



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

WRIT PETITION NO.714/2023

Kishor s/o. Krushnarao Pawar

Vs.

Schedule Tribe Caste Certificate Scrutiny Committee, Amravati and Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. P. Kalmegh, Advocate for Petitioner.
Mr. S. S. Hulke, A.G.P. for Respondents/State.

CORAM : NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED : 26/03/2025.

. Heard.

2. The challenge is to the order impugned dated 30.12.2022 passed by the respondent – Committee wherein the petitioner has submitted his caste certificate dated 13.07.1999 for issuance of validity which came to be rejected vide said order.

3. The petitioner is in the employment of the State Government (Police Department). As such having secured the employment against the post meant for Scheduled Tribe Category candidate, the caste claim for deciding validity was referred by the employer.

4. Further facts necessary for deciding the petition as under :

It is the case of the petitioner that in support of his claim, in all 24 documents were produced and the oldest entry of 17.03.1909 in relation to great-grandfather Nama Thakur, a son being born to Nama Thakur speaks of the entry “Thakur”. According to him, even in the birth

record of Tallu s/o. Nama Thakur, who is the grandfather bears the entry of “Thakur”.

5. Our attention is also invited to the entry of 05.07.1957 in the school record of father of the petitioner namely Krushna Tallu Pawar.

6. According to Mr. Kalmegh, learned Counsel appearing for the petitioner, there are consistent entries of “Thakur” and as such, the Committee while discarding these entries of pre-constitutional era has committed an error in accepting the entry of February 1921 in the birth and death record of one Tukaram Bapuji, great-grandfather. Mr. Kalmegh would further urge that the aforesaid relation was denied by the petitioner in view of the entry of Nama Thakur, who is the great-grandfather.

7. Apart from the above, his contentions are that the reliance placed by the Committee on the judgment of the High Court delivered on 01.08.2018 in *Writ Petition No.2890/2002 [Ku. Vaishali d/o. Ramkrushna Pawar Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.]* is wholly misplaced as the said writ petition has not dealt with the oldest entries of 1909 in relation to the great-grandfather.

8. He would invite our attention to the Vigilance Cell report so as to claim that Tukaram is shown to be the great-grandfather in spite of the stand taken by the petitioner, the Committee has not dealt with the said issue. It is his contention that even the entry of Hindu in the school record of uncle Haribhau Tallu Pawar if accepted, the same cannot lead to an inference that the petitioner

does not belong to “Thakur” Scheduled Tribe. As such, he has prayed for quashing of the order impugned.

9. As against above, the learned A.G.P. would try to support the impugned order based on the Divisional Bench judgment of this Court pronounced on 01.08.2018 in Writ Petition No.2890/2002 [*Ku. Vaishali d/o. Ramkrushna Pawar Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.*] with connected matters. According to him, once the blood relation is held not belonging to Scheduled Tribe, the petitioner is bound by the said decision and that being so, no fault could be noticed in the order impugned. He would claim that the judgment delivered in the matter of Ku. Vaishali referred above, is based on the documents which are produced in the said matter and this Court while dealing with the claim has considered the position of law and rejected the claim for issuance of validity in favor of the blood relation. That being so, he has sought dismissal of the petition.

10. Perusal of the record including that of impugned order depicts that in all 24 documents are submitted by the petitioner, out of which almost 20 documents depicts the entry of “Thakur”. As far as such entries of “Thakur” Scheduled Tribe or that of “Hindu Thakur” are concerned, in our opinion, the same need not be gone into once it is demonstrated that Hindu is a religion and not caste. Rightly so, the learned A.G.P. has claimed that “Hindu Thakur” cannot be treated as Scheduled Tribe. But we are equally required to be sensitive to the oldest entry of 1909 of great-grandfather,

1949 entry of grandfather and 1957 entry of father of the petitioner depicting the caste “Thakur” and not “Hindu Thakur”. As such, for discarding the oldest pre-constitutional era evidence, the Committee has relied on two documents viz. the entry of “Hindu Thakur” in relation to Haribhau, uncle of the petitioner and the rejection of the tribe claim by this Court in the matter of Ku. Vaishali. As far as the documents of Haribhau are concerned, the same are of post-constitutional era whereas the petitioner has produced pre-constitutional era documents to substantiate his claim for issuance of validity.

11. As regards in the matter of Ku. Vaishali, while deciding the claim for issuance of validity though this Court has rejected the claim for issuance of the validity, having gone through the said judgment, we are unable to find that the pre-constitutional era evidence which is produced in the case in hand was also produced and dealt with by the Division Bench. This has prompted us to believe that the petitioner, based on his individual case, was able to establish that he belongs to “Thakur” Scheduled Tribe and that being so, has rightly lodged the claim for issuance of validity.

12. For the aforesaid reasons, we are of the view that from the documents, the petitioner is able to establish that he belongs to “Thakur” Scheduled Tribe.

13. Though the Committee has relied on the affinity test, however, we are also conscious of the authoritative pronouncement by the Hon’ble Apex Court in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs.***

State of Maharashtra and Ors. reported in **2023(2) Mh.L.J. 785** wherein it is held that the affinity test cannot be held to be a litmus test. As such, having noticed that the petitioner is able to produce pre-constitutional era documents in support of his claim for issuance of validity, we are of the view that the order impugned is not sustainable. As such, the petition stands allowed in terms of prayer clause- i.

14. We direct that the validity be issued in favour of the petitioner of belonging to “Thakur” Scheduled Tribe within a period of four weeks from today.

(MRS. VRUSHALI V. JOSHI, J.) (NITIN W. SAMBRE, J.)