



Judgment

wp4326.23

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

WRIT PETITION No. 4326/2023.

Shri Gajanan s/o Bhanudas Shinde,
Aged 51 years, Occupation – Service,
Assistant Teacher, resident of New
Khetan Nagar, Kaulkhed, Akola,
District Akola.

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PETITIONER.

VERSUS

1.The State of Maharashtra,
through its Secretary, Ministry
of Tribal Welfare Department,
Mantralaya, Mumbai - 32.

2.The Scheduled Tribe Caste
Scrutiny Committee, Amravati Division,
Amravati, through its Chairman,
Irwin Square, Amravati.

3.Shri Saraswati Shikshan Samiti,
Janefal, Tq. Mehkar, District Buldhana,
through its President.

4.Shri Saraswati Primary Ashram
School, Deulgaon Sakarsha, Tq. Mehkar,
District Buldhana, through its
Head Master.

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RESPONDENTS.

Rgd.

Mr. A.S. Mardikar, Senior Advocate with Shri D.P. Singh,
Advocate for the Petitioner.

Mr. N.R. Patil, A.G.P. for Respondent Nos.1 and 2.
Mr. S.G. Joshi, Advocate for Respondent Nos.3 and 4.

CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.

DATE : JULY 19, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule is made returnable forthwith and by consent of learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. The challenge raised in this petition is to the order dated 23.06.2023 passed by respondent no.2 – the Scheduled Tribe Caste Scrutiny Committee, Amravati (Scrutiny Committee), whereby the tribe claim of the petitioner as belonging to “Thakur Scheduled Tribe” came to be invalidated.

Rgd.

3. The petitioner was appointed on the post of Assistant Teacher in the year 1984 with the School run by respondent no.3 Management against a seat reserved for Scheduled tribe category. The Sub Divisional Officer, Akola has issued a caste certificate dated 13.04.2000 to the petitioner as belonging to 'Thakur Scheduled Tribe'. The Management has forwarded the proposal of the petitioner with necessary documents to respondent no.2 Scrutiny Committee on 30.09.2013 for scrutiny and verification and issuance of validity certificate. The Scrutiny Committee has enquired the tribe claim of the petitioner through Police Vigilance Cell. Being dissatisfied with the documentary evidence and on failure of the petitioner to clear the affinity test, his tribe claim came to be rejected vide order dated 24.12.2020.

4. Being aggrieved by the aforesaid order, the petitioner had approached this Court by filing Writ Petition No.1851/2021. It was brought to the notice of this Court that the Scrutiny Committee has failed to consider the oldest document of great grand father of

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petitioner Gyanba dated 13.01.1916. In view of the situation, this Court vide order dated 27.08.2021 remitted the matter back to the Scrutiny Committee for verification of said document and adjudication in accordance with law.

5. In turn the petitioner approached to the Scrutiny Committee. Once again the respondent Scrutiny Committee expressed its dissent about petitioner's tribe claim and declined to grant validity vide the impugned order dated 23.06.2023. The Scrutiny Committee has considered the documents tendered by the petitioner, however, on the premise of one adverse document, failure in affinity test and by considering the rejection of validities in the family, declined to accede to the petitioner's urge.

6. During the course of hearing the petitioner has produced certain pre-constitutional documents of the year 1909 and 1912. In view of that, this Court vide order dated 01.11.2023 directed the Scrutiny Committee to verify those documents and submit report, which report has been received. The learned Senior Counsel

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appearing for the petitioner would submit that though the petitioner has produced several pre-constitutional documents, however, by laying emphasis on one isolated adverse document, the Scrutiny Committee has rejected petitioner's tribe claim. Particularly our attention has been invited to the document at Sr.Nos. 12 and 13 mentioned in the impugned order to contend that these are the oldest pre-constitutional entries of Thakur Caste, which the Scrutiny Committee admittedly has not examined. In this regard, we have been taken through the report submitted by the Scrutiny Committee dated 04.04.2024, indicating that in pursuance of the directions of this Court, the old document dated 01.05.1909 and 13.04.1912 have been examined and it is found that there is entry of caste 'Thakur'.

6. The impugned order discloses that during vigilance enquiry an adverse birth entry dated 20.06.1910 of petitioner's grand father Gyanba mentioning caste as 'Marathe' was procured. Rather the said document weighed the Scrutiny Committee to lien against the petitioner's tribe claim. In this regard, the petitioner would contend that by filing reply to the vigilance report, the petitioner has

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specifically denied the relationship with said Gyanba. To substantiate said contention, petitioner has filed an affidavit of one Gajanan Kashiram Sarnaik, who claims to be relative of said Gyanba. The report submitted by the Scrutiny Committee dated 04.04.2024, also indicates that the said affidavit was duly sworn by Gajanan Sarnaik.

7. We have gone through the genealogy prepared by the vigilance cell [page no.53 of the petition], which discloses that Gyanba has only two sons namely Yeshwanta and Vithoba. Contextually we have gone through the adverse entry which speaks of a female child born to Gyanba and thus, it runs contrary to the genealogy, and supports the stand of the petitioner.

8. Apart from this, we have particularly examined the pre-constitutional documents tendered by the petitioner. Specific emphasis is laid on the document at Sr.No.12, which is a birth entry showing that Gyanba has a male child born in the year 1909 and entry no.13 equally says that Gyanba had another male child born on 13.04.1912. The report submitted by the vigilance cell during the

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pendency of this petition indicates that those entries were verified and were found to be correct indicating entry of Thakur caste. Besides that, the petitioner has produced school leaving certificate of his uncle Rangnath dated 01.08.1954, alongwith some other documents showing Thakur caste.

9. In the aforesaid background of the pre-constitutional entries of 'Thakur' about the blood relatives of the petitioner, validity ought not to have been rejected when the relationship with the aforesaid family members is not in dispute. Besides that, in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs State of Maharashtra and others - 2023(2) Mh. L.J. 785**, the Supreme Court in paragraph 20, has held as under :-

"20. It is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the case to the Vigilance Cell. One of the tests is as laid down in the case of Kumari Madhuri Patil'. 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."

In view of that the Committee was bound to consider the oldest document of the year 1909. However, it is apparent that though said document was tendered before the Committee, it was not considered. The impugned order bears a specific endorsement that the documents of the year 1909 and 1912 were produced during the course of hearing, but, they have been discarded. As referred above, during the pendency of this petition, the documents have been verified and found to be correct.

11. It is a settled law that the pre-constitutional documents and particularly the oldest document bears more probative value. Not only the petitioner has produced the oldest document of the year 1909, but, several other documents which equally bears the entry of Thakur caste, which needs to be considered.

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12. Though the impugned order of the Scrutiny Committee speaks about area restriction and failure in the affinity test, we may advert to the decision of the Supreme Court in case of **Jaywant Dilip Pawar vs State of Maharashtra and others - 2018(5) All MR 975 (SC.)**, wherein it has been held that the question of area restriction does not arise, as the same has been removed. Likewise, the question of affinity test is concerned in the case of **Anand vs Committee for Scrutiny and Verification of Tribe Claims and others – 2011 (6) Mh.L.J. 919**, wherein it has been held that the affinity test cannot be termed as a litmus test.

13. To the next, the Scrutiny Committee has taken a note that few validities in the family were rejected by this Court. In this regard, the learned Senior Counsel for the petitioner has submitted that said orders have been challenged before the Supreme Court, in which stay has been granted. In view of said submission, the rejection of validities in the family cannot be a ground, as the same are pending before the Supreme Court.

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14. In the aforesaid background, it is evident that the oldest documents of the year 1909 and 1912 bears entry of Thakur Caste of which genesis is undoubted. The petitioner's relationship has not been established with the isolated document of the year 1910 of one Gyanba. We take note that the oldest document has been verified during the pendency of this petition. In the circumstances we hold that the petitioner has succeeded in establishing that he belongs to 'Thakur Scheduled tribe' and pass the following order :

- (i) Writ Petition is allowed.
- (ii) The orders passed by the respondent no.2 Scrutiny Committee dated 23.06.2023 invalidating the tribe claim of petitioner is hereby quashed and set aside. It is declared that the petitioner belongs to "Thakur Scheduled Tribe". The respondent no.2 Scrutiny Committee is directed to issue validity certificate in favour of the petitioner accordingly within a period of four weeks from the date of uploading of this order.
- (iii) The respondent no.2 Scrutiny Committee is at liberty to

seek revival of this order, in case the claim of petitioner's cousin is turned down by the Supreme Court.

- (iv) Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE