

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

WRIT PETITION (WP) 1120/2022

Ashutosh S/o Gajanan Gathe
Aged about 25 years, Occ. Student,
R/o-At-Post Fattepur Wadi,
Mothi Umri, Akola.

..... PETITIONER

// VERSUS //

1. The Vice-Chairman/Member-Secretary
Scheduled Tribe Caste Certificate
Scrutiny Committee,
Chaprashipura, Amravati.

2. The Director,
College of Engineering,
Wellesly Road, Shivaji Nagar,
Pune.

.... RESPONDENT(S)

Ms. Himani Kavi with Ms. Preeti Rane, Advocates for the petitioner
Mr. N.S. Rao, AGP for respondent 1
None for respondent 2

**CORAM : ROHIT B. DEO AND
Y.G. KHOBRAGADE, J.J.**

DATED : 05/01/2023

ORAL JUDGMENT : (PER:- Y.G. KHOBRAGADE, J.)

Heard Ms. Himani Kavi, learned Counsel for the petitioner
and Mr. N. S. Rao, learned Assistant Government Pleader for
respondent 1.

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2. **Rule.** Rule made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

3. The present petition under Article 226 of the Constitution of India is directed against the order dated 18.11.2021 passed by respondent 1 – Scrutiny Committee, whereby caste claim of the petitioner of being ‘Thakur’, Scheduled Tribe has been rejected.

4. In a nutshell, it is the grievance of the petitioner that he belongs to ‘Thakur’, Scheduled Tribe which is enlisted at Serial 44 in the list of the Constitution (Scheduled Tribes) Order, 1950 and on 12.08.2016 the competent authority issued a Caste Certificate in his favour. He passed 10th and 12th Standards and completed his graduation in B. Tech (Computer Engineering) in the year 2019. The proposal of his caste claim was forwarded to respondent 1 – Scrutiny Committee through proper channel for scrutiny and in support of his caste claim he produced following documents;

1. Caste Certificate of petitioner dt. 12.08.2016
2. School Leaving Certificate of petitioner of 10thstd dated 24.07.2014.
3. Caste Certificate of petitioner’s father dt. 04.12.1986
4. Extract of Dakhal Kharij Register of petitioner’s father

5. School Leaving Certificate of petitioner's father of 10th std dated 26.01.2014
6. College Leaving Certificate of petitioner's father dated 28.03.1995
7. Extract of Service Book of petitioner's father dated 28.06.2014
8. Extract of Kotwal Book of petitioner's grandfather namely Uttam (1941)
9. Extract of Dakhal Kharij Register of petitioner's grandfather namely Uttam (1941/1950/1950) dated 14.7.2014
10. School Leaving Certificate of petitioner's grandfather (1941/1950/1950) dated 30.01.2018
11. Family tree of petitioner's family dated 23.12.2020

However, on 18.11.2021, respondent 1 – Scrutiny Committee invalidated his caste claim of being 'Thakur' Scheduled Tribe.

5. Ms. Himani Kavi, learned Counsel for the petitioner submits that Vaishnavi d/o Mohan Gathe's, cousin sister of the petitioner, claim for caste 'Thakur' Scheduled Tribe was rejected by respondent 1 – Scrutiny Committee vide order dated 09.07.2019. Being aggrieved by the said order, the cousin sister of the petitioner had filed ***Writ Petition No. 5194/2019 (Vaishnavi d/o Mohan Gathe Vs. Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati)*** before this Court. On 29.07.2019, the co-ordinate Bench of this Court passed the judgment and order and set aside the order dated 09.07.2019 passed by

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respondent 1 – Scrutiny Committee and validated the caste claim of the cousin sister of the petitioner of being ‘Thakur’, Scheduled Tribe. Accordingly, the petitioner produced said order before respondent 1 – Scrutiny Committee. However, respondent 1 – Scrutiny Committee failed to consider and rely the judgment and order dated 28.07.2019 passed in ***Writ Petition No. 5194/2019*** (supra). It is further submitted that once the caste claim of cousin sister of the petitioner is validated being ‘Thakur’, Scheduled Tribe, respondent 1 – Scrutiny Committee could have relied and validated the caste claim of the petitioner as ‘Thakur’, Scheduled Tribe. However, respondent 1 illogically rejected the caste claim of the petitioner.

6. It is further submitted that the petitioner produced genealogical tree, which is not denied and doubted by respondent 1 – Scrutiny Committee. Respondent 1 – Scrutiny Committee also not disputed that on 29.07.2019, this Court passed the judgment and order in ***Writ Petition No. 5194/2019*** (supra) and validated the caste claim of the real cousin sister of the petitioner. Therefore, once the caste claim of the real cousin sister of the petitioner is validated, in those circumstances it would not be proper to differentiate between the caste claim of the petitioner from his real cousin sister and the petitioner cannot be treated belonging to other caste than ‘Thakur’, Scheduled

Tribe, hence, it is prayed for quashing and setting aside the impugned order on the ground of parity.

7. Mr. Rao, learned Assistant Government Pleader submitted that the caste claim of the petitioner is scrutinized by respondent 1 – Scrutiny Committee on scrutiny of documents, genealogical tree submitted by the petitioner as well as affinity test conducted by the Vigilance Cell and it is found that the caste ‘Thakur’ is in different communities and the petitioner’s caste ‘Thakur’ does not fall within the ambit of ‘Thakur’, Scheduled Tribe and respondent 1 – Scrutiny Committee has considered and passed the reasoned order, hence prayed for dismissal of the petition.

8. On the face of record, it *prima facie* appears that, proposal of caste claim of the petitioner has been forwarded through proper channel for scrutiny alongwith various documents observed by respondent 1 – Scrutiny Committee in its impugned order. The learned Assistant Government Pleader has not disputed the fact that on 09.07.2019 the co-ordinate Bench of this Court passed an order in ***Writ Petition No. 5194/2019 (supra)*** and validated the caste claim of the petitioner’s real cousin sister Vaishnavi and the petitioner produced the copy of the said order before respondent 1 – Scrutiny Committee but, it has not been considered while passing the impugned order.

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9. Apart from this fact, the petitioner produced pre-constitutional revenue records pertaining to his great-grandfather and grandfather wherein caste 'Thakur' is appearing but, those revenue records do not reflect about 'Thakur', Scheduled Tribe and affinity test is negative in this regard.

10. The Hon'ble Apex Court in the Special Leave to Appeal (C) No. 24894/2009 was testing the correctness of the judgment of Full Bench of the Bombay High Court in *Writ Petition No. 5028/2006* in *Shilpa Vishnu Thakur V/s State of Maharashtra & Ors.* The Full Bench has held that the affinity test is an integral part of the determination of the correctness of the claim of the caste certificate. The said Judgment was referred by the Hon'ble Apex Court in a judgment reported as *(2010) 14 SCC 489 Vijaykumar V/s State of Maharashtra & Ors.*, wherein, a certificate issued to the uncle of the appellant was found to be of no use as such certificate is/was not found to be validated by the Scrutiny Committee. However, in another judgment reported as *(2012) 1 SCC 113, Anand V/s Committee for Scrutiny and Verification of Tribe Claims and Ors.*, the judgment of Full Bench of Bombay High Court was referred to. In the later, the Hon'ble Apex Court has held that the affinity test is not a litmus test and that the document of pre-constitutional era is of highest probative value in the eyes of law. In the circumstances, the

Hon'ble Apex Court has framed the question as to what should be the parameters available to the Scrutiny Committee for verification of caste certificate, and referred the same to the larger Bench of three Judges for authoritative decision.

11. In the light of above, when the question as to whether affinity test is an integral part of the determination of the correctness of the claim of the caste certificate is pending consideration before the larger Bench of the Hon'ble Apex Court; and when the petitioner has submitted document, which was pre-constitutional document, having high probative value showing caste of the ancestor of the petitioner as 'Thakur'; judgment of this Court in ***Writ Petition No. 5194/2019*** (supra); and when the caste 'Thakur' has been included in the Presidential Order, 1950 as Scheduled Tribe; and when the petitioner's education is at stake for want of Tribe Certificate, we are of the considered view that the tribe claim of the petitioner could have been and ought to have been considered by the Scrutiny Committee, giving appropriate weightage to the pre-constitutional documents.

12. Of course, we do not intend to convey that the affinity test does not carry any significance, but when the question to that effect is pending consideration before the Hon'ble Apex Court, it cannot be said to be the only test to issue validity certificate of tribe claim or caste

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claim. The appropriate approach, according to us, where the pre-constitutional documents of the persons like petitioner shows that his caste is recorded as 'Thakur', is to consider the documents along with other evidence and to issue validity certificate, subject to outcome of the final decision of the Hon'ble Supreme Court in ***Special Leave to Appeal (C) No. 24894/2009 (Mah. Adiwasi Thakur Jamat Swarakshan Samiti v/s The State of Maharashtra and Ors.)***. The Scrutiny Committee, therefore, committed error which according to us requires correction.

13. We are conscious of the fact that 'Thakur' community also belongs to upper caste and that 'Thakur' is also a title of the upper caste community, but, when the caste 'Thakur' is mentioned in the pre-constitutional document and when the said caste had been included in the Scheduled Tribe category, the documents and judgment of this Court in ***Writ Petition No. 5194/2019*** (supra) ought to have been considered by the Scrutiny Committee. Having failed to do so, we find the approach of the Scrutiny Committee to be unreasonable.

14. So far as area restriction is concerned, it has been held in catena of judgments that the significance of the same has been scaled down because of migration of the tribe families for their livelihood. Thus, the tribe claim of the petitioner could not have been rejected on this count as well, ignoring pre-constitutional document.

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15. It is evident that the petitioner was admitted in respondent 2 – College for B. Tech (Computer Engineering) in the year 2014 under Open Category on payment of requisite fees. So also, respondent 2 – College withheld his College Leaving Certificate. Therefore, it is necessary to direct the respondent 2 – College to issue College Leaving Certificate to the petitioner and to refund the difference of fees paid by him as Open Category Candidate by treating him as reserved category candidate as per rules and regulations. We deem it appropriate to direct respondent 1 – Scrutiny Committee to issue ‘Thakur’ Scheduled Tribe validity certificate to the petitioner, subject to the outcome of the *Special Leave to Appeal (C) No. 24894/2009 (Mah. Adiwasi Thakur Jamat Swarakshan Samiti V/s The State of Maharashtra & Ors.)* pending before the Hon’ble Supreme Court. We, accordingly, proceed to pass the order as follows :

(i) The order dated 18.11.2021 passed by the respondent 1 – Scrutiny Committee is quashed and set aside.

(ii) It is declared that the petitioner has proved that he belongs to ‘Thakur’ Scheduled Tribe. The respondent 1 – Scrutiny Committee shall within a period of 10 days from receipt of copy of this order issue validity certificate to the petitioner accordingly.

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(iii) It is, however, made clear that issuance of validity certificate is subject to the final decision of the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 24894/2009, that has been referred to the larger Bench.

(iv) Till the petitioner receives validity certificate, he is free to refer to the copy of this order to indicate that he has been held entitled to receive validity certificate.

(v) Respondent 2 – College is directed to issue College Leaving Certificate to the petitioner and to refund the difference of fees paid by him as Open Category Candidate by treating him as reserved category candidate as per rules and regulations.

(vi) Rule is made absolute in the aforesaid terms. No costs.

(vii) Parties to act upon the authenticated copy of this order.

(Y.G. KHOBRADE, J.)

(ROHIT B. DEO J.)