



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

WRIT PETITION NO. 1244 OF 2023

Bhushan S/o. Damodar Thakur,
Aged about 46 yrs., Occ: Service,
R/o. Ujwal Nagar, In front of MSEB
Office, Daryapur Road, Akot,
Distt. Akola.

....PETITIONER

....VERSUS....

1. The Vice-Chairman/Member-Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati.
2. The President,
Akot Shikshan Sanstha, Akot,
Tah. Akot, Distt. Akola.

....RESPONDENTS

Ms. Preeti Rane, Advocate for petitioner.
Shri N.R. Patil, AGP for respondent/State.

CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.

DATE OF RESERVING THE JUDGMENT: 09/05/2024
DATE OF PRONOUNCING THE JUDGMENT : 28/05/2024

JUDGMENT (PER: SMT. M.S. JAWALKAR, J.)

Rule. Rule made returnable forthwith.

2. Heard finally by consent of learned Counsel appearing for the parties at the stage of admission.

3. The present petition is filed being aggrieved by the order dated 24/01/2023 passed by the respondent No. 1 - the Vice-Chairman/Member-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati (for short, 'Caste Scrutiny Committee') in Case No. सआ/अजप्रतस/अम/ 5-ST/2007/10044.

4. It is contended that, the petitioner belongs to 'Thakur' Scheduled Tribe, which is enlisted at Sr. No. 44 of the Constitution (Scheduled Tribes) Order, 1950. To that effect, the caste certificate dated 10/03/1993 is issued to the petitioner by the Competent Authority. The petitioner came to be selected on 26/03/2001 on the post of 'Assistant Teacher' by the respondent-employer from the Scheduled Tribe category. The caste claim of the petitioner towards 'Thakur' Scheduled Tribe came to be forwarded on 27/04/2004 to the Caste Scrutiny

Committee along with necessary documents for the purpose of caste verification. The petitioner had filed necessary documents of prior and post independence period. The documents of pre-independence period are as under:-

Name	Relation	Document	Date of document	Caste
Damodar Wamanrao Thakur	Father	School Leaving Certificate	29/04/1949	Thakur
Chandrashekhar Wamanrao Thakur	Real Uncle	School Leaving Certificate	14/06/1946	Thakur
Entry of a son (Chandrashekhar) born to Waman Baliram Thakur	Grandfather	Entry of Birth	13/06/1940	Thakur
Entry of a son (Damodar) born to Waman Baliramji	Grandfather	Entry of Birth	06/04/1943	Thakur
Entry of a son (Dinkar) born to Waman Baliramji	Grandfather	Entry of Birth	28/11/1946	Thakur
Purushottam Waman Thakur	Real Uncle	Extract of Dakhal Kharij Register	10/07/1944	Thakur
Murlidhar Waman Thakur	Real Uncle	Extract of Dakhal Kharij Register	28/04/1943	Thakur
Chandrashekhar Waman Thakur	Real Uncle	Extract of Dakhal Kharij Register	14/06/1946	Thakur
Damodar Waman Thakur	Father	Extract of Dakhal Kharij Register	29/04/1949	Thakur

5. The police vigilance inquiry reports came to be submitted in the case of the petitioner. The petitioner submitted his reply to the police vigilance inquiry report.

6. As the caste claim of the petitioner was pending at the relevant time before the Caste Scrutiny Committee, the respondent - employer insisted the petitioner for submitting validity certificate. Therefore, the petitioner approached before this Court by filing Writ Petition No. 8302/2019 for seeking direction against the Caste Scrutiny Committee to decide his caste claim which was pending since 2001, and also for protection of his service. This Court on 21/02/2020 allowed the Writ Petition and directed the Scrutiny Committee to decide the caste claim of the petitioner within a period of six months from the date of first appearance (i.e. 03/03/2020) before the Caste Scrutiny Committee and in the said decision, the interim order was passed by this Court, was continued to operate.

7. The Committee again for third time

conducted a fresh vigilance inquiry on 08/07/2022 and the petitioner submitted his reply to it. The petitioner had submitted a communication dated 02/12/2019 before the Committee thereby giving details regarding the validity certificates issued to the blood relatives of the petitioner namely Vikas and Prashas who are brothers of the petitioner and the same should be considered while deciding the caste claim of the petitioner. It is further pertinent to point out that, same sort of communication has also been issued by the Police Superintendent/Vigilance Officer of the Committee to the Scrutiny Committee on 15/12/2010. In the said communication, it is specifically observed at the behest of the said officer that, the statement of affinity has been recorded and it is also observed that real blood relatives of the petitioner namely Prashas and Vikas have been granted validity by the Scrutiny Committee. There are many petitions/cases came to be decided by this Court and the Superior Court and the issue in respect of

validity to be issued to an applicant if any validity in favour of other blood relative is on record, is no more res-integra.

8. On 24/01/2023, the Caste Scrutiny Committee invalidated the caste claim of the petitioner on the ground of documentary evidence, affinity test and area restriction. The petitioner is praying for quashing the order of invalidation for the reason that the employer is in process to initiate action of termination against the petitioner.

9. The learned Counsel for the petitioner relied on the following citations/authorities:-

- 1) *Anand V/s. Committee for Scrutiny and Verification of Tribes Claims and others [2011(6) Mh.L.J.] 919]*
- 2) *Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1, Nagpur and others in Writ Petition No.1504/2010*

10. Heard both the sides. Perused record produced by the learned Assistant Government Pleader. There is no dispute over genealogy. If documents produced on record by the petitioner are seen, which are pertaining to year 1940 to 1949, they are consistently showing entry as 'Thakur'. Not only this, the real blood relatives of the petitioner namely Prashas and Vikas have been granted validity by the Scrutiny Committee.

11. It appears that the Caste Scrutiny Committee relied on some entries in respect of Waman as 'Bhat'. The petitioner gave due explanation about the mistake committed while entering caste as 'Bhat'. So, in so far as revenue entries are concerned, the petitioner denied that they are in blood relation of the petitioner.

12. It is held in *Apoorva d/o Vinay Nichale (supra)*, which is held as under:

"We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the

candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it."

13. So far as affinity test is concerned, learned Counsel for petitioner relied on *Anand Vs. Committee (supra)*, wherein it is held as under:

"22.

(i)

(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, the 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 tribe's 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."

14. In view of the validity issued to the blood relatives of the petitioner, the petitioner cannot be denied the validity unless there is any fraud while obtaining the validity certificate by the petitioner or by the relatives of the petitioner. Such interference is also required to be taken by adopting provisions of law. In our considered opinion, the order passed by the Caste Scrutiny Committee is patently erroneous, arbitrary, illegal and liable to be set aside. As such, we pass the following order:

ORDER

- i) The Writ Petition is allowed.
- ii) The order dated 24/01/2023 passed by the The Vice-Chairman/Member- Secretary, Schedule Tribe Caste Certificate Scrutiny Committee, Amravati in Case

No.सआ/अजप्रतस/अम/5-ST/2007/10044, Amravati is set aside.

iii) It is declared that the petitioner belongs to 'Thakur' Scheduled Tribe which is entry No.44 in the Constitution (Scheduled Tribes) Order, 1950.

iv) The Schedule Tribe Caste Certificate Verification Committee, Amravati shall issue validity certificate to the petitioner within a period of four weeks from today. Till such validity certificate is received, the petitioner can rely upon the judgment to indicate direction has been issued for issuance of such validity certificate.

15. Rule is made absolute in above terms. No costs.

(Judge)

(Judge)

B.T.Khapekar/R.S. Sahare