



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14581 OF 2019

Ankush Balu Shinde
Age: 18 years, Occu.: Student,
R/o Mannas Pimpri, Tq. Sengaoon,
Dist. Hingoli

..PETITIONER

VERSUS

1. State of Maharashtra
Through its Secretary
Tribal Development Department,
Mantralaya, Mumbai
2. The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Division, Aurangabad
Through its Member Secretary
3. The Sub Divisional Officer,
Office of SDO, Hingoli,
Dist. Hingoli

..RESPONDENTS

....
Mr. A.S. Golegaonkar, Advocate h/f Mr. M.A. Golegaonkar, Advocate for
petitioner
Mr. S.B. Yawalkar, A.G.P. for respondents
....

CORAM : SUNIL P. DESHMUKH AND
R.G. AVACHAT, JJ.
DATED : 18th DECEMBER, 2020

ORAL JUDGMENT (PER : R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith. Heard learned counsel for
appearing parties finally, by consent.

2. The claim of the petitioner to have belonged to *Thakur* – Scheduled Tribe has been negated by Respondent No.2 – Scheduled Tribe Certificate Scrutiny Committee, Aurangabad (‘Scrutiny Committee’) by its order dated 05th August, 2019. The petitioner is, therefore, before this Court taking exception to the impugned order.

3. Mr. Golegaonkar, learned counsel for the petitioner would submit that the scrutiny committee, by its common order, has for no reason decided claims of three persons, who were no way concerned/related with one another. According to him, the petitioner has placed on record documents of himself and his blood relations, wherein their caste has been recorded as ‘*Thakur* – Scheduled Tribe’. One or two documents thereof are in the nature of pre-independence record. Moreover, cousin grandfather of the petitioner has been granted validity certificate. The order granting him validity has been affirmed by the Apex Court. There was no contra entry. When all the documents relied upon were in petitioner’s favour, the scrutiny committee ought not to have negated his claim on the ground of failure to clear affinity test and the area restriction. Learned counsel, therefore, urged for setting aside the impugned order.

4. Mr. Yawalkar, learned Assistant Government Pleader would, on the other hand, submit that none of the documents relied upon suggests the

petitioner to have belonged to *Thakur* – Scheduled Tribe. There is quite distinction between caste and tribe. Based on the evidence on record, scrutiny committee was justified to negative petitioner's claim.

5. We have considered the submissions made by learned counsel. Also perused documentary evidence placed before the scrutiny committee and perused impugned order to find that the scrutiny committee has decided claim of three different persons by a common order. Same ought not to have been done.

6. During the vigilance enquiry, the petitioner placed on record following documents of himself and his relations :-

2. उमेदवाराने जमातीच्या दाव्याबाबत दिलेले पुरावे :-

अ. क्र.	प्र.नि.उ.क्र. /रजि नं	उमेदवाराचे नाव	उमेदवाराशी नाते	उपलब्ध पुरावे	पुराव्यात नमूद जात	जन्म दिनांक प्रवेश दिनांक
1.	41123049 528	अंकूश बाळू शिंदे	उमेदवार	जात प्रमाणपत्र	ठाकूर	दि.22/9/2017
2.	1362	अंकूश बाळू शिंदे	उमेदवार	प्रवेश निर्गम उत्तरा	ठाकूर	जन्म दि.10/1/2000 प्रवेश दि. 13/6/06
3.	17149	अंकूश बाळू शिंदे	उमेदवार	टी.सी.	ठाकूर	जन्म दि.12/1/2000 प्रवेश दि.27/6/2014
4.	1498	वैष्णवी बाळू शिंदे	सख्खी बहिण	टी.सी.	ठाकूर	जन्म दि.10/10/2002 प्रवेश दि.19/6/2008
5.	1650	आदित्य भागवत शिंदे	सख्खा चुलत भाउ	टी.सी.	ठाकूर	जन्म दि.16/10/2006 प्रवेश दि.16/6/2012
6.	1423/20 13	आदित्य भागवत शिंदे	सख्खा चुलत भाउ	जात प्रमाणपत्र	ठाकूर	दि.8/8/2013
7.	277	बाळू ज्ञानबा शिंदे	वडील	प्रवेश निर्गम उत्तरा	ठाकूर	जन्म दि.10/8/1972 प्रवेश दि.1/7/1978
8.	2523	शिंदे बाळू ज्ञानबा	वडील	टी.सी.	ठाकूर	जन्म दि.10/7/1972 प्रवेश दि.1/7/85

9.	2350	बाळू ज्ञानबा शिंदे	वडील	जात प्रमाणपत्र	ठाकूर	दि.21 / 11 / 92
10.	531	भागवत ज्ञानबा शिंदे	सख्खा चुलता	प्रवेश निर्गम उतारा	ठाकूर	जन्म दि.22 / 5 / 1977 प्रवेश दि.1 / 7 / 1983
11.	82	ज्ञानबा विश्वनाथ शिंदे	आजोबा	प्रवेश निर्गम उतारा	ठाकूर	जन्म दि.1 / 1 / 1936 प्रवेश दि.8 / 7 / 1949
12.	22	बाबुराव राजाराम शिंदे	चुलत आजोबा	टी.सी.	ठाकूर	जन्म दि.4 / 12 / 1953 प्रवेश दि.23 / 11 / 58
13.	4113 / 99 / 371	बाबुराव राजाराम शिंदे	चुलत आजोबा	वैधता प्रमाणपत्र	ठाकूर	दि.10 / 4 / 2003
14.	157	शिंदे दिनु राजाराम	चुलत आजोबा	प्रवेश निर्गम उतारा	ठाकूर	जन्म दि.12 / 7 / 1955 प्रवेश दि.9 / 8 / 1962
15.	228	एकनाथ राजाराम शिंदे	चुलत आजोबा	प्रवेश निर्गम उतारा	ठाकूर	जन्म दि.12 / 5 / 1962 प्रवेश दि.7 / 7 / 1977
16.	64 / 326	मोहन राजाराम शिंदे	चुलत आजोबा	प्रवेश निर्गम उतारा	ठाकूर	जन्म दि.5 / 3 / 1968 प्रवेश दि.11 / 6 / 1973

7. The aforesaid record undoubtedly indicate the petitioner and his forefathers to have belonged to caste *Thakur*. School admission and school leaving certificates of the petitioner's grant father – Dnyanaba Shinde dates back to 1948. His caste recorded therein is *Thakur*. This being pre-independence document, the scrutiny committee ought to have relied on it to grant the petitioner validity certificate. Another document in the nature of school leaving certificate of the petitioner's cousin grandfather – Baburao Shinde, dates back to 1958. The same being very old document, ought to have been given its due probative value.

8. The reasons given by the scrutiny committee to negative petitioner's claim are based on surmise and conjectures. According to the scrutiny committee, mere documentary record indicating the petitioner and

his blood relations to have belonged to caste *Thakur* was not sufficient to drive home his claim to have belonged to *Thakur* – Scheduled Tribe. By presidential order of 1950, for the first time *Thakur* came to be recognised as Scheduled Tribe. Unless and until a person has been officially granted a certificate to have belonged to *Thakur* – Scheduled Tribe and the same is held to have been valid by the scrutiny committee, there may not be a record suggesting a particular person to have belonged to *Thakur* – Scheduled Tribe. Even the record collected during the vigilance enquiry is in favour of petitioner's claim.

9. Moreover, cousin grandfather – Baburao has been granted validity certificate. The Apex Court has affirmed/granted seal of approval to the validity certificate issued in favour of petitioner's cousin grandfather. The said document in fact seals the fate of claim of the petitioner. Relying on the said validity certificate, the scrutiny committee ought to have certified petitioner's certificate to be valid one. So long as validity certificate of petitioner's grandfather holds the field or until is recalled by the competent authority after due enquiry, same is the best piece of evidence to grant petitioner's claim.

10. The impugned order suggests that the scrutiny committee gave undue importance to the vigilance report and the affinity test. Apex Court in

the case of *Anand Vs. Committee for Scrutiny & Verification of Tribe Claims & Others (2012) 1 SCC 113* has observed that affinity test is not the litmus test when there is clinching documentary evidence supporting the petitioner's tribe claim. The scrutiny committee ought not to have acted upon the opinion given by the research officer and vigilance report. The record indicates the petitioner to have given his say in detail to the vigilance cell report.

11. Since the documents relied on by the petitioner record his caste as *Thakur* and there being a validity certificate granted in favour of his paternal cousin grandfather, the impugned order, to the extent of the petitioner, needs to be set aside. Petition thus succeeds in terms of following order :-

Impugned order dated 5th August, 2019 passed by respondent No. 2 – Scrutiny Committee is quashed and set aside to the extent of the petitioner. Respondent No. 2 – Committee is directed to forthwith issue requisite validity certificate to the petitioner of being “Thakur” scheduled tribe (ST). This order would not govern cases of other two claimants whose claims also are decided by the committee under the impugned order.

(R.G. AVACHAT, J.)

SSD

(SUNIL P. DESHMUKH, J.)