



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

WRIT PETITION NO. 1225 OF 2024

Vaishali Dattatray Khartadkar,
Aged about 47 years, Occu.:
Service, R/o. Plot No.32, Vaishnav
Jyoti Apartment, Trishar Nagar,
Shashtri Lay, Khamla, Nagpur,
District – Nagpur – 440 025.

.... **PETITIONER.**

// **VERSUS** //

1. The Scheduled Tribes Caste
Certificate Scrutiny Committee
through its Member Secretary and
Deputy Director, Sanna Building,
Opp. Govt. Rest House Camp,
Amravati – 444 601.
2. The Education Officer (Secondary),
Zilla Parishad, Nagpur.
3. Somalwar Highschool and Junior
College, Khamla Road, Nagpur,
Through its Headmaster.
4. Somalwar Academy Education
Society, Ramdaspath, Nagpur-10,
Through its Secretary, Shri P.P
Somalwar.

.... **RESPONDENTS.**

Shri H.S.Chitale, Advocate for Petitioner.
Shri Neeraj Patil, A.G.P. for Respondent Nos.1 & 2.
Shri Anand Parchure Adv. a/w Shri Nikhil Valesha, Adv. for Resp.Nos. 3 & 4.

CORAM : ALOK ARADHE, CJ AND
ANIL S. KILOR, J.

DATED : FEBRUARY 27, 2025

ORAL JUDGMENT : (Per : Anil S. Kilor, J.)

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. By way of present writ petition, filed under Articles 226 and 227 of the Constitution of India, the petitioner has questioned the correctness of the order dated 29/12/2023, passed by the respondent No.1-Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati, invalidating the tribe claim of the petitioner as Thakur (Scheduled Tribe).
4. The brief facts of the present case are as follows :

The petitioner claims to be belonging to Thakur (Scheduled Tribe). The petitioner was appointed as 'Assistant Teacher' by respondent No.3 in reserved category for Scheduled Tribes on 10/07/1998. Thereafter, the respondent No.3 asked the petitioner to

submit all the relevant documents including the caste validity certificate, vide communication dated 05/10/2004. Pursuant to which the petitioner submitted her caste claim along with the relevant documents to the Caste Scrutiny Committee, Nagpur on 04/11/2004.

5. The petitioner was then, served with a Police Vigilance Cell report dated 25/11/2006 to which, the petitioner submitted her reply on 08/12/2006.

6. In the meantime, since the respondent No.3 school was insisting the petitioner to submit the Caste Validity Certificate and as the Committee was not deciding the caste claim of the petitioner, a petition bearing Writ Petition No.2730 of 2015 came to be filed by the petitioner.

7. This Court, vide order dated 16/07/2015 in the said writ petition, directed the Committee to decide the caste claim of the petitioner as expeditiously as possible, within six months from the date of the order and further protected the services of the petitioner directing the respondent Nos. 3 and 4 not to terminate the petitioner on the ground of non-submission of the Caste Validity Certificate.

8. Thereupon, the caste claim of the petitioner was invalidated vide order dated 08/02/2018, on the ground of lack of territorial jurisdiction.

9. Thereafter, the petitioner obtained Caste Certificate as Thakur (Scheduled Tribe) from the Sub-Divisional Officer, Murtizapur on 23/03/2018 and again forwarded the caste claim to Respondent No.1-Committee. The petitioner submitted as many as 35 documents along with her caste claim in support of her claim. Thereupon, the vigilance enquiry was conducted and on receiving Vigilance Cell Report, the petitioner submitted her reply.

10. Without assigning any reason to conduct vigilance enquiry, again, it was conducted and on 05/06/2023 report was submitted to which the petitioner submitted her reply.

11. The Committee, after considering the Vigilance Cell Report, documentary evidence and the reply filed by the petitioner, passed the impugned order dated 29/03/2023, invalidating the Tribe Claim of the petitioner as 'Thakur'. In turn, the respondent No.3 issued ad-hoc

appointment order to the petitioner on 10/02/2023, thereby appointing the petitioner for a temporary period of 11 months. As such, the order of invalidation of the tribe claim of the petitioner and the order appointing the petitioner on ad-hoc basis are under challenge in this writ petition.

12. We have heard the learned counsel for the respective parties.

13. Shri Chitaley, learned counsel for the petitioner submits that in the first enquiry conducted by the Vigilance Cell nothing adverse was found and no justification is offered by respondent No.1 for conducting the Vigilance Cell enquiry again. It is submitted that relying upon this second vigilance report, the documentary evidence produced by the petitioner in support of her claim, has been discarded by the Committee.

14. It is submitted that the Vigilance Cell during the second enquiry, collected some documents which are claimed to be of the petitioner's relatives, having caste entry as 'Bhat' and making those entries as the basis, rejected the caste claim of the petitioner.

15. It is submitted that another ground on which the caste claim came to be invalidated is the affinity test. It is submitted that though it is well settled principle of law that the affinity test cannot be considered as litmus test, rejection of claim of the petitioner on the said ground is erroneous.

16. On the other hand, the learned AGP supports the impugned order and submits that the Vigilance Cell has found entries of some of the relatives of the petitioner as 'Bhat'. Further it is argued that since the petitioner failed in the affinity test, the Committee has rightly rejected the caste claim of the petitioner.

17. In the above referred backdrop, having gone through the record and the impugned order, it is evident that the petitioner has submitted numerous documents including the documents of pre-independence period.

18. The oldest document is of 1915 of great grandfather of the petitioner, having entry as 'Thakur'. There are also documents of 1949, 1953, 1955 and 1959 showing the caste as 'Thakur'.

19. Thus, there is sufficient documentary evidence produced by the petitioner in support of her caste claim. However, the same has been discarded for the reason that the Vigilance Cell procured certain documents claimed to be of petitioner's relatives, having caste entry as 'Bhat'. However, nothing is pointed out to establish their relations with the petitioner, particularly when the petitioner denied any relation with them. Admittedly, no further enquiry is made into the said aspect.

20. Thus, in absence of any sufficient evidence to say that the documents collected by the Vigilance Cell, having entries as 'Bhat', are of relatives of the petitioner, rejection of the tribe claim of the petitioner is illegal. Moreover, there is no justification offered for second Vigilance Cell report when the first report was on record and nothing adverse was found or noted in the said report.

21. The Hon'ble Supreme Court of India in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti ..vs.. State of Maharashtra & oth.*, reported in **2023(2) Mh.L.J. 785**, while considering the importance of the affinity test, has 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 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.”

22. Thus, it is evident that the affinity test is not litmus test to decide the caste claim and is not an essential part in process of determination of correctness of a caste or tribe claim in every case. It is further evident that the affinity test cannot be conclusive either way.

23. In the circumstances, discarding the documentary evidence and giving much importance to the affinity test is contrary to the well settled principles of law.

24. Having observed so, we are of the view that this case needs to be remanded back to the Caste Scrutiny Committee to decide the claim afresh after taking into consideration the observations made herein above.

25. Accordingly, we pass the following order :

- i) The Writ Petition is partly allowed.
- ii) The matter is remanded back to respondent No.1- Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati.
- iii) The respondent No.1-Committee is directed to reconsider the tribe claim of the petitioner within four months from the date of appearance of the petitioner.
- iii) The petitioner shall appear before the respondent No.1-Committee within one week.
- iv) As far as prayer clause (ii) is concerned, in view of the fact that the order invalidating the caste claim of the petitioner is quashed and set aside.

- v) The respondent No.3 is directed to reconsider the decision of appointment of the petitioner on ad-hoc basis and take a decision within fifteen days from the date of submission of copy of this order.

Rule accordingly. No order as to costs.

(ANIL S. KILOR, J)

(CHIEF JUSTICE)

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