



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

WRIT PETITION NO. 1828/2022

PETITIONER: Om S/o Kishor Pawar
Aged about 19 years, Occu: Student,
R/o at Post Ganori, Taluka- Bhatkuli,
District - Amravati.

...V E R S U S...

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

Ms. Preeti D. Rane, counsel for the petitioner.
Mrs. T.H. Khan, AGP for the Respondent/State.

CORAM : **AVINASH G. GHAROTE &**
URMILA JOSHI-PHALKE, JJ
DATE : **13/09/2023**

JUDGMENT : (PER : URMILA JOSHI-PHALKE, J)

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. The challenge raised in the present writ petition is to the order passed by the Caste Scrutiny Committee, Amravati invalidating the Caste Claim of the petitioner vide order dated 07/12/2021.

3. The petitioner, who is a student pursuing his further education, claims to be a "*Thakur Scheduled Tribe*". As per the contention of the petitioner, he had completed his 12th Standard Education and appeared for C.E.T.-2021 examination and cleared the same. He is currently pursuing his education in the D-Pharm Course. His caste claim was forwarded to the Scrutiny Committee for validation. Along with his caste claim, he submitted various documents from pre-independence era which show that the forefathers of the petitioner belong to the '*Thakur Community*'. He placed reliance on the genealogy tree. As per the genealogy tree – '*Bhikaji*', is his great-great-grandfather, who had a son namely *Himmat*. The said *Himmat* had nine children. Ramesh *Himmatrao* is his grandfather, who had two sons and two daughters namely *Raju*, *Kishor*, *Asha*, and *Sheela*, and Kishor is the father of the petitioner.

4. It is submitted that the entry dated 01/10/1919 regarding the birth date of a child born to the *Himmat* was recorded, which shows that the caste of the *Himmat* was recorded as '*Thakur*'. As per his birth date entry dated 24/08/1994, the son of the *Himmat* Ramrao was also recorded as a *Thakur*. He was enrolled in this name in school on 17/04/1931. Ramesh, who is the grandfather of the petitioner was also recorded as *Thakur*. The birth entry regarding the daughter of *Ramesh* was entered on

23/08/1951. Another son of *Shrikrishna Himmatrao* was enrolled in school on 10/07/1941 and his birth date is 22/08/1935. The daughter of *Himmat, Babitai* was also enrolled in school on 23/07/1941 and her birth date was 16/03/1935, who was also recorded as *Thakur*. The daughter of *Himmatrao* namely *Shakuntala* was admitted in school on 21/05/1952 and her birth date is recorded as 01/07/1945, who is also shown as *Thakur*. The son of *Ramesh Himmatrao* namely Raju, who is the cousin grandfather of the petitioner was admitted to school on 19/07/1962 and his birth date was recorded as 02/07/1955. Thus, there are consistent entries to show that his forefather belong to the '*Thakur-Scheduled Tribe*'. The caste claim of the petitioner was referred for the vigilance inquiry and the Vigilance Committee also referred to the same documents, during the inquiry. After receipt of the Vigilance Report, a show cause notice was issued to the petitioner on 01/11/2021. The petitioner had explained all the documents including the documents, wherein adverse entries are recorded by replying to the said show cause notice. But, the Caste Scrutiny Committee ignored the same and invalidated the claim by assigning the reason, that the petitioner failed to show the affinity with the *Himmat* as his ancestor, as the complete name of *Himmat* is not mentioned in the relevant documents. Being aggrieved with the same, the present petition is filed by the petitioner on the ground that the order passed by the

Scrutiny Committee is illegal and arbitrary.

5. The writ petition is opposed by the State on the ground that the burden is on the petitioner to prove his tribe claim. The affinity is not proved. He has to produce all requisite documents in support of his claim. The vigilance report shows that there are adverse entries during the pre-independence era showing the forefather of the petitioner as a *Bhat* and not as *Thakur*, therefore, the Scrutiny Committee correctly held that the petitioner failed to prove the affinity test, and no interference is called for.

6. Heard Ms. Preeti D. Rane, learned counsel for the petitioner. She submitted that the petitioner belongs to *Thakur – Scheduled Tribe* and placed reliance on various documents referred to above. She further submitted that the genealogy tree submitted by the petitioner is not in dispute. As per the said genealogy tree, *Himmat* who is the son of *Bhikaji*, great grandfather of the petitioner had in all nine children, and the grandfather of the petitioner namely Ramesh is his elder son. *Himmat* was recorded as *Thakur*, and his father Ramesh was also recorded as *Thakur*. His cousin and grandfather are also recorded as a *Thakur*. Thus, there are consistent entries showing that the petitioner's forefather belongs to the *Thakur*.

7. She further submitted that the claim of the

petitioner was referred to the Vigilance Committee. During vigilance, the Vigilance Committee collected the documents showing the birth entry of the child of *Himmat* dated 12/02/1921, which shows the caste of *Himmat* as *Bhat*. There is another entry regarding the birth date of the daughter of *Himmat* dated 13/03/1930, which also shows the caste of the *Himmat* as a *Bhat*. The Vigilance Committee has also collected one death extract regarding the death of the child of *Himmat*, which also shows the caste of the *Himmat* as *Bhat*. These adverse entries are explained by the petitioner, in his explanation to the show cause notice, which was issued after the receipt of the Vigilance Report. In fact, there are consistent pre-independence era entries, which shows that the petitioner's forefather belongs to the *Thakur* Committee. The scrutiny committee has not considered these pre-independence era entries which had a probative value and erroneously rejected the claim therefore, the order of the Scrutiny Committee deserves to be set aside by directing the Scrutiny Committee to issue the certificate.

8. Learned AGP submitted that during the Vigilance Inquiry, the Vigilance Officer came across the adverse entries as to the caste of forefathers of the petitioner and the petitioner could not establish his relationship with *Himmat* therefore, the caste claim was invalidated. It is further submitted that if the entries on which the petitioner placed

reliance are considered, there are various inconsistencies as completed the name of *Himmat* is not mentioned in the said documents. Therefore, it is difficult to ascertain that these entries are of the same *Himmat*, who is the great-grandfather of the petitioner. The burden is on the petitioner to establish his claim which he could not satisfy therefore, the scrutiny committee rightly invalidated the claim.

9. Having heard the learned counsels and on perusal of the record, the family tree, which, the petitioner has placed on record shows that the name of the great grandfather of the petitioner was *Bhikaji*. The said *Bhikaji* is having son *Himmat*, who is the great-grandfather of the petitioner. The said *Himmat* has in all nine children. Out of them, Ramesh is the great-grandfather of the petitioner.

10. The petitioner has placed reliance on the entry regarding the birth of the child of *Himmat* dated 12/12/1921, which records *Himmat* as a *Bhat*. The birth entry of child *Himmat* dated 12/03/1930 also records the caste as *Bhat*. The extract of the death Register dated 13/03/1930 shows that the child of *Himmatrao Pawar* died on 13/03/1930, wherein also the said *Himmat* was recorded as a *Bhat*. The birth extract as to the birth of the daughter of *Himmat- Shakuntala* records her birth date as 12/10/1942 and also records *Himmat* as a *Bhat*. Besides this, the birth entry as to the child of *Himmat* dated 01/10/1919 shows

Himmat as a *Thakur*. The grandfather of the petitioner namely Ramesh *Himmatrao*, whose daughter's birth entry was taken on 09/08/1951 records the said Ramesh as a *Thakur*. The another son of *Himmat* namely Shreekrushna shows that he belongs to the *Thakur Community*. The school admission extract of the daughter of *Himmat* namely *Babitai* of year 23/07/1941 shows her birth date as 16/03/1935 recorded her as a *Thakur*. The school admission extract as to the daughter of *Himmat* namely *Shakuntala*, who was admitted in the school on 21/04/1952 shows her birth date as 01/07/1944 and records her as a *Thakur*. Thus, it appears from the said record that during pre-independence era, the forefathers of the petitioners are recorded as *Thakur* as well as *Bhat*.

11. As per the birth extract regarding the birth date of *Shakuntala*, it shows her birth date as 12/10/1942 and the extract of the birth Register shows the caste of her father as *Himmat*, whereas the school admission extract of said *Shakuntala* shows her caste as *Thakur*. The above inconsistency is not explained by the petitioner either in the petition or before the Scrutiny Committee. One more inconsistency that we came across is that as per the genealogy tree, *Manorama* is shown to be the daughter of *Himmat* (Sister of Ramesh who is the grandfather of the petitioner), whereas the birth register extract issued on

09/08/1951 showing the birth date of *Manorama* as 09/08/1951 shows her to be the daughter of Ramesh. In the genealogy tree, the daughter by the name *Manorama* is not shown as an heir of said Ramesh. Thus, there are several inconsistencies noted by us while perusing the material on which the petitioner was placed reliance.

12. As observed by the Hon'ble Apex Court in the case of **Anand V/s Committee for Scrutiny and Verification of Tribes Claims and others**, reported in 2011 (6) Mh.LJ 919, that the scope of inquiry by the Vigilance Officer is broad-based and is not confined only to the verification of documents filed by the applicant with the application or the disclosures made therein. The inquiry, supposed to be conducted by the Vigilance Officer, would include the affinity test of the applicant to a particular tribe to which he claims to belong. In other words, an inquiry into the kinship and affinity of the applicant to a particular Scheduled Tribe is not alien to the scheme of the Act and the Rules.

13. In the light of the above observations, if the Vigilance Report is considered, the Vigilance Officer had collected the various documents pertaining to the entries of the forefathers of the petitioner, who were recorded as a Bhat. Regarding this, the petitioner has not given any satisfactory explanation. The genuineness of the caste claim has to be considered not only on careful examination of the

documents submitted in support of the claim but also on the establishing the genuineness of the family tree. Needless to say that the burden of proving his caste claim is upon the petitioner, for which he has to produce all the requisite documents in support of his claim, which he has not produced.

14. In *Maharashtra Adwasi Thakur Jamat Swarakshan Samiti vs State of Punjab reported in 2023 (2) Mh.L.J. 785*, the Hon'ble Apex Court has considered the aspect of issuance of validity certificate and held that Sub-rule (2) of Rule 12 clearly provides that only if the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it shall forward the application to the Vigilance Cell for conducting the school, home and other inquiry. Therefore, in every case, as a matter of routine, the Scrutiny Committee cannot mechanically forward the application to the Vigilance Cell for conducting an inquiry. When sub-rule (2) of Rule 12 contemplates that only if the Scrutiny Committee is not satisfied with the documents produced by the applicant that the case should be referred to the Vigilance Cell, it follows that the Scrutiny Committee is required to pass an order recording brief reasons why it is not satisfied with the documents produced by the applicant.

15. It is further held that the documents of the Pre-Constitution period showing the caste of the applicant and

their ancestors have got the highest probative value. For example, if an applicant is able to produce authentic and genuine documents of the pre-Constitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations provided to the Tribes included in the Scheduled Tribe order. In such a case, a reference to Vigilance Cell is not warranted at all.

16. In the light of the above observation, if the order of the Scrutiny Committee is perused, it shows that it is observed by the Committee that the Scrutiny Committee has examined the claim of the applicant in accordance with the guidelines issued by the Apex Court in its leading judgment in the case of ***Kumari Madhuri Patil and Another vs Addl. Commissioner reported in AIR 1995 SC 94*** and in accordance with the provision of the Act and the Rules. The case of the petitioner was handed over to the Police Vigilance Cell for detailed home, school, and other inquiries on 08/12/2020. The Police Vigilance Cell has conducted the inquiry and submitted its report to the committee. It was also found during the home inquiry that the traits, characteristics, and customs of the applicant do not match with Thakur Scheduled Tribe. The show cause notice was issued to the petitioner and an opportunity was given to explain the adverse entries which are appearing during the pre-

independence era. The Scrutiny Committee further observed that the explanation given by the petitioner is not satisfactory and did not accept the contention of the petitioner and invalidated the claim.

17. We have also considered these aspects and we have also noted that there are several inconsistencies in the pre-independence documents. It is pertinent to note that the pre-independence documents, on which the petitioner relied, no-where shows that the document dated 01/10/1919, wherein the name of *Himmatrao* was mentioned but nothing is on record to shows that the said *Himmatrao* is the same *Himmatrao*, who is the great great grandfather of the petitioner, as the complete name is not mentioned. There are inconsistent entries as to the caste of the said *Himmatrao*. In a birth extract of 01/10/1919, his caste was recorded as a *Thakur*, whereas in a birth entry dated 12/12/1921, his caste was recorded as a '*Bhat*'. There are various adverse entries showing said *Himmatrao* as a *Bhat*, which was discussed earlier.

18. Thus, after hearing both the sides at length and considering the documents placed on record and the record maintained by the Scrutiny Committee, we hold that the petitioner failed to prove the linkage with the previous generations; there are several inconsistent entries as to the name and the relationship between the forefathers of the

petitioner.

19. In view of the above, the Caste Scrutiny Committee rightly held that the petitioner failed to prove his caste claim and rightly rejected the application for validation. Accordingly, the writ petition deserves to be dismissed. Hence, we proceed to pass following order:

- a) Writ Petition is **dismissed** with no orders as to costs.
- b) Rule is discharged.

(URMILA JOSHI-PHALKE, J)

(AVINASH G. GHAROTE, J.)

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