



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

WRIT PETITION NO. 516/2023

Nitin s/o Ajay Donge
Aged about 30 yrs, Occ. Service,
R/o At-Post – Dobal Vesh, Behind
Gajanan Maharaj Temple,
Shegaon, Tah. Shegaon, Distt.
Buldhana-444203.

....PETITIONER

...VERSUS...

1. The Vice-Chairman/Member-Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati.
2. The Chief General Manager (T/E),
Maharashtra State Electricity
Distribution Company Ltd.
(MSEDCL), 'Prakashgad', 4th
Floor, Station Road, Bandra (E),
Mumbai-400051.

...RESPONDENTS

Ms. Himani Kavi, Advocate for petitioner
Shri V.A. Thakare, AGP for respondent No.1
Shri Amey Moharir, Advocate h/f Shri A.D. Mohgaonkar, Advocate
for respondent No.2

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

DATE OF RESERVING THE JUDGMENT: 08/04/2024

DATE OF PRONOUNCING THE JUDGMENT: 09/05/2024

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

Rule. Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

2. The present petition questions the order passed by the Scrutiny Committee invalidating the claim of the petitioner of belonging to 'Thakur' Scheduled Tribe. It is contention of the petitioner that petitioner belongs to 'Thakur' Scheduled Tribe which is enlisted at serial No.44 of the Scheduled Tribe Order. He has produced certificate dated 28 /03/2016 issued to the petitioner by the Competent Authority. Respondent No.1 is the Caste Scrutiny Committee and respondent No.2 is the employer of the petitioner. Petitioner in pursuant to the advertisement came to be appointed as an Assistant Engineer from Scheduled Tribe Category. Petitioner forwarded the proposal to the Scrutiny Committee. Petitioner also forwarded relevant documents as under:

Name	Relation	Document	Date of document	Entry
Mahadev Radhakisan	Grandfather	Dakhal Kharij Register and school leaving certificate	17/06/1946	Thakur
Mahadev Radhakisan Thakur	Grandfather	Birth certificate	23/02/1941	---
Gouishankar Suryabhan	Cousin great-grandfather	School leaving certificate	21/09/1921	Thakur
Gouishankar Suryabhan	Cousin great-grandfather	School admission register	04/07/1917	Thakur
Radhakisan Suryabhan Thakur	Great-grandfather	Sale-deed register	23/06/1963	---
Namdev Radhakisan	Cousin grandfather	School leaving register	20/07/1937	Thakur
Sukhdev Gourishankar	Cousin grandfather	School leaving register and school admission register	11/04/1942	Thakur
Jagdev Gourishankar Suryabhan Thakur	Cousin grandfather	Birth certificate	18/03/1940	---
Parvati Radhakisan Donge	Cousin grandmother (father's cousin sister)	School leaving certificate and school admission register	20/03/1947	Thakur

3. It is submitted that in the vigilance enquiry, the vigilance officer of the Committee had procured documents/pre-constitutional documents showing entry 'Thakur', and the petitioner also submitted the same documents. No other entries

are procured by the vigilance officer other than 'Thakur'. The Caste Scrutiny Committee rejected the claim of the petitioner on the ground of affinity test and area restriction. It is held by the Caste Scrutiny Committee that though entries are of 'Thakur', they are not 'Thakur' as mentioned in the list of presidential order.

4. Learned Assistant Government Pleader supported the order passed by the Caste Scrutiny Committee. There is no dispute over family tree.

5. We have heard both the parties at length, perused record and proceedings of Caste Scrutiny Committee produced by learned Assistant Government Pleader. It appears that the contention of the Caste Scrutiny Committee is that though the documents submitted by the petitioner shows his tribe, as 'Thakur' merely verification of the entries is not the aim of the committee. Even in support of tribe 'Thakur', the entry is of 'Thakur' only and not 'Thakur Scheduled Tribe'. This finding of

Scrutiny Committee is totally misconceived and erroneous and it appears that the same has been arrived at only for the reason to invalidate the tribe claim of the petitioner. The only entry in the Constitutional Scheduled Tribe order is 'Thakur'. In view of the law laid down by the this Court as well as Hon'ble Apex Court in the cases of *State of Maharashtra v/s Milind, reported in 2001 (1) Mh.L.J. (SC) 1* and *State Of Maharashtra & Ors vs. Mana Adim Jamat Mandal, AIR 2006 SC 3446*, it is evident that entry of a tribe in the list of scheduled tribe has to be read as it is and no authorities including any court can add or subtract anything from such entry. In the present matter, approach adopted by the scrutiny committee is totally erroneous and has resulted into denying the rights accrued to the petitioner by the presidential order. It is evident from the documents placed before the Scrutiny Committee and duly verified and approved by vigilance cell that they consistently show entry 'Thakur'. There are eight pre-constitutional documents having great probative value, which show the entry as 'Thakur'.

6. In *Mah. Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others*, reported in 2023 SCC OnLine SC 326, it is held as under:

“22. We can also contemplate one more scenario which is found in many cases. These are the cases where the applicant relies upon caste validity certificates issued to his blood relatives. Obviously, such a validity certificate has to be issued either by the Scrutiny Committee constituted in terms of the directions issued in Kumari Madhuri Patil’s case or constituted under the Rules framed under the 2000 Act. In such a case, firstly, the Scrutiny Committee must ascertain whether the certificate is genuine. Secondly, the Scrutiny Committee will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him has been issued is his blood relative. For that purpose, the applicant must establish his precise and exact relationship with the person to whom the validity certificate has been granted. Moreover, an enquiry will have to be made by the Scrutiny Committee whether the validity certificate has been granted to the blood relative of the applicant by the concerned Scrutiny Committee after holding due enquiry and following due procedure. Therefore, if the Scrutiny Committee has issued a validity certificate contemplated in terms of the decision in the case of Kumari Madhuri Patil, the examination will be whether the enquiry contemplated by the said decision has been held. If the certificate relied

upon is issued after coming into force of the 2000 Act, the Scrutiny Committee will have to ascertain whether the concerned Scrutiny Committee had followed the procedure laid down therein as well as in the ST Rules or the SC Rules, as the case may be. For this verification, the Scrutiny Committee can exercise powers conferred on it by Section 9(d) by requisitioning the record of the concerned Caste Scrutiny Committee, which has issued the validity certificate to the blood relative of the applicant. If the record has been destroyed, the Scrutiny Committee can ascertain whether a due enquiry has been held on the basis of the decision of the Caste Scrutiny Committee by which caste validity has been granted to the blood relative of the applicant. If it is established that the validity certificate has been granted without holding a proper inquiry or without recording reasons, obviously, the caste scrutiny committee cannot validate the caste certificate only on the basis of such validity certificate of the blood relative."

7. The Court also considered judgment in *Anand V. Committee for Scrutiny and Verification of Tribe Claims*, (2012) 1 SCC 113, wherein it is held as under:

"22.

(i)

(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, modernisation 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."

8. In our considered opinion, when there are so many documents consistently showing the relatives of the petitioner belonging to 'Thakur' Community and those documents are of pre-independence era which is having great probative value and the genealogy is not disputed, there was no reason for them to be discarded by the Caste Scrutiny Committee on the ground that

these Thakurs are different than the 'Thakur' Scheduled Tribe. The appellants have only to establish that they belong to the community mentioned at Serial No.44 of Part IX of Second Schedule of the Act No.108 of 1976. The rejection of claim on the ground that the relatives of the petitioner were not residents of the area mentioned in the presidential order 1956 or they were not able to give details of customs and tradition is wholly irrelevant. In view of the settled position of the law in this regard that area restrictions stand removed, and due to rapid urbanisation and assimilation in the main stream, there may be discord in the customs and traditions. There is no differentiation, as such, in the list of Scheduled Tribe as stated earlier. Nobody is having authority to interpret the entry or to add or subtract anything to the entry. As such, petitioner has duly established that he belongs to 'Thakur' Scheduled Tribe. The impugned order invalidating caste claim of the petitioner is perverse, arbitrary and capricious and same is liable to be set aside. Accordingly, we pass the following order:

ORDER

- i) The Writ Petition is allowed.
- ii) The order dated 28/12/2022 passed by the respondent No.1/ Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati, in Case No. सआ/अजप्रतस/अम/5-ST/2016/10363 is hereby set aside.
- iii) It is declared that the petitioners belong to 'Thakur' Scheduled Tribe which is entry No.44 in the Constitution (Scheduled Tribes) Order, 1950.
- iv) The Scheduled Tribe Caste Certificate Verification Committee, Amravati shall issue validity certificate to the petitioner within a period of four weeks from today. Till such validity certificate is received, the petitioner can rely upon the judgment to indicate direction has been issued for issuance of such validity certificate.

9. Rule is made absolute in above terms. No order as to costs.

JUDGE

JUDGE

R.S. Sahare