



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

WRIT PETITION NO. 2426/2023

Avinash S/o. Arun Ingle,
Aged : 24 years, Occ.: Student,
R/o. Mhada Colony, Kaulkhed, Akola

----PETITIONER

--VERSUS--

Schedule Tribe Caste Certificate Scrutiny
Committee, Amravati Division, Old by pass
Road, Chaprashipura Amravati,
Through its Vice Chairman/Jt. Commissioner. ----RESPONDENT

WITH

WRIT PETITION NO. 5653/2021

Abhishek S/o. Arun Ingle,
Age : 18 Yrs., Occ. : Student,
R/o. Kaulkhed, Tq. & Dist. Akola.

----PETITIONER

--VERSUS--

1. Schedule Tribe Caste Certificate Scrutiny
Committee, Old By Pass, Chaprashipura,
Amravati, Through its Vice Chairman/Jt.
Commissioner.
 2. Government Industrial Training Institute,
Balapur, National Highway No.6, Balapur,
Dist. Akola, through its Principal.
- RESPONDENTS

Mr. A. P. Kalmegh, Advocate for Petitioner.
Mr. A. S. Fulzele, Additional Government Pleader for Respondents/State.

CORAM : A.S.CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : JULY 14, 2023

ORAL JUDGMENT (PER : A.S.CHANDURKAR, J.)

1. **Rule.** Rule made returnable forthwith and heard finally with consent of the learned Counsel for the parties.

2. The challenge raised in these Writ Petitions is to the order passed by the Scrutiny Committee invalidating the claim of the petitioners of belonging to “Thakur” Scheduled Tribe.

3. The petitioners in support of their claim of belonging to Thakur Scheduled Tribe have sought to rely upon various pre-constitutional documents of their forefathers having the entry of “Thakur”. These documents were examined by the Vigilance Cell and after verifying the old records, it was found that the said documents did have such entry. The Scrutiny Committee however by holding that there was absence of affinity of the forefathers with members of the Scheduled Tribe and further that there was no evidence to indicate that the forefathers, who were residing in the scheduled area, the claim came to be invalidated.

4. The learned Counsel for the petitioners after referring to the old entries of the pre-independence era submitted that perusal of the report of the Vigilance Cell would indicate that the Vigilance Cell found that

there was absence of evidence that the traits and characteristics of scheduled tribes were being followed. According to him, with the passage of time, it was not expected that all such old practices would be continued. By referring to the decision in ***Civil Appeal No.2502/2022 (Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.)*** decided by the Hon'ble Supreme Court on 24.03.2023 he submitted that the affinity test was not a litmus test to decide such claim and it was not an essential part in the process of determination of correctness of the tribe claim. It was further submitted by relying upon the decision in ***Jaywant Dilip Pawar Vs. State of Maharashtra and Ors. [2018 (5) ALL M R 975]*** that with the removal of area restrictions, the said aspect was not relevant for determining the tribe status. He therefore submitted that the claim in question deserves to be allowed.

5. The learned Additional Government Pleader for the respondents supported the orders passed by the Scrutiny Committee. It was submitted that the Committee was justified in observing that the petitioners sought to take advantage of the similarity in the use of the term "Thakur" as found in the old documents. There was absence of affinity and hence the Scrutiny Committee rightly found that the petitioners were not entitled for grant of Validity Certificate. After

considering the entire material, the Scrutiny Committee had proceeded to invalidate the claim in question. Hence, the Writ Petitions are liable to be dismissed.

6. We have heard the learned Counsel for the parties and we have also perused the records maintained by the Scrutiny Committee. In so far as various pre-constitutional documents are concerned, it is seen that the documents of the years 1936, 1940 and 1944 pertaining to the petitioners' grandfather have the entry "Thakur". In the Birth and Death Extract of the years 1936 and 1944 in the column of Caste, the entry "Thakur" is found. The Vigilance Cell in its report has verified the old records and had stated that such entries were found to be existing in the said documents. It is thus clear that from the pre-constitutional documents produced by the petitioners that the same pertain to the predecessors of the petitioners and they had the entry "Thakur". The probative value of these old documents will have to be given due importance and the same cannot be ignored.

7. According to the Scrutiny Committee, though the entry "Thakur" was found in the old documents, the same did not indicate that the petitioners belong to the Scheduled Tribe. The reasons given were that the predecessors were not from the area where scheduled tribes were found and further that the affinity towards scheduled tribes was not

indicated. We find that both these reasons cannot be made the basis for the rejection of the petitioners' claim. In ***Jaywant Dilip Pawar (supra)*** the Hon'ble Supreme Court has held that with the removal of the area restrictions, it was not permissible to restrict such claim only to persons from the scheduled areas. As regards the absence of affinity, the said issue has now been concluded in the decision in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*** wherein it has been held that the affinity test cannot be treated to be a conclusive test either way. The material collected by the Vigilance Cell has to be considered along with all other material on record. In the report submitted by the Vigilance Cell it can be seen that statements were made that in the family in case of any death, the body use to be buried. The said practice was however discontinued. The Hon'ble Supreme Court has observed that with passage of time, it cannot be expected that all the earlier traits and characteristics would continue to be available due to advancement of the society. The affinity test cannot be applied as a litmus test in such matters. Hence, when the report of the Vigilance Cell is considered along with all other material on record, we find that the petitioners have succeeded in proving that they and their forefathers belong to "Thakur" Scheduled Tribe. The order of the Scrutiny Committee giving weightage to the aspect of area restrictions and absence of traits and characteristics therefore is liable to be set aside.

8. Hence, for aforesaid reasons, the orders dated 01.11.2022 in Writ Petition No.2426/2023 and 02.11.2020 in Writ Petition NO.5653/2021 are set aside. It is declared that the petitioners have proved that they belong to 'Thakur' Scheduled Tribe. The Scrutiny Committee shall within a period of four weeks of receiving the copy of the judgment issue Validity Certificate in favour of the petitioners.

9. Till the Scrutiny Committee issues the Validity Certificate, the petitioners can rely upon this judgment to indicate that their claim of belonging to 'Thakur' Scheduled Tribe has been accepted.

10. Rule is made absolute in aforesaid terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

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