventuality, it is the contentions of the learned Counsel for the petitioners that in view of law laid down by the Division Bench of this Court in the matter of **Apoorv Nichale vs Divisional Caste Scrutiny Committee** reported in **(2010 (10) Mh.L.J. 401)**; once pursuant to the order of this Court, validity has been granted in favour of the blood relations, the Committee cannot have an escape of rejecting the claim in relation to the petitioners. A reliance is placed on the aforesaid orders dated 21-12-2023 delivered in both the petitions in relation to the blood relations of the petitioners.

5. As against above, learned Additional Government Pleader would submit that applicability of affinity test in the claim for grant of validity for 'Thakur' Scheduled Tribe was decided by this Court in the matter of **Shilpa Vishnu Thakur vs State of Maharashtra and others** reported in **(2009(3) Mh.L.J. 995)**. He has relied on the judgment in the said matter. In addition to above, his contentions are that the said view is further endorsed by the judgment of the Hon'ble Apex Court in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs State of Maharashtra and others** reported in **(2023(2) Mh.L.J. 785)**.

6. According to learned Additional Government Pleader, the law laid down by the Full Bench of this Court so also the Hon'ble Apex Court in the aforesaid two judgments is at all not delved upon by the Division Bench of this Court while deciding the issue vide impugned orders dated 21-12-2023.

7. In such an eventuality, the orders granting validity in favour of the blood relation cannot be relied on in view of the applicability of doctrine of *sub-silentio*. He would claim that by an order dated 21-12-2023, this Court has not recorded any finding on the issue of applicability and satisfaction of the affinity test.

8. Learned Additional Government Pleader so as to substantiate his contention has drawn support from the judgment of this Court in the matter of Shrinath J. Balwar vs Municipal Corporation of Greater Bombay and another reported in (1991 SCC OnLine Bom 449) particularly paragraph 6 and also judgment of Hon'ble Apex Court in the matter of State of U.P. and another vs Synthetics and Chemicals Ltd and another reported in (1991) 4 SCC 139, particularly paragraphs 40 and 41. As such, he would claim that once the petitioners who are father and son duo have failed to satisfy the affinity test, the Committee is justified in rejecting their tribe claims.

9. We have appreciated the aforesaid submissions.

10. We are required to deal with the first issue so as to what has prompted the Division Bench of this Court while passing the orders on 21-12-2023 in Writ Petition No.2725/2022 (Subhash Krushnarao Khartadkar vs Scheduled Tribe Caste Scrutiny Committee and two others and Writ Petition No.2726/2022 (Satish Bhaskarrao Khartadkar vs Scheduled Tribe Caste Scrutiny Committee and one another). Undisputed facts on record are that the petitioners in both these matters are in blood relation with the petitioners before us in the above referred Writ Petitions and same is not disputed by the either side.

11. While deciding the validity of the order of rejection of the claim for grant of validity as that of belonging to scheduled tribe, this Court in the aforesaid orders has recorded the submissions of learned Additional Government Pleader. In the said matter, the Court was sensitive to the fact that the documents reflect the entry 'Thakur'. However, it was claimed that the entry 'Thakur' does not further suffix with scheduled tribe. This Hon'ble Court thereafter considered the claim based on the law laid down by the Hon'ble Apex Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs State of Maharashtra and others reported in (2023(2) Mh.L.J. 785), which is wrongly mentioned as Maharashtra Adivasi Thakur Jamat Seva Mandal Vs State of Maharashtra and others reported in 2006(4) Mh.L.J. 521. This Court was sensitive to the fact that

the claim was rejected by the Committee based on the affinity test and has dealt with the said issue. The Court has accordingly formed an opinion that the issue is squarely covered by the judgment of the Hon'ble Apex Court in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (supra)

12. As such, it cannot be said that while dealing with the claim of blood relations in Writ Petition Nos.2725/2022 and 2726/2022, the Division Bench was not conscious of the fact about the non-clearance or non-satisfaction of the affinity test by the petitioners to the said petition.

13. Apart from above, the fact remains that the affinity test is held to be not a litmus test based on which the claim can be said to be rejected; particularly when the documents reflect the entry as that of 'Thakur' Scheduled Tribe.

14. As such it cannot be said, that the issue of affinity test was not looked into by the Division Bench while dealing with the claim of two blood relations of the petitioners and as such the doctrine of *sub-silentio* shall be attracted in the case in hand.

15. As far as the claim for grant of validity is concerned, the fact remains that the oldest documents produced by the petitioners were of the year 1927 and subsequent thereto, all the documentary entries demonstrate as that of petitioners belonging to 'Thakur'.

16. In such an eventuality, once the Court in Writ Petition Nos. 2725/2022 and 2726/2022 has ordered grant of validity to the blood relatives, the petitioners cannot be treated in differently merely because it is the contention of the learned Additional Government Pleader that the petitioners have not cleared the affinity test. It is not the case of the respondents that the petitioners have not answered the affinity test.

17. If we consider the case as has been placed before the Court by the Additional Government Pleader; his contentions are that once the affinity test is not cleared, in such an eventuality based on the judgment in the case of **Shilpa Thakur** (supra) which is approved by the Hon'ble Apex Court, the claim is liable to be rejected. If we consider the said argument viz; a party clears the affinity test but on documentary evidence is unable to satisfy the claim, it cannot be said that the Committee in such an eventuality is granting the validity in favour of the parties.

18. As such the said submissions, in our opinion, are liable to be rejected as the same suffer from fallacy.

19. As a sequel of above, once it is held that the petitioners' blood relatives are granted validity by virtue of orders dated 21-12-2023 delivered in Writ Petition Nos. 2725/2022 and 2726/2022, the petitioners in our opinion; who are father and son duo are definitely entitled for the grant of identical relief.

20. As far as the aforesaid two orders in relation to blood relations of the petitioners, thereby granting validity as that of belonging to Scheduled Tribe are concerned, admittedly the same are not subject matter of challenge before the Hon'ble Apex Court. As such, the respondent has already accepted the said rulings and thereby it can be inferred that the petitioners' blood relations are already declared to be 'Thakur' Scheduled Tribe.

21. That being so, we deem it appropriate to allow both these petitions.

22. We quash and set aside the impugned orders passed by the Committee rejecting the tribe claim of the petitioners.

23. We further direct the respondent Committee to issue validity in favour of the petitioners expeditiously.

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

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)