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

WRIT PETITION NO. 1309/2023

Baliram s/o Shaligram Suryawanshi,
Aged about 65 yrs., Occ. Retired,
R/o. Jagdamba Nagar, Khamgaon
Road, Shegaon, Tah. Shegaon,
Dist. Buldhana.

...PETITIONER

VERSUS

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

2. The Principal,
Police Training Centre, Akola.

3. The Sub-Divisional Officer,
Khamgaon, Dist. Buldhana.

Ms. Preeti Rane, Advocate for petitioner.
Mr. V.A. Thakare, Asst. Government Pleader for respondent Nos. 1 to 3.

CORAM : VINAY JOSHI AND
SMT. M. S. JAWALKAR, JJ.

DATE : 23.07.2024

ORAL JUDGMENT : (PER: VINAY JOSHI, J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel appearing for the parties.

2. Respondent No.1 Scheduled Tribe Caste Certificate Scrutiny Committee ("Committee") has rejected the petitioner's caste claim for "Thakur" Scheduled Tribe vide order dated 12.01.2023 which is impugned herein.

3. The petitioner claims to be belonging to "Thakur" Scheduled Tribe which is enlisted Sr. No. 44 in the Constitution (Scheduled Tribes) Order, 1950. The petitioner would submit that though pre-constitutional documents showing "Thakur" caste have been tendered, however the Committee gave unnecessary importance to the post constitutional isolated adverse entry of "Maratha" caste. It is also submitted that only on account of isolated adverse entry and failure in affinity test, petitioner's claim is rejected.

4. The petitioner has produced in all 25 documents to establish his caste claim. Particular emphasis is led on the documents at Sr. Nos.

3 and 4 which are pre-constitutional entries. The documents at Sr.No.3 relates to the petitioner's grand-father Parashram dated 01.02.1921. We have perused the said extract of birth register which bears entry of caste "Thakur". Secondly, the petitioner has relied on death extract of his grand-father Parashram dated 23.02.1944 bearing entry of "Thakur" caste. The Vigilance Cell has not doubted the correctness of these documents. Besides that the petitioner has produced other post-constitutional documents showing entry of "Thakur" caste.

5. The impugned order discloses that during vigilance inquiry one adverse document dated 10.07.1972 has been procured showing caste as "Maratha". The petitioner has explained that while he was minor, his relative namely Mahadeo Wankhade has mistakenly entered "Maratha" caste to the school record. We have gone through the said extract which bears the name of guardian Mahadeo Wankhade (relative) which supposed the petitioner's explanation. Moreover, the petitioner has produced his school documents of the year 1975 showing that his caste was entered as "Thakur". In the circumstances, we are not inclined to give much weightage to isolated adverse entry

that too of the year 1972 entered at the instance of relative. It is well settled that pre-constitutional documents would have primacy to establish the caste. Since two documents of the pre-constitutional era have been produced and not disputed by the Vigilance Cell, we are inclined to accede the petitioner's claim. So far as failure in affinity test is concerned, the law in this regard is well settled in case of ***Anand Vs. Committee for Scrutiny and Verification of Tribe Claims (2012)(1) SCC 113***, wherein it is ruled that the affinity test cannot be termed as litmus test, it should be used in the corroborative form.

6. In view of above, we are of the considered view that the Committee erred in sidling the pre-constitutional documents which ought not to have. We hold that the petitioner has established his caste claim for "Thakur" Scheduled Tribe, hence the following order:-

(I) Petition is allowed. We hereby quash and set aside the impugned order 12.01.2023 passed by respondent No.1 Committee.

(II) We hereby declare that the petitioner has duly established that he belongs to "Thakur" Scheduled Tribe

which is enlisted at Serial No. 44 in the Constitution (Scheduled Tribes) Order, 1950.

(III) Respondent No.1 Committee is directed to issue caste validity certificate to the petitioner of "Thakur" Scheduled Tribe within four weeks from the date of communication of this order.

(IV) Petition stands disposed of in above terms.

(SMT. M. S. JAWALKAR, J.) (VINAY JOSHI, J.)

Gohane