



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

WRIT PETITION NO. 7246 OF 2022

1. Shri Jay Madhukar Tayade,
Age 24 years, Occ. Student,
R/o. Sagad, Tq. Balapur,
District Akola

2. Ku. Shraddha Madhukar Tayade,
Age 26 yrs, Occ. Student,
R/o. Sagad, Tq. Balapur,
District Akola

.....PETITIONERS

...VERSUS...

Schedule Tribe Caste Certificate
Scrutiny Committee, Old By Pass,
Chaprashipura, Amravati,
Through its Vice Chairman/
Jt. Commissioner,

.....RESPONDENTS

Mr. R.S. Suryawanshi, Advocate for Petitioners,
Mr. A.A. Madiwale, AGP for Respondent/State.

CORAM:- NITIN W. SAMBRE & ABHAY J. MANTRI, JJ.
DATE : 03.01.2024

JUDGMENT (Per: Abhay J. Mantri, J.)

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

2. The petitioners have challenged the order dated
16.3.2022, passed by the respondent - Scheduled Tribe

Caste Certificate Scrutiny Committee, Amravati (for short, “*the Scrutiny Committee*”), thereby invalidating the claim of the petitioners of belonging to Thakur Scheduled Tribe.

3. It is claimed that the petitioners belong to the Thakur Scheduled Tribe, which is recognized at serial No. 44 in the list of Scheduled Tribe Notification. The Sub-Divisional Officer, Balapur, District Akola issued a caste certificate in favour of the petitioners on 23.6.2016. The petitioners are pursuing their studies. To avail of the benefits of the Scheduled Tribe category, the petitioners have submitted their caste certificates along with other documents to the college for verification. Accordingly, the college forwarded caste certificates to the respondent – Scrutiny Committee for their verification along with the documents prior to 1950. The petitioners claimed that since the documents pertain to the pre-constitutional era, they have more probative value, and therefore, their tribe claims to be validated.

4. Since the Scrutiny Committee was not satisfied with the documents placed on record by the petitioners

about their caste claims, the Committee has referred their case to the Vigilance Cell pursuant to the provisions of sub-rule (2) of Rule 12 of the Maharashtra Scheduled Tribes (Regulations of Issuance and Verification of) Certificate Rules, 2003.

5. The Vigilance Cell, after conducting the enquiry, submitted its report to the Scrutiny Committee. In the aforesaid backdrop, the petitioners were served with the show-cause notices dated 15.7.2019 calling upon them to explain the opinion given by the vigilance cell on the affinity test and area restrictions. The petitioners submitted their explanation on 20.1.2020 and appeared for a hearing.

6. The Scrutiny Committee after considering the submissions made by the petitioners and after evaluation of the documentary material placed on record, vide impugned order, invalidated the claim of the petitioners of belonging to the Thakur Scheduled Tribe. Being aggrieved by the same, the petitioners have preferred this petition.

7. Learned counsel for the petitioners Mr. R.S. Suryuawanshi vehemently argued that the Committee has

not considered the oldest entries of documents for the years 1954, 1945, 1929, and 1910 in respect of the grandfather and great-grandfather of the petitioners which find place in the school record as well as Kotwal book of the Tahsil Office and erred in rejecting the claim of the petitioners on the ground that they failed to satisfy affinity towards Thakur Scheduled Tribe and therefore, the petitioners are entitled to claim the validity certificates of the Thakur Scheduled Tribe. The learned counsel, to buttress his contentions, has relied upon the following authorities:

- i) *Anand Vs. Committee, (2011(6) Mh.L.J.919;*
- ii) *Ravindra Khare Vs. State of Maharashtra and others, (2013(3) All M R 644;*
- iii) *Ku. Ashwini Vilas Chavan Vs. State, 2017(4) All M R 412;*
- iv) *Motilal Pawar, (Writ Petition No. 7/2014);*
- v) *Prakash Deore Vs. STCCSC & Ors, 2019(5) Mh. L.J. 228;*
- vi) *Priya Pramod Gajbe Vs. The State of Maharashtra and others (Writ Petition No. 7117 of 2019)*

In view of the dictum laid down in the above cases, the learned counsel has prayed for quashing and setting aside the order impugned.

8. *Per contra*, the learned AGP has opposed the petition stating that there exists a different caste under the nomenclature of the Thakur Caste. Every Thakur caste is not a tribe. Similarly, the entry of caste of Thakur suggests different meanings i.e. Thakur is *caste*, Thakur is the title to high caste people, etc. So also, the petitioners have failed to prove the affinity test that they belong to the Thakur Scheduled Tribe. Therefore, the Committee based on the material placed on record and non-satisfaction of the affinity test has rightly rejected the claim of the petitioners which requires no interference at the hands of this Court.

9. We have appreciated the aforesaid submissions and perused the impugned order along with the documents on record. On going through the documents, it clearly appears that the petitioners have produced the school record i.e. extract of the school leaving certificate with the extract of the leaving certificate register wherein the name of the grandfather of the petitioners Mr. Kashinath is shown as a student of the school, whose date of birth is shown as 1.9.1946. The second and third documents are extracts of the Kotwal Book which indicates the entry that one male

boy was born on 04/08/1945 and one female baby was born on 20.6.1929, their father was shown as Mr. Govind Khushal Thakur i.e. the grandfather of the petitioners. One more entry in the Kotwal Book dated 26.3.1910 denotes that one female baby was born and her father was shown as Mr. Khushal Surebhan Thakur i.e. the great-grandfather of the petitioners. In all the above entries, their caste is mentioned as *Thakur*.

10. It is pertinent to note that all those documents are of the pre-constitutional era and therefore those documents have a greater probative value than the affinity test. The aforesaid documents fortify their claim of belonging to the Thakur Schedule Tribe. The Vigilance Cell as well as the Scrutiny Committee did not dispute those documents or their genuineness/authenticity. So also, they did not controvert the relationship of the petitioners with their grandfather and great-grandfather.

11. The Hon'ble Apex Court in the case of ***Priya Pramod Gajbe Vs. The State of Maharashtra and others (Writ Petition No. 7117 of 2019)*** and other judgments have

categorically laid down the dictum that more weightage has to be given to the pre-constitutional documents rather than the affinity test. The aforesaid dictum is squarely applied to the case in hand. The Hon'ble Apex Court has also held that the affinity test cannot be applied as a litmus test. It further observed that findings about the area restriction are also not sustainable in the eyes of the law when pre-constitutional documents are on record substantiating the case of the petitioners.

12. Thus, to sum up, the above discussion and documents on record, it reveal that the entries in the school record and Kotwal book for the years 1910, 1929, 1945, and 1954, categorically show that the caste of grandfather and great-grandfather of the petitioners is *Thakur* Scheduled Tribe. Those documents have greater probative value. So, it cannot be said that based on the finding of the affinity test and the area restriction the Scheduled Tribe claim is open for rejection as the documentary evidence which is of the Pre-Constitutional era has fortified the claim of the petitioner. Moreover, the Vigilance Cell Report as well

as the Scrutiny Committee have not disputed those documents. Consequently, it seems that the findings recorded by the Scrutiny Committee appear contrary to the ratio laid down in the case of *Priya Gajbe* (supra) and other judgments relied upon as well as the fact on record. Therefore, the said order is not sustainable in the eyes of the law and is liable to be quashed and set aside in the present petition. In the aforesaid background, we deem it appropriate to allow the petition in the following terms. As a result, we pass the following order:-

- i) Impugned order dated 16.03.2022, passed by the respondent – Scrutiny Committee is hereby quashed and set aside.
- ii) It is declared that the petitioners have proved that they belong to the *Thakur* Scheduled Tribe.
- iii) Within a period of four weeks from receipt of a copy of this judgment, the respondent – Scrutiny Committee, Amravati shall issue caste validity certificates in favour of the petitioners.

13. Rule made absolute in the aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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