



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

WRIT PETITION NO. 2344 OF 2023

1. Pankaj Rajendra Sapkal,
Age : 25 years, Occ. Student,
R/o at Post Rani Sati Nagar,
Plot No. 65, Khamgaon,
District Buldhana 444 303

2. Ku. Kunal Ramesh Sapkal,
Age : 25 years, Occ. Student,
R/o. Ghatpuri road, Vrundvan Nagar,
Khamgaon, District Buldhana

.....PETITIONERS

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

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. S.M. Ghodeswar, AGP for Respondent/State.

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

DATE : 21.12.2023

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

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

2. Petitioners being dissatisfied by the order dated 17.11.2022, passed by the respondent - Schedule Tribe Caste Certificate Scrutiny Committee, Amravati (for short, - "*Scrutiny Committee*") invalidating claim of the petitioners that they belong to Thakur Scheduled Tribe category, has preferred this petition.

3. The petitioners are the students in the Buldhana district who are pursuing their studies. The petitioners claimed that they belong to the '*Thakur*' Scheduled Tribe category which is recognized and at serial No. 44 in the list of the Scheduled Tribe Notification. On 2.1.2020 and 6.1.2021, the Sub-Divisional Officer, Buldhana issued caste certificates in favour of the petitioners as they belong to the '*Thakur*' Scheduled Tribe category. On submission of the certificates in the College, vide communications dated 3.12.2021 and 8.8.2022, the college forwarded the certificates to the Scrutiny Committee for their verification. The Scrutiny Committee, vide order dated 17.11.2022, invalidated the caste claim of the petitioners, therefore, the petitioners approached this Court.

4. Learned counsel for the petitioners vehemently contended that the respondent - Scrutiny Committee failed to consider the oldest entry of the document of 1926 which shows that the petitioners belong to the 'Thakur' Scheduled Tribe category and further failed to consider the settled position of law laid down in the cases of *Anand Vs. Committee, 2011(6) Mh.L.J. 919; Priya Parate Vs. STCCSC & Ors, 2013(1) All MR 133; Ravindra Khare Vs. State of Maharashtra & Ors, 2013(3) All MR 644; Gajanan Shende Vs. Head Master Govt. Ashram School, 2018(2) Mh.L.J. 460; Jaywant Pawar Vs. State – Civil Appeal No. 2336/2011, Ku. Ashwini Vilas Chavan Vs. State, 2017(4) All M.R.412, etc., hence, the Scrutiny Committee erred in invalidating the caste claim of the petitioners. The learned advocate has invited our attention to the revenue entry dated 9.1.1926 which shows that a baby boy was born to the great-grandfather of the petitioner Mr. Chandrabhan. Reliance is also placed on the ratio laid down in the case of *Priya Pramod Gajbe Vs. State of Maharashtra and Others, 2023 SCC OnLine SC 909* and *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and**

Others, 2023(2) Mh.L.J. 785, and argued that the affinity test is not a litmus test to decide the caste claim and it is not an essential part of the process of determination of the correctness of the caste or tribe claim. It is submitted that the area restriction mentioned in the order is wholly irrelevant as the petitioners have to only establish that they belong to the Scheduled Tribe community and therefore, the finding recorded by the Scrutiny Committee is perverse and contrary to the settled position of law.

5. *Per Contra*, Mr. S.M. Ghodeswar, the learned AGP has strongly resisted the petition on the ground that the petitioners have failed to prove the affinity test or that they are the inhabitants of the area as published by the State Government, so also, they failed to bring on record the documentary evidence in support of their caste claim. The petitioners also failed to take benefit of the validity certificate obtained by their cousin sister Ms. Vaishali as they failed to prove their relationship with her. Lastly, it is submitted that the impugned order is just and proper, which needs no interference in writ jurisdiction.

6. It is pertinent to note that after service of notice upon respondent/State on 12.4.2023 till 29.11.2023 a last chance to file a reply was granted, despite the sufficient opportunity, the respondent/State has failed to file a reply to the petition and therefore, contents of the petition have remained uncontroverted.

7. On perusal of the impugned order, it seems that the respondent - Scrutiny Committee invalidated the caste claim of the petitioners, mainly on the following grounds:

- i) *The petitioners have failed to satisfy the affinity test conducted during vigilance inquiry, and*
- ii) *The petitioners failed to prove that they originally belonged to the area where the people of the 'Thakur' Scheduled Tribe reside.*

It is pertinent to note that the respondent Committee has not controverted the revenue entry dated 9.1.1926 about Mr. Chandrabhan, the great-grandfather of the petitioners, said entry denotes that one baby boy was born to Mr. Chandrabhan. The said document is neither controverted nor denied by the respondent committee. On

the contrary, the Vigilance Cell Report indicates that the Vigilance Cell Committee has verified/inspected the said document from the original record of the Tahsil office, and said entry is found to be correct. In the said entry, the caste of Mr. Chandrabhan was mentioned as Thakur. Also, the Committee has not disputed the relationship of Mr. Chandrabhan with the petitioners but the Committee only on the ground that the petitioners have failed to prove affinity test and failed to prove that they belong to an area where people of Thakur community reside, invalidated the caste claim. It is a settled position of law that if a tribe claim is supported by the pre-constitutional document, the pre-constitutional document has a greater probative value than any other document, and the same cannot be discarded merely on the grounds of affinity test or area restrictions. The petitioners belonging to a particular area have also come on record before the Scrutiny Committee, and therefore, there was no reason to discard the said document by the Committee.

8. Moreover, the Hon'ble Supreme Court in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra), has held that *“the affinity test cannot be applied as a litmus test to decide a caste claim and is not an essential part in the process of determination of the correctness of a caste or tribe claim in every case. The affinity test cannot be conclusive either way, when the affinity test is conducted by 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 while deciding the caste validity claim.”*

9. Thus, from the above ratio, it is clear that the affinity test is not the sole criteria to determine a caste claim of the parties but other material on record has to be taken into consideration.

10. Secondly, the respondent–Scrutiny Committee has negated the claim of the petitioners on the ground that the petitioners are not the residents of the area mentioned in the Presidential Order, and therefore, they are not entitled to

claim caste validity certificates. However, in our considered opinion, it is wholly irrelevant to determine the claim of the petitioners only on the basis of their residence, but petitioners have to establish that they belong to the Scheduled Tribe Community at serial No. 44 in the list of the Scheduled Tribe Notification. Besides, the petitioners have produced an authentic and genuine document of the pre-constitutional era to show that they belong to the ‘*Thakur*’ Scheduled Tribe community, hence, we do not find substance in that regard. As such, the finding of the Committee about area restrictions also is not sustainable in the eyes of the law.

11. That apart, petitioners have produced the caste validity certificate of cousin sister Ms. Vaishali Thakur, issued by the Scrutiny Committee, Aurangabad Division, however, the Scrutiny Committee has discarded the said document stating that the petitioners have not filed an affidavit showing their relationship with Ms. Vaishali Thakur. In fact, the uncle of petitioner no.1 and father of petitioner no.2, Mr. Ramesh has filed an affidavit before the

Vigilance Cell, and petitioner No.1 has also filed an affidavit before the Tahsil office, wherein the family tree is given. In the said tree, the name of Ms. Vaishali is shown as cousin sister. The Committee has failed to consider said fact in its proper perspective and erred in discarding the same. In fact, on the basis of the ratio laid down in *Apoorva Vinay Nichale Vs. Divisional Caste Scrutiny Committee No 1 and Others, 2011(2)BCR 824*, the Scrutiny Committee ought not have to refuse the same status to the petitioners that they belong to Thakur Scheduled Tribe. Despite this, the Committee has discarded the said certificate on the ground that the petitioners failed to show their relationship with Ms. Vaishali in pedigree. Thus, it seems that the findings given by the Scrutiny Committee on the count of affinity test and area restrictions are contrary to the ratio laid by the Hon'ble Supreme Court, (supra). Refusal of the grant of the same status to the petitioners is contrary to the settled position of law as is laid down in the case of *Apoorva Nichale* (supra).

12. Having regard to the aforesaid discussion and documents on record, it clearly reveals that the Entry dated 9.1.1926 shows that the caste of the great-grandfather of the petitioner was shown as Thakur Scheduled Tribe in the revenue record. The said document was neither controverted nor denied by the Scrutiny Committee or Vigilance Cell Committee. Per contra, it appears that the Vigilance Cell Committee has personally inspected the said document from the revenue record and found it to be the correct entry. The said document is from the year 1926 which is of the pre-constitutional era and therefore, said document has a greater probative value than the affinity test or area restrictions, therefore, on that ground alone, the petitioners are entitled to get caste validity certificates. Secondly, the Scrutiny Committee, Aurangabad Division has issued a caste validity certificate in favour of Ms. Vaishali who is the cousin sister of the petitioners, and the Caste Scrutiny Committee, Amravati has issued a caste validity certificate in favour of Mr. Sharad Shrihari Thakur who is cousin brother of the petitioners and therefore, in view of ratio laid down in Apoorva Nichale case, the Scrutiny

Committee ought to have issued same status to the petitioners that they belong to ‘*Thakur*’ Scheduled Tribe. Thus, it seems that the findings on the point of affinity test and area restriction given by the respondent Scrutiny Committee are contrary to the ratio laid down in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra) as well as the facts on record, therefore, the said findings are required to be quashed and set aside by issuing necessary direction to the Scrutiny Committee in that regard. Hence, we deem it appropriate to pass the following order:

ORDER

- i) Impugned order dated 17.11.2022 passed by the respondent – Scrutiny Committee is quashed and set aside.
- ii) Respondent – Scrutiny Committee, Amravati is directed to issue caste validity certificates in favour of the petitioners within a period of eight weeks from receiving the copy of this order.

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

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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