



767-J-WP-486-23

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

WRIT PETITION NO.486 OF 2023

Surendra Namdeorao Kalse,
aged 58 years, occ. Retired
from service as Junior college Lecturer,
r/o Rajura, District Chandrapur

... Petitioner

-vs-

1. The Scheduled Tribe Caste
Certificate Scrutiny Committee,
Chandrapur, Through its Member/Secretary,

2. The Principal,
Shivaji Arts, Commerce and Science
College, Rajura, District Chandrapur

... Respondents

Shri R. S. Parsodkar, Advocate for petitioner.
Smt S. S. Jachak, Assistant Government Pleader for respondent No.1.
Ms Kirti Satpute, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.
DATE : JULY 19, 2023

Oral Judgment : (Per : A. S. Chandurkar, J.)

1. Rule. Rule made returnable forthwith and heard the learned
counsel for the parties.

The petitioner has challenged the order passed by the Scrutiny
Committee on 22/11/2022 thereby invalidating the claim of the
petitioner belonging to 'Thakur' Scheduled Tribe. In support of such
claim the petitioner relied upon various pre-constitutional documents
having entry 'Thakur'. The Vigilance Cell in its enquiry noted that the

documents of 1932-1933 and 1941 of the petitioner's grandfather had the entries 'Thakur'. It also found that the documents of 1974 and 1976 have the entry 'Bhat'. The said report was submitted to the Scrutiny Committee. The petitioner has also relied upon validity certificate issued by the Scrutiny Committee at Nashik to his cousin brother. According to the Scrutiny Committee, the said validity certificate could not be relied upon since it was issued on 30/09/1998 without following the due process of law. On that count the claim of the petitioner came to be invalidated.

2. We have heard the learned counsel for the parties and we have perused the record of the proceedings. It can be seen from the record that the petitioner has relied upon the documents of his grandfather Laxman of the years 1932, 1933 as well as 1941. The name of his grandfather has been shown as Laxman son of Fakira Thakur. These documents have been verified by the Vigilance Cell. There are other pre-constitutional documents having similar entries and hence these old entries carry great probative value. The Vigilance Cell in its report has specifically stated that the old record was examined and such entries existed there. The other entries relied upon by the Scrutiny Committee are of the year 1974 and 1976. Those documents would not have much weightage when compared to the documents of 1932,

1933 and 1941. It can thus be said that on the basis of pre-constitutional documents having the entry 'Thakur', the claim made by the petitioner on the basis of documentary material stands substantiated. Insofar as the grant of validity certificate to the petitioner's cousin is concerned, the same has been issued on 30/09/1998 and continues to operate even today. This Court in Writ Petition No.2685/2022 (*Ku. Shravani d/o Ganesh Wankhede vs. State of Maharashtra, Thr. its Secretary, Dept. of Social Justice and Empowerment, Mantralaya, Mumbai and ors.*) has held that merely because a validity certificate is issued by another jurisdictional Scrutiny Committee, the same need not be discarded for that reason. In absence of any allegation of fraud being practised, the validity certificate would have to be given its due weightage. As regards the aspect of affinity test, the said issue has now been decided by the Larger Bench of the Honourable Supreme Court in case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs State of Maharashtra and others*. **2023(2) Mh.L.J. 785**. It has been held that the affinity test cannot be treated as a litmus test and same cannot be the only basis for rejecting such claim.

3. On perusing the report of Vigilance Cell and considering the overall material on record, it will have to be held that the petitioner

has proved that he belongs to 'Thakur' Scheduled Tribe. Absence of following old traits and practises with passage of time cannot be given undue importance.

4. For aforesaid reasons the order passed by the Scrutiny Committee is liable to be set aside. Accordingly the following order is passed :

- (i) The order passed by the Scrutiny Committee on 22/11/2022 is set aside. It is declared that the petitioner belong to 'Thakur' Scheduled Tribe.
- (ii) Within a period of four weeks from receipt of copy of this judgment, the Scrutiny Committee shall issue validity certificate to the petitioner.
- (iii) The petitioner is entitled to receive all retirement benefits that have been withheld for want of validity certificate. The respondent No.2 to take necessary steps in that regard.
- (iv) Rule is made absolute in aforesaid terms with no order as to costs.

(Mrs Vrushali V. Joshi, J.)

(A. S. Chandurkar, J.)