



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

WRIT PETITION NO. 4558 OF 2013

PETITIONER : Gaurav S/o. Ravindra Bais, Aged about 21 years, Occu. Student, R/o. At – Sawad, Post – Kasarkheda, Tah. Arvi, Distt. Wardha.

//VERSUS//

RESPONDENTS : 1. The Joint Commissioner and Vice-Chairman, Scheduled Tribe Caste Certificate Scrutiny Committee, Adiwasi Vikas Bhavan, Giripeth, Nagpur.

2. Principal, Karmavir Dadasaheb Kannamwar College of Engineering (K.D.K.), Great Nag Road, Nandanwan, Nagpur – 440009.

Mr. S.R. Narnaware, Advocate for the Petitioner.
Mr. H.D. Marathe, Assistant Government Pleader for Respondent No.1/State.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI JJ.
DATED : 29th JANUARY, 2025.

JUDGMENT (PER : NITIN W. SAMBRE, J.)

This Court *vide* order dated April 7, 2014 has granted Rule and this is how the Rule by consent is taken up for hearing.

2. In the petition, the petitioner has sought quashing of the order dated December 14, 2012 passed by the respondent No.1 – Caste Scrutiny Committee, Nagpur and has sought further

direction that the Committee be directed to issue a validity certificate of belonging to 'Thakur' Scheduled Tribe.

3. The facts necessary for deciding the petition are as under:

The petitioner, after clearing his 12th Standard H.S.C. examination, got admission in the Bachelor of Mechanical Engineering Trade in the respondent No.2 - College against a seat reserved for Scheduled Tribe category candidate.

4. Since the admission was secured based on the caste certificate of belonging to 'Thakur' Scheduled Tribe category, the respondent No.2 - College referred the claim for deciding/adjudicating the validity *vide* communication dated January 16, 2012.

5. The Committee, after adjudication of the claim *vide* impugned order dated December 14, 2012 rejected the claim for issuance of validity and as such this petition.

6. Mr. Narnaware, learned counsel appearing for the petitioner has invited our attention to the order impugned so as to claim that in support of the tribe claim of belonging to 'Thakur' Scheduled Tribe, the petitioner has in all produced 14 documents. According to him, the pre-constitutional era documents on which the petitioner has relied on are as under:

(i) Birth extract in regard to a male child born to Gulabsingh Thakur on June 6, 1934, who was his great grandfather. The certificate to that effect issued by the Collectorate, Wardha.

(ii) The School leaving certificate in respect to paternal grandfather Shri Jagadeosingh Gulabsingh Bais, issued by the New English High

School, Wardha in which on June 9, 1948 caste is recorded as 'Thakur'.

(iii) An attested copy of the sale deed executed in the year 1936 by Rupsingh, brother of Jagdeosingh, Tansingh s/o. Gulabsingh.

7. Since the Committee was not satisfied, the matter was referred to the Police Vigilance Cell for enquiry on March 31, 2012. The Police Vigilance Cell, after recording the statement of the petitioner's father viz. Shri Ravindra Devisingh @ Jagdeosingh Bais on February 29, 2012 and the statement of other blood relations, opined that the documents do not support the claim of the petitioner of belonging to 'Thakur' Scheduled Tribe and the petitioner's origin is from Rewa district in the State of Madhya Pradesh.

8. The petitioner accordingly submitted his explanation to the Police Vigilance Cell report and claimed that once the documents, which are of pre-constitutional era, establish/support the claim of belonging to 'Thakur' Scheduled Tribe, it is not open for the Committee to claim and apply affinity test and record a finding that the petitioner is not belonging to 'Thakur' Scheduled Tribe.

9. Mr. Narnaware, learned counsel appearing for the petitioner, so as to substantiate his contention, has relied on the order in **Writ Petition No.841/2012** (*Akshay S/o. Kishor Bhisikar Vs. State of Maharashtra*), decided on October 9, 2012 at Nagpur and other orders which are part of the record. It is further claimed that the issue is squarely covered by the judgment of the Apex Court in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others reported in 2023(2) Mh.L.J. 785*. Drawing support from the aforesaid judgment, it is claimed that even if in a

given set of circumstances the affinity test can be taken recourse to, however, it cannot form the basis for rejection of the claim.

10. As against above, the learned Assistant Government Pleader would oppose the claim. According to him, even if the petitioner has taken education in the State of Maharashtra, the petitioner's place of origin is Rewa/Satna in the State of Madhya Pradesh. It is claimed that even if the caste certificate is granted to the petitioner's father on April 10, 1980 by the Executive Magistrate, Arvi, still the Court must be sensitive to the place of origin of the petitioner. As such, it is claimed that the petitioner is rightly held to be not entitled for the validity certificate.

11. We have considered the submissions.

12. The fact remains that the petitioner has produced pre-constitutional era documents of June 6, 1934 in regard to the birth of a male child to Gulabsingh Thakur, who happened to be the great grandfather of the petitioner, the school leaving certificate of paternal grandfather Shri Jagadeosingh Gulabsingh Bais of June 9, 1948 and the copy of the sale deed of 1936 executed by Rupsingh, brother of Jagdeosingh. The aforesaid documents in categorical terms establish that the caste entry in the aforesaid documents of the pre-constitutional era is that of 'Thakur'.

13. The Committee then proceeded to consider the area restrictions and observed that 'Thakurs' only from Ahmednagar, Kolaba, Nasik, Poona and Thane are treated as Scheduled Tribe. The Committee recorded that the statement of the grandfather of the petitioner reflects that it was 100 years back the family got migrated to Maharashtra. The Committee further recorded that the

pre-constitutional era documents cannot be accepted in view of area restrictions and the petitioner being a migrant. It is further held that the petitioner has not satisfied the affinity test and rejected the claim.

14. The claim of the petitioner in fact ought not to have been rejected particularly when the Committee was of the view that it was more than a century ago the family of the petitioner migrated to Maharashtra. Apart from above, the documents are discarded which are of pre-constitutional era merely because of area restrictions as the Committee was of the opinion that 'Thakurs' only from five districts are entitled to be recognized as 'Scheduled Tribe'. The aforesaid finding recorded by the Committee cannot be said to be sustainable once the area restrictions are removed. In such an eventuality, all that was expected from the Committee was to deal with the documents on its merit instead of rejecting the same only on the count of the area restrictions. The issue on the aforesaid is already well-settled in the catena of judgments.

15. Apart from above, the affinity test cannot be termed as a litmus test and in such an eventuality, the Committee ought not to have rejected the claim stating that the petitioner has failed to satisfy the affinity test of belonging to Scheduled Tribe.

16. That being so, we are of the view that the order impugned is not sustainable.

17. The order impugned dated December 14, 2012 is hereby quashed and set aside.

18. We permit the petitioner to appear before the respondent No.1 - Committee on May 26, 2025 and the Committee shall cause appropriate enquiry in the matter and shall make endeavour to decide

the claim of the petitioner within a period of six months from the date of the appearance of the petitioner.

19. As such, the petition stands partly allowed. Rule is made absolute accordingly. No order as to costs.

(VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

Vijaykumar