



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 490/2023

Gajanan S/o. Laxman Nimbalkar,
Age 59 yrs, Occ. Service,
R/o. Sawargaon Nehu, Tq. Nandura,
Dist. Buldhana.

....**PETITIONER**

...VERSUS...

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

2. Zilla Parishad, Buldhana,
Through its Chief Executive Officer.

....**RESPONDENTS**

WITH

WRIT PETITION NO. 3894/2023

Anil S/o. Ramdas Nimbalkar,
Age 55 yrs, Occ. Service,
R/o. 40 Bigha, Malkapur,
Tq. Malkapur, Dist. Buldana

....**PETITIONER**

...VERSUS...

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

2. Superintendent of Police, Buldhana.

....**RESPONDENTS**

Shri A.P.Kalmegh, Advocate for petitioner in WP No. 490/2023.
A.M.Ghogare, AGP for respondent(s)/State.

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

DATE : 12/07/2024

JUDGMENT (PER : SHRI VINAY JOSHI, J)

Heard.

2. **Rule.** Rule made returnable forthwith.

3. Heard finally by consent of learned counsel appearing for the parties.

4. For the sake of convenience, both the petitions are taken together for disposal since vide common order dated 22/12/2022, the respondent no. 1 – Scheduled Tribe Caste Certificate Scrutiny Committee (for short, ‘Scrutiny Committee’) has invalidated the caste claim of the petitioners namely Gajanan and Anil, who belong to the same family.

5. The caste claim of the petitioner(s) has been rejected on the ground that the Scrutiny Committee during Vigilance

Inquiry came across two adverse documents to the claim of the petitioner(s). In particular, both the documents pertain to petitioner Anil dated 16/01/1968 and 09/07/1974 showing the remark as 'Hindu Thakur' and 'Hindu Non-Backward'. These documents have been majorly weighed to the Scrutiny Committee in declining the claim, apart from the ground of failure in affinity test.

6. The learned counsel appearing for the petitioner(s) would submit that the Scrutiny Committee utterly failed to appreciate the consistent pre-Constitutional entries in the documents having 'Thakur' entry. We have been taken through the impugned order and related documents. As regards to the claim of the petitioner Anil, total 18 documents (Sr. Nos. 1 to 18) have been produced, whilst in support of the claim of the petitioner Gajanan, documents at Sr. Nos. 19 to 30 have been produced. The petitioner particularly took us through the documents at Sr. Nos. 5, 9, 12, 13, 21, 25, 26, 27 and 30, which are pre-Constitutional one bearing the caste

entry as 'Thakur'. We have examined the related documents which are as below:-

Sr. No. (As per impugned order)	Name	Relation	Document	Date of document	Caste	Page Nos. of Paper Book
5	Ramdas Ananda Thakur	Father of petitioner Anil	School Leaving Certificate	16/4/1941	Thakur	46
9	Ananda Ganu Thakur	Grandfather of petitioner Anil	Birth Entry	9/9/1931	Thakur	45
12	Ganu S/o. Maroti Thakur	Great Grandfather of petitioner Anil	Sale Deed	31/3/1922	Thakur	50 & 51
13	Ganu S/o. Maroti Thakur	Great Grandfather of petitioner Anil	Karja Rokha	01/06/1928	Thakur	52 (in WP 3894/2023)
21	Raghunath Sampat	Cousin Uncle of petitioner Gajanan	School Leaving Certificate	17/06/1938	Thakur	29
25	Tukaram S/o. Maroti Thakur and Ganu S/o. Maroti Thakur	Cousin Grandfather of petitioner Gajanan	Mortgage Deed	4/5/1929	Thakur	35

26	Ganu S/o. Maroti Thakur and Tukaram S/o. Maroti Thakur	Grandfather of petitioner Gajanan	Mortgage Deed	11/5/1925	Thakur	40
27	Sakharam Maruti Thakur	Cousin Grandfather of petitioner Gajanan	Lease Deed	8/3/1924	Thakur	43
30	Davlat Maroti Thakur	Cousin Grandfather of petitioner Gajanan	Death Entry	21/6/1926	Thakur	45

7. On examination of these documents, it is apparent that there are several pre-Constitutional entries having the entry of 'Thakur' tribe. Particularly, it is brought to our notice that the Vigilance Cell has not doubted the genuineness or correctness of these documents and thus, in the circumstances, the Scrutiny Committee ought to have considered those pre-Constitutional documents. Our attention has been invited to paragraph 22 of the decision of the Apex Court in case of *Anand V. Committee for Scrutiny and Verification of Tribe Claims [(2012) 1 SCC 113]*, wherein it is ruled that,

“22. (i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste”.

The said principle has been reiterated by the Hon’ble Supreme Court in later decision in case of **Priya Pramod Gajbe V/s. State of Maharashtra and ors [2023 SCC OnLine SC 909.**

8. In the circumstances, the Scrutiny Committee went wrong in discarding these old pre-Constitutional entries. Moreover, it reveals that the adverse documents do not bear entry of some other caste but merely, it has been stated that the person belongs to Hindu religion. Moreover, those documents are of the year 1968 and 1974. Certainly, the old documents would take precedence. In absence of challenge to the genuineness of these documents, we see no reason to discard the same.

9. As regards to the failure of the petitioner(s) in

affinity test, the law in this regard is well settled in case of **Anand** (supra), wherein it is revealed that the affinity test is not a decisive but it shall be used to corroborate the documentary evidence and should not be the sole criteria to reject the claim. In the light of above, we hold that the petitioners have established that they belong to 'Thakur' Scheduled Tribe. Accordingly, we pass the following order:-

ORDER

- 1) Writ Petition Nos. 490/2023 and 3894/2023 are allowed.
- 2) The common order dated 22/12/2022 passed by the respondent no. 1 - Scrutiny Committee is hereby quashed and set aside.
- 3) It is declared that the petitioners namely Gajanan S/o. Laxman Nimbalkar and Anil S/o. Ramdas Nimbalkar belong to 'Thakur' Scheduled Tribe, which is Entry No. 44 in the Constitution (Scheduled Tribes) Order 1950.

- 4) The Scrutiny Committee shall issue validity certificates to both the petitioners within a period of four weeks from the date of communication of this order.

Rule is made absolute in above terms. No costs.

(Judge)

(Judge)

B.T.Khapekar