



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5102/2023

Himanshu s/o Ganesh Pawar
aged 20 years, Occu. Student, R/o
Jagdamba Nagar, Khamgaon Road,
Shegaon, Tah. Shegaon, Dist.
Buldana.

....PETITIONER

...VERSUS...

1. The State of Maharashtra, through
Secretary, Department of Tribal
Development, Mantralaya, Mumbai.
2. The Chairman, the Schedule Tribe
Caste Certificate Verification
Committee, Amravati Division, Dist.
Amravati.
3. The Principal, B.K. Birla College of
Arts, Science & Commerce, Kalyan,
Dist. Thane.

...RESPONDENTS

Shri G.R. Kothari, Advocate for petitioner
Mrs S.S. Jachak, Addl. G.P. for respondent Nos.1 and 2

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

DATE OF RESERVING THE JUDGMENT : 31/01/2024

DATE OF PRONOUNCING THE JUDGMENT: 02/02/2024

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

Heard.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

3. The present petition is filed by the petitioner seeking direction for quashing and setting aside the impugned order passed by respondent No.2- Scheduled Tribe Caste Certificate Verification Committee, Amravati in respect of claim of petitioner. The petitioner further seeks declaration that the petitioner belongs to 'Thakur' Scheduled Tribe and further direction to the respondent No.2 for issuance of tribe validity certificate to the petitioner.

4. It is contended by the petitioner that petitioner belongs to 'Thakur' Scheduled Tribe. He was admitted to respondent No.3

College to pursue B.Sc. (IT) Degree Course. The tribe claim of the petitioner was referred before respondent No.2- Scrutiny Committee for verification. The petitioner submitted relevant documents in support of his tribe claim including pre-independence documents. The Sub Divisional Officer, Malkapur after perusal of documents held that petitioner belongs to 'Thakur' Scheduled Tribe and thereby issued Scheduled Tribe Certificate. The petitioner along with his application for verification of his tribe claim filed several pre-independence documents pertaining to his ancestors before the Scrutiny Committee but ignoring all such documents and position of law prevailing today, the Committee invalidated the tribe claim of the petitioner on the ground that affinity was not established.

5. We have perused impugned order passed by Schedule Tribe Caste Certificate Verification Committee, Amravati, (hereinafter referred as 'Scrutiny Committee'). The

record of Scrutiny Committee is also placed by learned Assistant Government Pleader on record. With the assistance of learned Assistant Government Pleader, we have perused the record. The petitioner claims to belonging to 'Thakur' Scheduled Tribe, which is an entry at Sr. No.44 of the Constitution (Scheduled Tribes) Order, 1950.

6. On perusal of the police vigilance cell, it appears that it is favourable to the petitioner all the entries except one shows that the blood relatives of the petitioner belong to 'Thakur' Scheduled Tribe. However, as per vigilance, there is no affinity to the tribe 'Thakur'. On that sole basis, the claim of the petitioner was denied. So far as entries are concerned, the oldest entry in our considered opinion, will prevail over the subsequent entries. The said entry is of 25/06/1929, wherein date of birth is shown as 29/09/1914. There are certain documents which appear at page No.44 of the petition. There is remark of Enquiry Officer in paragraph No.2,

wherein he has mentioned that in the entry of Kashinath Sadashiv, his tribe is mentioned as 'Thakur Pawar' and he also added that the Head Master of the said school i.e. Zilla Parishad Prathamik Marathi Shala, Vadner Bholji, Tah. Nandura, District Buldhana gave remark in writing that in the tribe mentioned as 'Thakur Pawar' and 'Thakur' is written in different ink. However, on perusal of record placed before the Court at page 114, there is no such remark by any of the Head Master in writing. As such, there is no basis in allegation that 'Thakur' is written in different ink. So far as affinity test is concerned, there are various judgments. In view of these judgments, affinity test cannot be applied when there are sufficient pre-independence documents having provative value.

6. Learned Counsel for petitioner relied on various judgments including judgments:

1) *Priya Pramod Gajbe Vs. State of Maharashtra and*

others, 2023 SCC OnLine SC 909

2) *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti
 Vs. The State of Maharashtra and ors. In Civil Appeal
 Nos.2502/2022*

3) *Jaywant Dilip Pawar Vs. State of Maharashtra and ors.,
 2018 (5) All MR 975.*

7. On perusal of record following documents appear to be prior to independence. There is no dispute about genealogical tree produced on affidavit by the petitioner. Following documents of pre-independence are there on record:

Name	Relation	Document	Date of document	Caste
Sadashiv Vithoba	Great-grand-father	School leaving certificate dated 01/07/2021	Date of Birth is 29/09/1914, date of admission in school is 25/06/1929 and leaving of School on 16/07/1930	Thakur

Prabhakar Sadashiv	Grandfather	School leaving certificate dated 01/07/2021	Date of Birth is 25/01/1945 and leaving of School on 30/04/1961	Thakur
Kashinath Sadashiv	Cousin grandfather	School leaving certificate dated 01/07/2021	Date of Birth is 16/02/1942, date of admission is 11/07/1955 and leaving of School on 28/07/1956	Thakur Pawar
Vasant Sadashiv	Cousin grandfather	School leaving certificate dated 01/07/2021	Date of Birth is 05/01/1947, date of admission is 15/04/1953 and leaving of School on 27/02/1954	Thakur
Vatsala Sadashiv	Cousin grandmother	School leaving certificate dated 01/07/2021	Date of Birth is 12/06/1950, date of admission is 09/07/1956 and leaving of School on 30/10/1956	Thakur

8. As such, there are pre-independence documents which are showing blood relatives of the petitioner belongs to 'Thakur'

Scheduled Tribe. It appears that in some places, the surname of blood relatives is shown as 'Pawar' but tribe is shown as 'Thakur'. Only at one place, it was shown as 'Thakur Pawar'. The oldest entry is thus of the year 1921. As such, it will prevail over all subsequent entries. Even in subsequent entries, there is mention of 'Thakur'. Only somewhere 'Pawar' is shown as surname but tribe is shown as 'Thakur'. Only at one place it is shown as 'Thakur Pawar', however it is of no significance as earliest entry (i.e. pre-independence document) ancestor of the petitioner shown as belongs to 'Thakur' then subsequent single entry of petitioner will not change the tribe 'Thakur' of the petitioner.

9. The learned Counsel for petitioner relied on *Mah. Adiwasi Thakur Jamat Swarakshan Samiti (supra)*, wherein the Hon'ble Apex Court held that:

“(b) for the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along

with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim; and

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case."

10. Learned Counsel for petitioner also relied on ***Priya Pramod Gajbe (supra)***, wherein Hon'ble Apex Court relied on citation in ***Anand V. Committee for Scrutiny and Verification of Tribe Claims, (2012) 1 SCC 113***, wherein the Hon'ble Apex Court, in paragraph No.12 read thus:

"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, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in

favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(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, modernization 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."*

As such, there are pre-independence documents showing

tribe of forefather of petitioner as 'Thakur'. There is no reason to discard his claim. So far as 'Pawar' is concerned, admittedly, it was shown as surname in some of the documents and only one document, it was shown as 'Thakur Pawar'.

11. In our considered opinion, this entry is subsequent, it is of 1955. As such, the oldest would prevail over all subsequent entries. So far as affinity test is concerned, the appellant has stayed in urban area along with his family for decades. The applicant may not have knowledge of aforesaid facts. In view of this factual aspects, the Hon'ble Supreme Court held that the affinity test cannot be applied as a litmus test. Since the oldest undisputed document produced by the petitioner relates back to 1929 and other documents having probative value, the Committee was not justified in invalidating the claim of the petitioner applying affinity test and area restriction.

12. The Hon'ble Apex Court in *Jaywant Pawar (supra)* held that, area restriction of scheduled tribe in State of Maharashtra, 'Thakur' community was deleted after Amendment Act, 1976 was published and all members of 'Thakur' community are to be treated as Scheduled Tribe. Court further held that observation of Scrutiny Committee is wholly irrelevant. Appellant only to establish that they belong to community mentioned at Sr. No.44 of part-9 of second Scheduled of Amendment Act.

13. In substance, there are documents having probative value to show the consistent entry of 'Thakur' Scheduled Tribe. As such, we pass the following order:

ORDER

i) The order dated 04/11/2022 passed by the Schedule Tribe Caste Certificate Verification Committee, in Case No.सआ/अजप्रतस/अम/5/500/EDU/032022/205509, Amravati is set aside.

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

iii) The Schedule Tribe Caste Certificate Verification Committee, Amravati shall issue validity certificate to the petitioner within a period of four weeks from today.

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

JUDGE

JUDGE

R.S. Sahare