



728-J-WP-8388-22

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 8388 OF 2022

Vijaykumar S/o Gulabrao Thakur, Age : 48 years,
Occ. Service, R/o Ward No.8, Mapari Galli,
Tq. Lonar, Dist. Buldhana.

PETITIONER

VERSUS

1. Scheduled Tribe Caste Certificate Scrutiny Committee,
Amravati, Division, Old by pass Road, Chaprashipura
Amravati. Through its Vice Chairman/Jt. Commissioner,
2. Zilla Parishad Buldhana,
Through its Chief Executive Officer.
3. Education Officer (Primary),
Zilla Parishad, Buldhana.

RESPONDENTS

WITH

WRIT PETITION NO. 3289 OF 2023

Prasad S/o Sanjay Thakur, Age : 20 years, Occ. Student,
R/o Ward No.8, Mapari Galli, Tq. Lonar, Dist. Buldhana.

PETITIONER

VERSUS

Scheduled Tribe Caste Certificate Scrutiny Committee,
Amravati, Division, Old by pass Road, Chaprashipura,
Amravati. Through its Vice Chairman/Jt. Commissioner.

RESPONDENT

Shri A.P Kalmegh, Counsel for the petitioner in both the writ petitions.
Shri S.M. Ghodeswar, Assistant Government Pleader for respondent-State.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : JULY 12, 2024

Common Judgment : (PER NITIN W. SAMBRE, J.)

Writ Petition No.3289 of 2023 is not on Board. Taken on Board.

Since both these writ petitions arise out of the common impugned order, same are being decided by this common judgment. **RULE.** Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. In both these writ petitions, challenge is to the common order dated December 13, 2022 passed by the respondent-Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati Division, Amravati (for short, 'the respondent no.1-Committee') whereby the claim of the petitioners as that of belonging to 'Thakur' Scheduled Tribe came to be negated.

3. Shri Ankush Kalmegh, learned counsel appearing for the petitioners would urge that both the petitioners in support of their tribe claim produced pre-independence era documents which go back to 1916. He would invite attention of this Court to the birth and death entries in regard to a son born to Sitaram on November 03, 1916 who happened to be the direct blood relative of the petitioners. The entry of 1916 is almost 100 years old.

4. Similarly, the learned counsel would invite our attention to other pre-independence era entries of 'Thakur' in relation to the death of the great-grandfather in March-1943 so also school admission extract of Gulab dated July 29, 1944 to substantiate the claim. He would urge that the real sister of the petitioner in Writ Petition No.3289 of 2023 viz. Shraddha Sanjay Thakur is granted validity by the Scrutiny Committee at Aurangabad which is discarded by the respondent-Committee without recording any convincing reason. It is further submitted that since all the material placed on record depict the entry 'Thakur' Scheduled Tribe and the real sister of the petitioner in Writ Petition No. 3289 of 2023, is

holding the validity which fact is also reflected in the order impugned passed by the respondent-Committee, the petitioners are entitled for issuance of validity certificate as claimed.

The counsel for the petitioners would further urge that the validity issued in favour of Shraddha by the Scrutiny Committee at Aurangabad is discarded only on the ground that the said order is a non-speaking order. According to him, it is not open for the respondent-Committee to disbelieve the order of the other Committee by undermining the statutory authority of such Committee. As such he would claim that the impugned order is liable to be set aside and the petitioners are entitled to be issued the validity certificate.

5. As against above, Shri S. M. Ghodeswar, learned Assistant Government Pleader would strenuously urge that the contentions of the petitioners are contrary to the enquiry conducted by the Vigilance Cell. According to him, in the case in hand, it is necessary to demonstrate that the petitioners belong to 'Thakur' Scheduled Tribe and not 'Thakur' higher caste. So as to substantiate his claim, he would invite our attention to the provisions of State Reorganization Act, earlier settlement of 'Thakur' Scheduled Tribe community and findings of the respondent-Committee on failure of the petitioners to satisfy the affinity test. In this background, the Assistant Government Pleader would urge that the order of the respondent-Committee can be said to be justified. According to

him, the view taken is possible one which is based on the supporting reasons. As such, he seeks for dismissal of both the writ petitions.

6. At the outset, we need to observe that the admitted fact on record is the issuance of validity certificate by the Scrutiny Committee at Aurangabad in favour of Shraddha, real sister of the petitioner in Writ Petition No.3289 of 2023. In the impugned order, the respondent-Committee has disbelieved the order passed by the Scrutiny Committee at Aurangabad on the ground that the said order is a non-speaking order. We have called for the record from the said Committee and we have perused the order passed in favour of Shraddha. It can be noticed from the contents of the order that it is a well reasoned and speaking order. As such, the finding recorded by the respondent-Committee are factually incorrect. In our opinion, the respondent-Committee is not an appellate authority to undermine and disbelieve the authority of the Scrutiny Committee at Aurangabad in granting validity in favour of Shraddha. The findings recorded are factually incorrect based on false reasons that too contrary to the record.

7. This takes us to the submissions of the counsel for the petitioner whereby he has claimed that pre-independence era documents bear 'Thakur' Scheduled Tribe entries. He has drawn support from the entries in respect of Gulab Ramchandra, who was grandfather/father respectively of the petitioners dated July 29, 1944 which is an extract of school

admission record, school leaving certificate in relation to Ramchandra Sitaram Thakur, great-grandfather/grandfather respectively of the petitioners dated July 11, 1928, entry about son born to Sitaram on November 03, 1916 great-great-grandfather and great-grandfather respectively of the petitioners and such other similar entries as can be referred to from the impugned order.

8. The aforesaid documents being of pre-independence era in categorical terms provide that the caste is entered as 'Thakur' in relation to the blood relatives of the petitioners. The respondent-Committee disbelieving the documentary evidence placed before it has recorded a reason that the petitioners have failed to demonstrate that they belong to 'Thakur' Scheduled Tribe.

9. Apart from above, the provisions of the State Reorganization Act are also relied upon by the respondent-Committee to reject the claim of the petitioners. On September 06, 1950, in view of the provisions of Article 342 of the Constitution of India, the first Presidential Order was promulgated by the President of India notifying the Scheduled Tribes for the Bombay State, at the relevant time. As per the list, 'Thakur' was listed at Serial Number 21. Therefore, for the whole Bombay State, 'Thakur' was recognized as Scheduled Tribe. There was no area restriction imposed by the Parliament in the first Presidential Order. On October 29, 1956, the area restrictions were imposed for the first time by the Act of

Parliament (modified order, 1956) for 25 Tahsils of 5 Districts, for the tribe. However, again on September 20, 1976, by the Act of 1976, the Parliament amended the earlier Scheduled Tribes list and brought back the position existing prior to October 29, 1956 and removed the area restrictions so far as the entry 'Thakur' is concerned. The entry is at Serial Number 44. This means, the Parliament has, with the object to achieve removed/reorganized the area restrictions for 'Thakur' Scheduled Tribes for the bifurcated or re-constituted State of Maharashtra.

10. The Constitution (Scheduled Tribes Order, 1950) relating to the State of Maharashtra included entry no.44 in relation to 'Thakur' tribe. The Scheduled Castes and Scheduled Tribes Order came to be amended by Act No.63 of 1956 on September 25, 1956. By the said amendment, the entry in respect of 'Thakur' tribe came to be amended and entry no.6 of the Scheduled Tribes Order (Amendment), 1956 pertaining to Bombay State (Part-III) read as follows :

"6.(a) In Ahmednagar district –	
Akola, Rahuri and Sangamner talukas	
(b) In Kolaba district -	Thakur or
Karjat, Khalapur, Pen, Panvel and	Thakur
Sudhagad talukas and Matheran	including Ka
(c) In Nasik district -	Thakur, Ka
Igatpuri, Nasik and Sinner talukas	Thakar, Ma
(d) In Poona district -	Thakur and
Ambegaon, Junnar, Khed and	Ma Thakar.
Mawal talukas	
(e) In Thana district -	
Thana, Kalyan, Murbad, Bhivandi	
Bassein, Wada, Shahapur, Palghar,	
Jawhar and Mokhada talukas	

Thus, by the Act of 1956, the Constitution (Scheduled Tribes) Order, 1950, came to be amended. The said Act No.63 of 1956, by section 5 provided that where the list of Scheduled Castes and Scheduled Tribes in relation to any State was varied by the Amending Act, the population, as at the last Census of the Scheduled Castes or of the Scheduled Tribes in that State shall be ascertained or estimated by the Census Authority in such manner, as may be prescribed and shall be notified by that Authority in the Gazette of India. The change effected in the scheduled appended to Orders of 1950 by the Amendment Act was necessarily by specifying the areas as to whether the enlisted tribe, where the tribes notified throughout the State was recognized as such or tribal population residing in a particular area was declared to be Scheduled Tribes.

11. The issue was dealt with by the Division Bench of this Court in *Motilal Namdeo Pawar Versus Scheduled Tribe Certificate Scrutiny Committee, Nasik & Others* [Writ Petition No.07 of 2014] decided on December 22, 2017. The Division Bench while dealing with the aims and objects has observed in paragraph 14 as under :-

“14. The Scheduled Castes and Scheduled Tribes Order, 1950 underwent an amendment by Act No.108 of 1976, enacted on September 18, 1976. It would be gainful to reproduce the statement of objects and reasons of the Act No.108 of 1976, which resulted in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. The same is reproduced as below :

“STATEMENT OF OBJECTS AND REASONS

Under the Scheduled Castes and Scheduled Tribes Orders some communities have been specified as Scheduled Castes or as Scheduled Tribes only in certain areas of the State concerned and not in respect of the whole State. This has been causing difficulties to members of these communities in the areas where they have not been so specified. The present Bill generally seeks to remove these area restrictions. However, in cases where continuance of such restrictions were specifically recommended by the Joint Committee on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1967, no change is being effected. The Committee had also recommended exclusion of certain communities from the lists of Scheduled Castes and Scheduled Tribes. These exclusions are not being made at present and such communities are being retained in the lists with the present area restrictions. Such of the communities in respect of which the Joint Committee had recommended exclusion on the ground that they were not found in a State are, however, being excluded if there were no returns in respect of these communities in the censuses of 1961 and 1971.

On perusal of the above SOR, it can be noticed that the existing order, specifying certain communities as scheduled castes or scheduled tribes only in certain areas of the State and not in respect of the whole State, was causing difficulties to members of these communities in the areas where they have not been so specified. With this background, the area restrictions criteria which was introduced in the Scheduled Castes and Scheduled Tribes (Amendment) Order, 1956 was done away with. With the result that the tribes identified as scheduled tribe in the Scheduled Tribes Order, 1950 as amended by the Act of 1956, came to be recognized as ‘Scheduled Tribe’ throughout the said State, in contrast to they being confined to a particular area of the State. In fact by removal of the area restrictions, the tribe or caste, if it is recognized as a scheduled caste or scheduled tribe in the State was entitled to avail the benefits irrespective of the places where they were normally traced to since the tribes normally dwelled in clusters and mostly found in certain hilly

areas. However, by the amendment of 1976, the restriction of 'thakurs' being hailing from the districts specified in 1956 Order was completely done away with."

12. The Vigilance Cell which has conducted the enquiry in the matter was unable to dispute the sanctity and fruitfulness of the entries in relation to the blood relatives of the petitioners which is part of the record of the respondent-Committee. That being so, based on the documentary evidence, it has to be observed that the petitioners have established that they belong to 'Thakur' Scheduled Tribe.

13. As far as failure of the petitioners to satisfy the affinity test is concerned, we have already noted that from the document produced on record, the petitioners are able to demonstrate that they belong to 'Thakur' Scheduled Tribe. The petitioners thereafter have undergone the affinity test and such affinity test is said to be not satisfied inspite of the fact that Shraddha, real sister of the petitioner in Writ Petition No. 3289 of 2023 holds a validity of belonging to 'Thakur' Schedule Tribe.

14. The respondent-Committee cannot be said to be sitting in appeal over the decision of the Scrutiny Committee at Aurangabad which has granted validity in favour of Shraddha. The Scrutiny Committee at Aurangabad has already recorded in its order dated April 04, 2011 while granting validity to Shraddha that she has satisfied the affinity test. As

such, the applicability of the affinity test ought not to have again applied in case of the petitioners herein whose claim is based on the validity issued to their blood relation. Support can be drawn from the Division Bench judgment of this Court in case of *Apporva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and ors.* [2010(6) Mh.L.J. 401].

15. In this background we are of the view that the order impugned is not sustainable. Accordingly the following order is passed.

- (i) The order dated December 13, 2022 passed by the respondent-Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati Division, Amravati thereby invalidating the claim of the petitioners in both the writ petitions is hereby quashed and set aside.
- (ii) The respondent-Committee is directed to issue validity certificate in favour of the petitioners in any case by August 14, 2024.

16. Rule in both the writ petitions is made absolute. There shall be no order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)