



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

WRIT PETITION NO. 8381/2023

Ku. Gangubai D/o Prabhakar Naitam
{Sau. Gangubai W/o Bapu Bhandekar)
Aged about 45 yrs, Occ. Service,
R/o At-Post – Warud Road, Tah.
Rajura, Distt. Chandrapur-442905

.... **PETITIONER**

// VERSUS //

1. District Caste Certificate Scrutiny
Committee, Chandrapur,
Through its Member-Secretary
2. Chief Executive Officer,
Zilla Parishad, Chandrapur
3. Education Officer (Primary),
Zilla Parishad, Chandrapur
4. Block Education Officer,
Panchayat Samiti, Rajura

.... **RESPONDENTS**

Shri S.R.Narnaware, Advocate for petitioner.
Ms. T.H.Khan, AGP for respondent No. 1/State.
Shri S.V.Sohoni, Advocate for respondent No. 2.

**CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.**

DATE OF RESERVING THE JUDGMENT:

06/09/2024

DATE OF PRONOUNCING THE JUDGMENT :

23/09/2024

JUDGMENT (PER: SMT. M.S. JAWALKAR, J.)

(1) **Rule.** Rule made returnable forthwith.

(2) Heard finally by consent of learned counsel appearing for the parties at the stage of admission.

(3) Being aggrieved by the order dated 08/07/2023 passed by the respondent No. 1 - District Caste Certificate Scrutiny Committee, Chandrapur (in short, 'Scrutiny Committee'), thereby invalidating the claim of the petitioner for 'Tiramal' Nomadic Tribe (NT), the petitioner has filed the present petition.

(4) It is submitted that, the petitioner was appointed on 17/12/2003 as untrained Teacher against the vacancy reserved for Nomadic Tribe (NT). The petitioner is disabled person. Her physical impairment is to the extent of 78% because of the post polio residual paralysis of left lower limb, therefore, she is entitled for the privileges and benefits of physically handicap

person. The petitioner submitted for verification of her tribe claim belonging to 'Tiramal' NT, along with caste certificate, school leaving certificate and birth extract of her father mentioned as 'Tiramal'. The earlier Police Vigilance Cell Report submitted by the Scrutiny Committee accepted the document of her father as correct. The said Vigilance Cell Report was totally in favour of the petitioner and no counter document has been produced.

(5) On 18/08/2023, respondent No. 4 issued Show Cause Notice to the petitioner to submit validity certificate till August, 2023, failing which, the monthly salary from September, 2023 shall be stopped. In September, 2023, the petitioner learned that her tribe claim was invalidated by respondent No. 1. Therefore, the petitioner personally visited the office of the Scrutiny Committee, Chandrapur requesting for the copy of the order and accordingly, the Scrutiny Committee has supplied the copy of the order dated 08/07/2020 to the petitioner on 13/12/2023. Hence, the present petition.

(6) It is the contention of the learned Counsel for the petitioner that the petitioner has submitted her own documents belong to 'Tiramal' NT, documents of her father Prabhakar Nilu dated 01/07/1954, wherein, the entry is mentioned as 'Tiramal' and the revenue record of the grandfather Nilu Arjun for the year 1954-55. The tribe claim of the petitioner was rejected only on the ground that the birth record of the father Prabhakar Nilu is in the dilapidated condition and therefore, the Scrutiny Committee drew a conclusion that it is not a reliable proof and accordingly, passed an impugned order which is totally erroneous and unreasonable. The petitioner's service can be terminated because the Show Cause Notice was issued to the petitioner for the termination of her service. Hence, she prayed for interference of this Court.

(7) The learned counsel for the petitioner relied on the following authorities/citations:-

(i) Sudhir Vasantrao Dhekan V/s. Joint Commissioner of Scheduled Tribe Caste Certificate Scrutiny Committee,

Nagpur [2010(5) Mh.L.J.353]

(ii) Syed Khalil Syed Vajir V/s. State of Maharashtra and ors. [2012(3) Mh.L.J. 927]

(iii) Mahesh Pralhadrao Lad V/s. State of Maharashtra and ors. [2009(2) Mh.L.J. 90]

(iv) Anand V/s. Committee for Scrutiny and Verification of Tribe Claims and ors. [(2012) 1 SCC 113]

(v) Ashwin Rajendra Parate V/s. State of Maharashtra and ors [Judgment of this Court in WP No. 2716/2022]

(vi) Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti V/s. The state of Maharashtra and ors, 2023 SCC OnLine SC 326,

(8) The learned Assistant Government pleader for the respondent No. 1 - Scrutiny Committee supported the order passed by the Scrutiny Committee and contended that the documents submitted by the claimant/petitioner are of Tirmal (NT-B) but the petitioner's school leaving certificate submitted before the Committee shows entry as 'Tirumal' but original record shows entry written as 'Tirumal' Teli and the documentary proof of birth record of the father is in a dilapidated condition. According to the Act and Rules, pre-

constitutional documents have probative value in the eyes of law. According to the Vigilance Cell report and the documents submitted by the petitioner, it clearly proves that the petitioner belongs to 'Teli' (OBC) not as 'Tirumal' (NT-B).

(9) Learned Counsel for respondent No. 2, i.e. Executive Officer Zilla Parishad supported the action of show cause asking the petitioner to submit the tribe validity certificate as it is justified in view of the terms of the appointment order. Though, tribe Claim was invalidated on 08/07/2020, the petitioner in explanation dated 07/11/2023, informs that she would submit the tribe validity certificate after the decision of Scrutiny Committee. Thus, her explanation was not correct.

(10) We have heard both the parties at length. Perused record and proceedings produced by the AGP of Caste Scrutiny Committee. The petitioner placed on record her caste certificate issued by Executive Magistrate, Chandrapur, dated 17/01/1995, showing her cast 'Tirumal' (NT). Her school leaving certificate

dated 01/07/1978 showing her entry as 'Tiramal'; her father's (Prabhakar Nilu) station house form A - birth, issued from Pombhurna, District - Chandrapur and his date of birth showing 01/07/1954 and entry mentioned as 'Tiramal'. She also produced her grand father's (Nilu Arjuna) land revenue record for the year 1954-55, her cousin uncle (Hemant Budhaji Naitam), School leaving certificate issued by Zilla Parishad Primary Boys School Pombhurna, wherein, entry is mentioned as 'Tirumal' and his date of birth is shown as 06/08/1975. He placed on record her cousin brother (Santosh Urukuda) certificate issued from Zilla Parishad Primary School Ambedhanoda, Tahsil - Rajura, wherein entry is mentioned as 'Tiramal' tribe and date of birth is 09/08/1969.

(11) The document pertaining to year 01/07/1954, in respect of applicant's father's birth certificate clearly goes to show that on 01/07/1954, a son was born to Nilu Tirumal by name Prabhakar. This document is the certified copy obtained by

the applicant from the original. However, this document is discarded by the Caste Scrutiny Community on the ground that when letter sent to Block Development Officer for bringing the original record, the block Development Officer informed through letter that record of Nilu Tiramal is in dilapidated condition, therefore, cannot be produced before the Committee. If earlier vigilance report dated 17/01/2004 is perused, it is clearly supporting the applicant. It appears that entries of birth certificate of father of the petitioner were also duly verified by the Vigilance Cell and were reported as true and correct.

(12) Vigilance Report also supports documents in respect of petitioner, petitioner's father and grandfather which are duly showing entry 'Tiramal'. So also in revenue record of 1954, the petitioner's grandfather and cousin grandfather's entry is there. However, there is no tribe entry mentioned in these revenue documents. In Kotawal Panji register of 1954 the name of grandfather Nilu is mentioned along with his 'Tiramal' tribe. It is

recorded by Vigilance Cell that tribe of the petitioner is 'Tirmal' and her forefathers are resident of Pombhurna, District Chandrapur. Thus, the petitioner is having only one old document that is of 01 /07/1954, and certified copy of the same is produced. Just because the Block Development Officer is not in a position to bring that record before the Scrutiny Committee, that cannot be a reason to discard her document, specifically when Vigilance Cell is there to inquire into the matter. The Caste Scrutiny Committee have also considered the document of the year 1965. It was discarded on the ground that admission is of the year 1985, which is subsequent to 1982. There are two other documents which were placed on record by the petitioner, one of 01/07/1954 and another one dated 17/11/1934, in respect of Prabhakar Nilu and Nilu Arjuna respectively. These two documents at page Nos. 30 and 31, which is also a part of the record at page Nos. 28 and 29 appears not to have been considered.

(13) Learned Counsel for the petitioner relied on *Sudhir Vasantrao Dhekan* (Supra), wherein, it is held that person cannot be terminated for not producing Caste Validity Certificate, where his tribe claim is pending decision for validity before the Committee. However, in this matter as the show cause notice was given to the petitioner her services were not terminated. It appears that she was not informed about the decision of the Committee in the year 2020. So far as judgment relied on *Sayed Khalil Syed Vajir*, it is not applicable in the facts and circumstances. In the said decision, refusal by the Caste Scrutiny Committee to decide the cast claim merely on the ground that the applicant was desirous of contesting an election of Municipal Corporation is held not justified.

(14) Learned Counsel placed reliance on *Mahesh Lad* (Supra), in support of his contention that there is no requirement either under the Act or the Rules or the judgment of the Supreme Court or High Court that documentary evidence other than pre-

constitutional, pre-presidential notification or State notification or state modification notifying Caste or Nomadic Tribe be excluded from being considered when a Committee considers an application for verification of Tribe/Caste status for the purpose of issuing validity certificate. He has submitted that there is old document prior to the Presidential order, as such the Committee has miserably failed to consider the same. In view of the judgment in *Anand (supra)*, if there are document prior to cut off date showing applicants caste there is no necessity to apply affinity taste.

“22. It is manifest from the aforeextracted paragraph that

.....

(i).....

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the

link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

(15) Learned Counsel for petitioner also relied on *Ashwin Parate* (supra), wherein, judgment of *Anand* (supra), has been relied on by this Court and it is reiterated affinity test is not a litmus test. Moreover, the area restriction is also removed.

(16) Learned Counsel for petitioner relied on *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra), wherein, Hon'ble Apex Court held that :

"36. Thus, to conclude, we hold that:

(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee

must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(b) For the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim; and

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case."

(17) Learned Counsel for petitioner further relied on ***Priya Promod Gajbe (supra)***, wherein it is held as under :

*14. It will further be apposite to refer to the recent judgment of this Court in the case of **Mah. Adiwasi Thakur Jamat Swarakshan Samiti (supra)**, wherein this Court observed thus:-*

"25. Now, we come to the controversy regarding the affinity test. In clause (5) of Paragraph 13 of the decision in the case of Kumari Madhuri Patil, (1994) 6 SCC 241, it is held that in the case of Scheduled Tribes, the Vigilance Cell will submit a report as regards peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, methods of burial of dead bodies etc. in respect of the particular caste or tribe. Such

particulars ascertained by the Vigilance Cell in respect of a particular Scheduled Tribe are very relevant for the conduct of the affinity test. The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the applicant. But in a given case, even the parents may be unaware for the reason that for several years they have been staying in bigger urban areas. On the other hand, a person may not belong to the particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, Shri Shekhar Naphade, the learned senior counsel, is right when he submitted that the affinity test cannot be applied as a litmus test. We may again note here that question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with the material produced by the applicant."

(18) We, therefore, find that Scrutiny Committee erred in not giving due weightage to the oldest document dated 17/11/1934 and 01/07/1954, which was produced from proper custody and which had the entry 'Tirmal'. It is not the case of the

Committee that there was tampering or any doubt as regards to the said document. It is just ignored and discarded by the Committee without there being any justifiable and cogent reason. The affinity test cannot be treated as a litmus test and the claim of a person cannot be disregarded solely on this basis. We, therefore, find that the petitioner's claim of belonging to 'Tirumal' NT ought to have been accepted by the Scrutiny Committee. The order dated 08/07/2020, is unsustainable and liable to be set aside. The consequential communication by respondent Nos. 2 to 4 are also liable to be set aside for the aforesaid reason. Hence, we pass the following order:

ORDER

1. Petition is allowed.
2. The Order dated 08/07/2020, passed by respondent No.1, District Caste Certificate Scrutiny Committee, Chandrapur, (received on 13/12/2023), is hereby quashed set aside.

3. It is held that the petitioner duly established that she belongs to the 'Tiramal' as included in Entry No. 18 of the Nomadic Tribe.

4. The communications/show cause notice dated 18/08/2023 does not survive, it is also quashed and set aside.

5. The respondent - No.1, District Caste Certificate Scrutiny Committee, Chandrapur, is directed to issue the caste certificate to the petitioner as belongs to 'Tirmal' (NT) within a period of four weeks.

6. By that time this judgment should be treated as certificate.

Rule is made absolute in the above terms.

No order as to costs.

(SMT. M.S. JAWALKAR, J.) (AVINASH G. GHAROTE, J.)

Jayashree..