



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

WRIT PETITION NO. 5871 OF 2024

Gajanan s/o Wamanrao Peshwe,
Aged about 66 years,
Occupation-Retired,
R/o. Amrutnagar, Jalamb Road,
Khamgaon, District-Buldhana.

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Petitioner

..Versus..

1. The Vice-Chairman/Member,
Secretary, Scheduled Tribe Caste
Certificate Scrutiny Committee,
Chaprashipura, Amravati.
2. The Secretary,
Water Resources Department,
Mantralaya, Mumbai-32.
3. The Superintending Engineer,
Akola Irrigation Circle,
Near Collectorate Office,
Akola.
4. The Executive Engineer,
Akola Irrigation Division,
Akola.

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Respondents

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Ms. Preeti Rane, Advocate for Petitioner,
Mrs. S.V. Kolhe, Assistant Government Pleader for Respondents.
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CORAM : SMT. M.S. JAWALKAR, AND
PRAVIN S. PATIL, JJ.

RESERVED ON : 10th JULY, 2025.
PRONOUNCED ON : 25th JULY, 2025.

JUDGMENT [Per : Pravin S. Patil, J.]

1. **Rule.** Rule made returnable forthwith. By consent of the learned Counsel for the parties, the matter is taken up for final disposal.

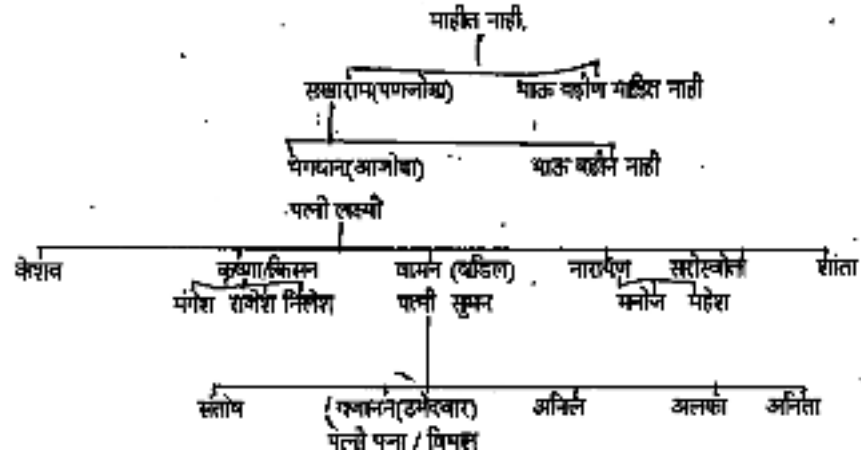
2. By this petition, the Petitioner is challenging the order dated 31.07.2024 passed by Respondent No.1-Scrutiny Committee, Amravati whereby the caste claim of the Petitioner as a 'Thakur' Scheduled Tribe is rejected.

3. The Petitioner's case, in brief, is that he belongs to 'Thakur' Scheduled Tribe, which is enlisted at Sr. No.44 of the Scheduled Tribes Order, 1950. He stated that on 13.10.1980 he came to be appointed as a Junior Engineer by Respondent No.2. Thereafter, he was promoted as Deputy Sub-Divisional Officer, vide order dated 10.01.1996. After promotion of the Petitioner, Respondent had issued notice dated 13.09.2011 to the Petitioner that promotion on the post of Sub-Divisional

Officer is granted for temporary period of eleven months and same will be continued till 30.09.2011 subject to submission of validity certificate.

4. In the backdrop of above said factual position, Petitioner forwarded his caste claim to the Scrutiny Committee with the necessary documents. Petitioner, along with his caste claim, filed in all 31 documents. Out of these 31 documents, the cut-off date documents relied by Petitioner was School Leaving Certificate of Waman Bhagwan Peshwe dated 20.06.1950; extract of service book of his father dated 00.01.1934; Extract of service book of cousin namely Krishnakant Bhagwan Peshwe dated 31.05.1941; Birth entry of daughter of Bhagwan Sakharam Thakur, dated 15.02.1923; loan entry in the name of Sakharam Bhagwan Thakur dated 11.01.1915 and Rent Agreement of Bhagwan Sakharam Thakur dated 08.09.1933. As such, on the basis of this pre-constitutional era documents, Petitioner claims that he belongs to caste of 'Thakur'. Petitioner to prove his relationship, relied upon the genealogical tree prepared by vigilance cell during the course of enquiry. The same is reproduced here for convenience

to recognize the relationship of Petitioner with his ancestors.



5. It is seen from the record that after submitting the documents, Respondent No.1-Committee under Rule 12 (2) of the Scheduled Tribe (Regulation of Issuance of Verification of Certificate) Rules, 2003 forwarded the documents to the Vigilance Cell for conducting School, Home and other enquiry. The Vigilance Cell accordingly conducted the enquiry and submitted their report to the Scrutiny Committee on 28.04.2023.

6. Considering the findings recorded by the Vigilance Cell, the Show Cause Notice was issued to the Petitioner on 29.05.2023 and asked to tender his explanation over the same. Petitioner accordingly on 13.07.2023 tendered the reply-cum-explanation to the Respondent No.1-Committee and clarified

that the pre-constitutional era documents clearly demonstrate the caste 'Thakur' in the entire record. As such, it is the submission of the Petitioner that the genuineness of the said documents cannot be doubted and more weightage required to be given to the same as the same are pre-constitutional documents.

7. In the meantime, Petitioner obtained the voluntary retirement from the Respondent No.3's office and thereby he was relieved from service from 01.06.2012. However, his pensionary benefits were not released by the office for not submitting the caste validity certificate. Petitioner therefore made various communications to the Respondents to release his pensionary benefits, but because of pendency of application before Respondent No.1-Committee, the pensionary benefits were not released in favour of Petitioner.

8. In the background of not releasing the pensionary benefits by employee at one hand and Respondent No.1-Committee was not deciding his caste claim on other hand, Writ Petition No.2748/2024 came to be filed before this Court. In the

said petition, this Court by order dated 02.05.2024, by accepting the statement of the learned Assistant Government Pleader that the caste claim of the Petitioner will be decided within a period of three months, disposed of the petition.

9. In the background of above said factual position, Respondent No.1-Committee decided the caste claim by order dated 31.07.2024 and thereby invalidated the same on the ground of documentary evidence, affinity and area restrictions. As a result, Petitioner is deprived from monetary/retirement benefits for the service which he has rendered in the Respondent department. Hence, the Petitioner solicits the indulgence of this Court in the present matter.

10. Learned Assistant Government Pleader appearing for the Respondent/State vehemently opposed the petition and stated that on the basis of report of Vigilance Cell, the entries in the service record of the father of Petitioner found to be doubtful and further there is an overwriting, striking of earlier entries and uses of different inks and handwriting in relation to the caste entries. In view of the said finding of the Vigilance

Cell, the learned Committee has taken right decision to not rely upon the entries of his father.

11. It is further submitted by the learned Assistant Government Pleader, since the findings recorded by the Vigilance Cell are adverse to the claim of Petitioner, the notice was issued to the Petitioner and asked to clarify about adverse entries recorded by the Vigilance Cell. However, there is no satisfactory explanation given by the Petitioner. As such, it is the submission of the Respondents that the reasons recorded by the Committee are correct and there is no merit in the submission of the Petitioner.

12. We have heard both the counsel at length, considered the documents placed on record and also the case laws referred by the Petitioner in the matter.

13. In the present matter, it will be apt to first refer the judgment of Hon'ble Supreme Court of India in the case of *Anand .vs. Committee for Scrutiny and Verification of Tribe Claim*, reported in *2011 (6) Mh.L.J. 919*. In the said case,

Hon'ble Supreme Court has laid down the broad parameters while dealing with a caste claim which requires to be followed by the Caste Scrutiny Committee. The same are specifically mentioned in Para Nos.18 and 19, which are reproduced as under :

18. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(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.

19. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim."

14. Recently, Hon'ble Supreme Court of India in the case of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti .vs. State of Maharashtra and others***, reported in ***2023 SCC Online SC 326*** has laid down the law that affinity test is not a litmus

test to decide a caste claim and is not an essential part in process of determination of correctness of a caste or tribe claim in every case. Furthermore, in the same judgment, Hon'ble Supreme Court of India has considered Rule 12 (2) of the Rules, 2003 and specifically recorded that as per the procedure laid down under the Rules, if the Scrutiny Committee is not satisfied with the documentary evidence produced by the Applicant, it shall forward the applications to the Vigilance Cell for conducting the school, home and other enquiry. However, as a matter of routine, the Scrutiny Committee cannot mechanically forward the application to the Vigilance Cell for conducting an enquiry.

The Hon'ble Supreme Court held that only if the Scrutiny Committee is not satisfied with the document produced by the Applicant, in that case only should refer the documents to the Vigilance Cell. Furthermore, the Scrutiny Committee is required to pass an order recording brief reasons why it is not satisfied with the documents produced by the Applicant, before referring the case to the Vigilance Cell.

As such, from the observation of the Hon'ble Supreme Court of India, it is necessary that application of mind

must be reflected in the order-sheet of the Scrutiny Committee while referring the documents to the Caste Scrutiny Committee.

15. In the catena of cases decided by this Court, it is time and again held by this Court that pre-constitutional documents, particularly of the ancestors of the Applicant should be given weightage and same should not be thrown away on minor discrepancies. It is held by this Court that the independent application of mind on the pre-constitutional era documents should be reflected in the order of Respondent No.1-Committee.

16. In the light of above said legal position, it is clear that in the present case, Respondent No.1-Committee failed to follow the procedure as laid down under Rule 12 of the Maharashtra Scheduled Tribes Certificate Rules, 2003. From the record, it is clear that after receipt of proposal of the Petitioner, without recording any reasons, as held by Hon'ble Supreme Court of India in the case of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra) forwarded the documents to vigilance cell. We see no application of mind and satisfaction of the Committee Members that why they

disbelieved the pre-independence documents produced by Petitioner.

17. It will be pertinent to note that Respondent No.1-Committee recorded finding that pre-independence document produced by Petitioner, particularly dated 20.06.1950 i.e. School Leaving Certificate of father as 'Thakur'; dated 15.02.1923 i.e. birth entry of daughter shows caste 'Thakur'; dated 11.01.1915 i.e. loan entry of great grandfather in revenue and school entry shows 'Thakur'; however, said entries being on documents, Petitioner cannot be held to belong to the caste 'Thakur' Schedule Tribe. From this finding, it is clear that Respondent No.1-Committee discarded the pre-independence documents which is having more probative value without reason. Hence, impugned order is *prima facie* illegal and liable to be quashed and set aside.

18. It seems from the impugned order that Respondent No.1-Committee has rejected the caste claim of the Petitioner mainly on the ground that the caste claim of cousin brother namely Mangesh Krushnaraao Peshwe has been dismissed by this

Court along with a bunch of petitions decided along with Chhaya Jasvantsingh Hazari and others case and, therefore, recorded the finding that if the caste claim of the cousin brother is itself rejected, the Petitioner cannot be held to be of 'Thakur' Scheduled Tribe. In this regard, it is stated that in the case of Jaswantsingh Hazari case, the entire issue revolving around the affinity test and on that count, petitions were rejected. However, the said petition is now pending before the Hon'ble Supreme Court of India and issue is under consideration before Hon'ble Supreme Court. But at the same time, it will be apt to consider the recent Judgment of Hon'ble Supreme Court of India in the case of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra) wherein it is made clear that affinity test is not a litmus test to decide a caste claim and is not an essential part in process of determination of correctness of a caste or tribe claim in every case. Therefore, finding of Respondent No.1-Committee is not justified in the matter.

19. It is pertinent to note this court in ***Writ Petition No.7485/2022 (Shyam Gajanan Bhuyar .vs. Scheduled Tribe Caste Certificate Scrutiny Committee, decided on 18.01.2024)***,

while considering the identical controversy held that considering the pendency of the Special Leave Petition, the Caste Validity Certificate can be granted, subject to outcome of the Special Leave Petition pending before the Hon'ble Apex Court.

20. As such, Petitioner also stated in the matter that considering the view taken by this Hon'ble Court, subject to decision of pending Special Leave Petition No.2670/2018, the caste validity can be granted to the Petitioner. Hence, considering the aforesaid facts, we deem it appropriate to allow the petition in the following terms. Hence, the order :

O R D E R

- (i) The writ petition is allowed.
- (ii) The impugned order dated 31.07.2024 passed by the Respondent No.1-Committee, Amravati is hereby quashed and set aside.
- (iii) It is declared that the Petitioner has proved that he belongs to caste of 'Thakur' Scheduled Tribe category on the basis of pre-independence documents and accordingly Respondent No.1-Committee is directed to issue Caste Validity

Certificate in favour of Petitioner within a period of four weeks from the date of receipt of copy of this judgment.

(iv) It is made clear that the issuance of Caste Validity Certificate in favour of Petitioner would be subject to outcome of Special Leave Petition No.2670/2018 pending before the Apex Court.

21. Rule is made absolute in the above terms.

(Pravin S. Patil, J.)

(Smt. M.S. Jawalkar, J.)