



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

WRIT PETITION NO. 7262 OF 2022

Mangesh S/o Dattatray Ingale
Age 27 years, Occ.Service,
R/o At-Post – Partapur, Tah.Mehkar,
Distt.Buldhana

.. **Petitioner**

Versus

1. The Vice-Chairman/Member
Secretary, Scheduled Tribe Caste
Certificate Scrutiny Committee,
Chaprashipura, Amravati Division,
Amravati
2. The Joint-Director,
Divisional Agriculture Office,
Division Kolhapur, Near Gramsevak
Kasba Bawada, Kolhapur
3. The Taluka Agriculture Officer,
Mahabaleshwar, Distt. Satara

.. **Respondents**

Ms.Preeti Rane, Advocate for Petitioner.

Mr.S.M.Ukey, Addl. G.P. for respondent Nos.1 & 2.

CORAM : **BHARATI DANGRE &**
ABHAY J. MANTRI, JJ.

DATED : **OCTOBER 10, 2024**

ORAL JUDGMENT: (Per : **Abhay J. Mantri, J.**)

Rule. Rule is made returnable forthwith and heard finally,
with the consent of the learned counsel for the parties.

(2) The challenge is raised to the order dated 20/10/2022, passed by the respondent No.1 Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati (for short- '*the Committee*'), thereby invalidating the claim of the petitioner that he belongs to the "*Thakur*" Scheduled Tribe, has preferred this writ petition.

(3) The petitioner claims that he belongs to the "*Thakur*" Scheduled Tribe. Accordingly, on 05/04/2019, Sub-Divisional Officer, Mehkar issued a caste certificate in his favour.

(4) The petitioner, vide appointment order dated 26/09/2018, was appointed as 'Agriculture Sevak' against the post reserved for the Scheduled Tribes category. Accordingly, his caste certificate and relevant documents were forwarded to the Committee for verification. After completing two years as 'Agriculture Sevak', the petitioner should have been promoted to the post of 'Agriculture Assistant'; however, he could not be promoted due to not having a caste validity certificate.

(5) The Scrutiny Committee was dissatisfied with the documents submitted by the petitioner; they were forwarded to the Vigilance Cell for a detailed enquiry. The Vigilance Cell accordingly conducted an enquiry and submitted its report to the respondent No.1 Committee on 23/08/2021, observing that one adverse entry as "*Bhat*"

was found, contrary to the petitioner's claim. Based on said observations, the Committee issued a show-cause notice dated 07/09/2021 and asked the petitioner to explain the said adverse entry. Pursuant to the said notice, the petitioner submitted his explanation to the Committee on 18/01/2022. The respondent Committee, after considering the documents, the Vigilance Cell report and the explanation submitted by the petitioner, has observed that the petitioner failed to prove the affinity test to demonstrate that he belongs to the "*Thakur*" Scheduled Tribe and invalidated his claim.

(6) Learned Counsel Ms Preeti Rane, representing the petitioner, vehemently contended that the petitioner, in support of his claim, has produced fourteen documents, out of which three documents are from 1924, 1927 and 1936, pertaining to his great-grandfather and cousin great-grandfather wherein their caste has been recorded as "*Thakur*"; however, the Committee has not considered these documents and given undue importance to one adverse entry dated 05/09/1922 found during the Vigilance Cell enquiry about son born to one Tukaram, who has no concern with the family of the petitioner. The petitioner categorically denied his relationship with Tukaram in his explanation. However, the Committee has neither considered the explanation nor considered pre-Constitutional era documents and erred in holding that the petitioner failed to demonstrate his claim.

(7) Ms Preeti Rane, learned counsel, further argued that the Committee had rejected the petitioner's claim on the grounds of affinity test and area restriction. As per the mandate laid down by the Apex Court, "the affinity test cannot be termed as a litmus test and area restriction is removed", and therefore, findings given by the Committee in that regard are unsustainable in the eyes of the law. To buttress her submissions, she has relied upon the following decisions of the Apex Court and High Court:-

1. *Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Development and others* (1994) 6 SCC 241.
2. *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another vs. State of Kerala and another* (1994) 1 SCC 359.
3. ***Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others* 2010(6) Mh.L.J. 401.**
4. *Anand vs. Committee for Scrutiny and Verification of Tribe Claims and Others* 2011 (6) Mh.L.J. 919.
5. *Jaywant Dilip Pawar vs. State of Maharashtra and others* 2018(5) ALL MR 975 (S.C.).
6. *Motilal vs. Scheduled Tribe Certificate Scrutiny Committee* 2017 SCC OnLine Bom 9778.
7. ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and others* 2023 (2) Mh.L.J. 785.**

(8) *Per contra*, Mr. Ukey, learned Additional Government Pleader representing the respondent/State has strenuously opposed the claim of the petitioner contending that during the Vigilance Cell enquiry, one entry of 1922 pertains to one Tukaram was found, wherein his caste was recorded as "*Bhat*" and said entry is adverse to the claim of the petitioner. The Committee has rightly considered the said entry while passing the impugned order. Secondly, he has placed reliance on the Full Bench decision of this Court in the case of ***Shilpa Vishnu Thakur vs. State of Maharashtra and others 2009(3) Mh.L.J. 995*** and asserted that in case of verification of the claim of the candidate, who claims to be belonging to Scheduled Tribe, affinity test is of paramount consideration in determining the cast claim.

(9) He further placed reliance on the decision of this Court in the case of ***Dattatraya s/o Shriram Ingle vs. The Committee for Scrutiny and Verification of Tribal Claims, Amravati, and another*** in Writ Petition No.1614/2003 decided on 07/06/2016 and decision of the Apex Court in the case of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and others 2023 (2) Mh.L.J. 785*** and submits that the decision of the Apex Court relied upon by the petitioner are not helpful to him in support of his claim. He further canvassed that the petitioner failed to prove the affinity test.

Hence, he urged that the petitioner failed to prove that he belonged to the "Thakur" Scheduled Tribe.

(10) We have considered the rival contentions of the learned Counsel for both parties and perused the record, as well as decisions relied upon by the parties in support of their rival claims.

(11) At the outset, it appears that the petitioner, to substantiate his claim, has produced fourteen documents, out of which three documents of 1924, 1927 and 1936 pertain to his great-grandfather and cousin great-grandfather, wherein their caste has been recorded as "Thakur", those documents are an extract of the birth registers and revenue entries. Neither the Committee nor the Vigilance Cell has disputed those entries; therefore, there is no reason to disbelieve those entries. Thus, those entries categorically depict that the petitioner and his ancestors belonged to the "Thakur" Scheduled Tribe.

(12) It also reveals that while considering the tribe claim of the petitioner, instead of relying upon three entries, the Committee has erred in relying on the entry of 1922 recorded in the name of one Tukaram. This denotes that one son was born to Tukaram in 1922, and his cast was recorded as "Bhat". According to the Vigilance Cell and the Committee, the so-called Tukaram is the ancestor of the petitioner.

As against this, the petitioner, in his explanation, has categorically denied his relation with the so-called Tukaram.

(13) We have perused the said document/entry, which is an extract of the birth register, in which it has been recorded that the son was born to Tukaram, whose caste is recorded as "*Bhat*". In the entry, no surname of said Tukaram has been mentioned. The said entry is singular. On the contrary, in the explanation, the petitioner has categorically averred that so-called *Tukaram* has no nexus with his family because there cannot be any birth record of 1922 of his great-grandfather as the year of birth of his grandfather is 1925, and the birth year of his cousin grandfather is 1928 and therefore, submitted that no son was born to his ancestor Tukaram in the year 1922. Hence, he has categorically denied the said document; in that event, it would be incumbent on the Committee to substantiate their contention that said Tukaram is the ancestor of the petitioner, but except for the said document, the Committee has not collected any other adverse entry, document, or material to substantiate their contention.

(14) *Besides*, on perusal of the genealogy given by the petitioner, which has not been disputed by the Vigilance Cell or the Committee, it is evident that Tukaram is shown as the petitioner's great-great-grandfather. He had two sons, Sampat and Vithoba, and

one daughter.

(15) It further reveals from the birth extract entry of 1924 that the son was born to Vithoba, and the entry dated 18/12/1927 depicts that the son was born to Sampat. Vithoba and Sampat are both shown as sons of Tukaram, and in the years 1924 and 1927, sons were born to them; in such an eventuality how, the entry of 1922 denoting that the son was born to the great-great-grandfather Tukaram of the petitioner, which appears impossible. Therefore, said entry seems contrary to the record. Hence, we do not find substance in the contention of the learned Additional Government Pleader that the entry of 1922 pertains to the great-great-grandfather of the petitioner.

(16) Mr. Ukey, the learned Additional Government Pleader also emphasises that "*Thakur*" has different meanings, i.e., "Thakur" is a caste, a tribe, an Honorary title to high caste people, a title to Rajput, Maratha, and Kshatriya people, and "Thakur" is also a second name/title of "Bhat" and "Bramha-Bhat" caste people and therefore, he submits that as per the law laid down in the case of ***Shilpa Thakur*** (supra), the petitioner failed to prove the affinity test. As against, the petitioner has relied upon the decision of the Apex Court in the case of ***Maharashtra Adiwasi Thakur Jamat*** (supra) and submitted that "the affinity test cannot be termed as a litmus test and area restriction

is removed.” Likewise, the pre-Constitutional era documents have greater probative value than the subsequent documents, but the Committee has ignored the same.

(17) In the case of ***Shilpa Thakur*** (supra), the Apex Court in Civil Appeal No.2502/2022 has observed that people having the surname “*Thakur*” belong to both forward castes and various backward castes and also noted that in the case of a person having the surname “Thakur”, there may be evidence in the form of entry of the name of the caste as a Tribe or Scheduled Tribe in the land records, school or college records or any official records concerning the applicant or his ancestors. However, in the case in hand, the petitioner's surname is “Ingale” and not “Thakur”.

(18) In addition, perusing the pre-Constitutional era documents depicts that the caste of the ancestor of the petitioner has been recorded as “*Thakur*” and not as a surname. Moreover, the Apex Court in the case of ***Maharashtra Thakur Adiwasi Thakur Jamat*** (supra) has categorically held that “the affinity test cannot be termed as a litmus test”, and therefore, we do not find substance in the contention of the learned Additional Government Pleader that petitioner has failed to prove the affinity test. Likewise, the affinity test cannot be said to be conclusive in finding out whether the petitioner belongs to the “Thakur”

Scheduled Tribe or not. Furthermore, it is observed that area restriction is removed.

(19) Apart from the above, during the pendency of the petition, the petitioner has filed an additional affidavit dated 08/10/2024 on record contending that this Court in Writ Petition No.5650/2021 between **Shivam S/o Gajanan Ingle vs. Schedule Tribe Caste Certificate Scrutiny Committee** has declared that Shivam belongs to Thakur, Scheduled Tribe. The petitioner claimed that Shivam is in his blood relation, and therefore, Ms Rane contended that in view of the law laid down in the case of **Apoorva Nichle** (supra), the petitioner is entitled to get a validity certificate.

(20) On perusal of genealogy, the name of the father of Shivam, i.e. Gajanan, appears in the family tree as the cousin brother of the petitioner and Co-ordinate Bench of this Court in Writ Petition No.5650/2021 while considering the entry of 1922 showing the caste of his ancestor "*Bhat*" discarded the said document, as the petitioner therein has disputed the said entry and held that the petitioner therein belongs to the "*Thakur*" Scheduled Tribe.

(21) That being so, in our view, as per the dictum laid down in the case of **Apoorva Nichle** (supra), the Committee ought to

have granted a validity certificate in favour of the petitioner.

(22) In the backdrop above, the rejection of the claim of the petitioner solely based on the one document of 1922, affinity test and area restriction is not sustainable in the eyes of law, particularly since the petitioner has furnished three pre-Constitutional documents indicating his ancestor's caste as "*Thakur*", as well as the case of the petitioner is covered by the law laid down in the case of ***Apoorva Nichle*** (*supra*) and ***Maharashtra Thakur Adiwasi Thakur Jamat*** (*supra*). In our view, based on three pre-Constitutional era documents and a validity certificate issued in favour of the cousin brother of the petitioner, he is entitled to get a validity certificate.

(23) In the wake of the above, in our opinion, the dictum laid down in the decisions relied upon by the learned Additional Government Pleader is hardly of any use to him in support of his contentions, per contra the law laid down in the case of ***Maharashtra Adiwasi Thakur Jamat*** (*supra*) and ***Apoorva Nichle*** (*supra*) relied upon by the petitioner are applicable in the case in hand.

(24) As a result, it appears that the Committee has erred in rejecting the claim of the petitioner; therefore, the said order is not sustainable in the eyes of the law and liable to be set aside for the

aforesaid reasons, as such, we deem it appropriate to allow the present petition in the following terms :-

ORDER

- (i) The impugned order dated 20/10/2022 passed by respondent No.1 Committee is hereby quashed and set aside.
- (ii) The petitioner is declared to belong to the "Thakur" Scheduled Tribe.
- (iii) The respondent No.1 Committee is directed to issue a Caste Validity Certificate in favour of the petitioner within **four weeks** from receipt of a copy of this judgment.
- (iv) Rule is made absolute in the above terms. No order as to costs.

[ABHAY J. MANTRI, J.]

[BHARATI DANGRE, J.]

KOLHE