



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

Writ Petition No.3889/2022

Ganesh Narayan More,
Age 29 years, Occ.-Agriculturist,
R/o.-Wakad, Tq. Risod, Dist. Washim.

.... Petitioner.

Versus

1. Schedule Tribe Caste Certificate Scrutiny Committee,
Amravati Division, Old By Pass, Chaprashipura, Amravati,
through its Vice Chairman/Joint Commissioner.

2. The Collector, Washim.

3. Tahsildar, Risod, Dist. Washim.

4. Gram Panchayat Wakad, through its Secretary,
Tq. Risod, Dist. Washim.

.... Respondents.

Mr. A.P. Kalmegh, Advocate for the petitioner.
Mr. Marathe, AGP for the respondent nos.1 to 3.

CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ

DATE : 15-01-2024.

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

Heard.

2. **Rule.** Rule is made returnable forthwith.

3. The challenge is to the order dated 23-05-2022,
wherein the tribe claim of the petitioner as that of belonging to
"Thakur" Scheduled Tribe, came to be rejected.

4. The submissions of the learned Counsel for the petitioner are, that the petitioner was issued a caste certificate on 17-12-2020 which was used for the purpose of election. A reference was made for the purpose of issuance of validity, which is rejected.

5. Mr. Kalmegh, learned Counsel appearing for the petitioner would urge, that the petitioner has produced in all 14 documents in support of his tribe claim. According to him, the document viz- extract of Admission Register in relation to Rama Panduji reflecting caste 'Thakur' as on 06-04-1940 i.e. the petitioner's grandfather speaks of the petitioner belonging to 'Thakur' Scheduled Tribe community. Similarly, he has relied on the entry of 27-11-1943 in the Death Register of Pandu Ganpati (Thakur) petitioner's great grandfather. Apart from above, he has also relied on the document of Nivrutti Panduji, cousin grandfather of petitioner dated 29-06-1938, and document in relation to Kalawati Panduji, maternal aunt of father of the petitioner, reflecting 'Thakur' entry as on 21-06-1938 in the Admission Register. Sakharam Panduji, cousin grandfather of the petitioner, also belongs to 'Thakur' as could be noticed from the admission entry in the school record on 26-06-1930.

6. In the aforesaid background, having regard to the pre-Constitutional entries of 'Thakur' in relation to blood relation of the petitioner, it is claimed that the petitioner's claim for

validity ought not to have been rejected when; (a) the relationship with the aforesaid persons is not in dispute and (b) the affinity test cannot be termed as litmus test in view of 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 *AIR 2023 SC 1657*.

7. He would further urge that the affinity test cannot be termed as a litmus test particularly; when the pre-Constitutional documents are existing and placed on record so as to support the claim for issuance of validity.

8. Learned Assistant Government Pleader would oppose the prayer. According to him, even if the documents reflect the entry 'Thakur', the Committee is empowered to look into the same so as to find out whether the petitioner belongs to 'Thakur' Scheduled Tribe. He would further urge that such issue can be inquired only based on the affinity test so as to discharge the burden to that effect by the petitioner.

9. We have appreciated the submissions.

10. The above referred documentary entries of the year 1930 onwards speak of ancestors of the petitioner belong to 'Thakur' community as reflected in the various public documents such as; School Register, Death Entry etc., as such the Committee was of the view that the documents which are placed on record

depict the entry of blood relations of the petitioner as that of 'Thakur', which can be noticed from the documents of the pre-Constitutional era.

11. So as to find out whether the petitioner belongs to 'Thakur' Scheduled Tribe community, the Committee has applied the affinity test.

12. The Hon'ble Apex Court in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra), while dealing with the affinity test has held that "the matter is required to be referred to the Vigilance Cell at the level of enquiry before the Committee so as to find out whether the party like petitioner belongs to genuine scheduled tribe community. The Vigilance Cell is empowered to verify the knowledge of the applicant about the deities of the community, customs, rituals, mode of marriage, death ceremony etc. in respect of that particular Scheduled Tribe".

13. However, the Hon'ble Apex Court has held that by very applicability of the affinity test, it cannot be said that the said test can be said to be conclusive to find out whether the petitioner or a candidate belongs to 'Thakur' Scheduled Tribe. Similarly, the affinity test cannot be said to be a litmus test.

14. In the aforesaid background, if we consider the case of the petitioner, the fact remains that the petitioner's ancestors were holding entry as that of 'Thakur'.

15. The petitioner has furnished all the information in relation to his tribe claim including that of trades, customs which he has followed. If we appreciate the aforesaid contention on the part of the petitioner in the backdrop of the pre-Constitutional entries, it is worth to refer to the observations in para 20 of the judgment in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (supra), which reads as under :-

"20. It is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the case to Vigilance Cell. One of the tests is as laid down in the case of Kumari Madhuri Patil¹. It lays down that the documents of the pre-Constitution period showing the caste of the applicant and their ancestors have got the highest probative value. For example, if an applicant is able to produce authentic and genuine documents of the pre-Constitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations provided to the Tribes included in the ST order. In such a case, a reference to Vigilance Cell is not warranted at all."

16. In the aforesaid backdrop, rejection of the claim of the petitioner solely based on the affinity test particularly; when the petitioner has furnished the details about his caste/tribe and the Committee has referred the claim to the Vigilance Cell so as to find out whether the blood relations of the petitioner belong to

'Thakur' or not and having noticed that the pre-Constitutional entries are that of scheduled tribe, the Committee in our opinion has erred in rejecting the prayer of the petitioner.

17. In this background, we deem it appropriate to allow the present petition and pass the following order.

- (i) Writ Petition stands allowed.
- (ii) The impugned order dated 23-05-2022 is hereby quashed and set aside and declare that the petitioner belongs to 'Thakur' Scheduled Tribe.
- (iii) The respondent Committee to issue Caste Validity Certificate to the petitioner as that of he belongs to 'Thakur' Scheduled Tribes within a period of four weeks from the receipt of the copy of this order to it.

18. Rule is made absolute in above terms with no order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J)