



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

WRIT PETITION NO. 3711 OF 2024

Madhavi d/o Tukaram Ingle,
Age 29 yrs, Occ. Student,
R/o. Nage Layout, Near Mhada Colony,
Kaulkhed, Akola

..... **PETITIONER**

...V E R S U S...

Scheduled Tribe Caste Certificate
Scrutiny Committee, Sai Uttam Vila,
House No. 3, Near Rangoli Ground,
Shastri Nagar, Yavatmal, through
its Vice Chairman/Jt. Commissioner

.....**RESPONDENT**

Mr. A.P. Kalmegh, Advocate for the Petitioner.
Mr. J.Y. Ghurde, Assistant Government Pleader for respondent.

CORAM:- NITIN W. SAMBRE & ABHAY J. MANTRI, JJ.

CLOSED FOR JUDGMENT :29.07.2024

JUDGMENT PRONOUNCED ON :06.08.2024

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

1. **Rule.** Rule made returnable forthwith. Heard finally,
with the consent of the learned counsel appearing for the parties.

2. The challenge is to the order dated 26.03.2024 passed by
respondent Scheduled Tribe Caste Certificate Scrutiny Committee
Yavatmal (for short "*the Committee*"), which invalidated the

petitioner's claim that she belongs to the '*Thakur*' Scheduled Tribe caste.

3. The petitioner claims that she belongs to the 'Thakur' Scheduled Tribe Category. Accordingly, Sub-Divisional Officer Washim issued a caste certificate in her favour on 10.7.2018. The petitioner, to avail the benefits prescribed for the Scheduled Tribe reserved category, submitted the caste certificate along with all necessary documents to the Committee. Being dissatisfied with the documents, the Committee forwarded the same for enquiry to the Vigilance Cell. The Vigilance Cell conducted the enquiry and submitted its report on 08.11.2023.

4. During the enquiry, the Vigilance Cell found that the petitioner failed to prove the affinity test, and the ancestors of the petitioners transferred their property to a non-tribal person without obtaining necessary permission from the Collector; therefore, the petitioner cannot be said to be belonging to Thakur Scheduled Tribe. The Committee, after considering the report, sought an explanation from the petitioner about the observations in the Vigilance report. By filing a detailed reply, the petitioner denied the

observations in the report. Considering the Vigilance Report, explanation of the petitioner and documents on record, the Committee has invalidated the caste claim of the petitioner; hence, this petition.

5. Mr. Kalmegh has contended that the petitioner, to substantiate his claim, has produced as many as twenty-two documents, out of which four are from 1922 to 1941 pertaining to his great-grandfather, grandfather and cousin grandfather wherein their caste is mentioned as 'Thakur'. Those documents are from the pre-constitutional era and have more probative value. He further canvassed that the Committee has erred in observing that the petitioner failed to prove the affinity test. As it is a settled position of law that '*the affinity test cannot be termed as a litmus test*'. He submitted that the Committee erred in holding that the petitioner's ancestors sold the property to a non-tribal person; therefore, the petitioner is not entitled to the relief as sought. The mere selling of immovable property to a non-tribal person would not affect the petitioner's claim. Hence, he urged for quashing and setting aside the impugned order.

6. To substantiate his contentions, the learned counsel has relied upon the judgments in the cases of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Others* (AIR 2023 SC 1657), and *Apoorva d/o.Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and Others* [2010(6)Mh. L.J. 401]. , *Writ Petition No. 5083/2023 (Shantanu s/o.Bhagwat Ingle Vs. State Common entrance Test Cell and another, Writ Petition No. 7320/2023 (Ganesh s/o. Shridhar More and another Vs. The Vice Chairman Member – Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Yavatmal)*.

7. As against above, Mr. Ghurde, the learned Assistant Government Pleader, opposes the claim on the ground of affinity test and contends that the petitioner's ancestors sold their property to a non-tribal person without obtaining necessary permission; hence, the petitioner is not entitled to the relief as claimed. He supports the impugned order and urges that the order requires no interference at the hands of this Court.

8. We have appreciated the rival submissions, perused the impugned order and the documents on record, and considered the judgments relied upon by the petitioner.

9. At the outset, it appears that the petitioner, in support of his claim, has produced twenty-two documents, out of which four are from the year 1922 to 1944, pertaining to his great-grandfather and cousin-grandfather wherein their caste is shown as ‘*Thakur*’ Scheduled Tribe. It is pertinent to note that neither the Vigilance Cell nor the Committee has disputed those documents. Therefore, as per the law laid down in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*, pre-constitutional documents have more probative value. Similarly, “the affinity test cannot be termed as a litmus test particularly when the petitioner produced the pre-constitutional era documents on record.

10. Apart from the above, the petitioner has also produced a validity certificate issued in favour of his blood relative before the Committee. While dealing with the said validity certificate, the Committee observed that it issued the said certificate contrary to the fact that the ancestors of the petitioner sold the property to a non-tribal person, and some inconsistent entries were found in the vigilance cell report. Therefore, issuance of the said validity certificate is not helpful to the petitioner. The said finding appears contrary to the settled dictum laid down in the case of *Apoorva Nichle*

(supra). As per the law laid down in the said case, the petitioner is entitled to get a validity certificate, and the transaction to sell the property to a non-tribal person does not create an embargo in granting the petitioner's claim. Hence, we do not find any substance in the objection raised by the learned Assistant Government Pleader in this regard.

11. Having considered the above discussion, it is evident that the petitioner, to substantiate his claim, has produced four pre-constitutional era documents from 1922 to 1941 and also produced the validity certificate issued in favour of his blood relative and, therefore, as per the law laid down in the case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti and Apoorva Nichle, the petitioner is entitled to get a validity certificate since the Committee has not challenged the validity certificate issued in favour of the blood relative of the petitioner on the ground that such certificate was obtained by fraud or were issued without jurisdiction.

12. In view of the discussion supra, we deem it appropriate to allow the petition.

13. The writ petition stands allowed. The impugned order dated 26.03.2024, passed by respondent Scheduled Tribe Caste Certificate Scrutiny Committee, Yavatmal, is hereby quashed and set aside.

14. It is declared that the petitioner belongs to the “*Thakur*” Scheduled Tribe.

15. The respondent – Committee is directed to issue a caste validity certificate in favour of the petitioner within four weeks from the date of production of this order.

16. Rule made absolute in the above terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)