



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

WRIT PETITION NO.6959/2023

Prajakta d/o Suresh Bayaskar
Aged about 22 yrs, Occ. Student,
R/o At Post – Abhaynagar Dande,
Behind Swami Temple, Khamgaon,
Tah. Khamgaon, Distt. Buldhana-
444303.

....PETITIONER

....VERSUS....

The Vice-Chairman/Member-
Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati.

....RESPONDENT

WITH

WRIT PETITION NO.7579/2022

Mandar Suresh Bayaskar
Aged about 19 years, Occ. Student
R/o Abhay Nagar, Khamgaon,
District Buldhana.

....PETITIONER

....VERSUS....

The Scheduled Tribe Caste
Certificate Scrutiny Committee,
Chaprasipura, Amravati.

....RESPONDENT

Ms Preeti Rane, Advocate for petitioner in WP 6959/2023
Shri P.R. Parsodkar, Advocate for petitioner in WP 7579/2022
Shri V.A. Thakare, AGP for respondent

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

DATED: **08/05/2024**

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

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

2. The petitioners in Writ Petition No. 7579/2022 and Writ Petition No.6959/2023 are the real brother and sister. Therefore, both the matters are taken up together for decision. Learned Counsel for the parties agreed to take both the matters for final disposal, at the stage of admission.

3. Both the petitioners claim to belong to 'Thakur' Scheduled Tribe, which is enlisted at serial No. 44 of the

Scheduled Tribes Order. The petitioners are issued Certificate of 'Thakur' Scheduled Tribe. The claim of the petitioners toward 'Thakur' Scheduled Tribe came to be forwarded to the Scrutiny Committee along with necessary documents for the purpose of verification. The police vigilance enquiry came to be conducted. The petitioners submitted reply to the police vigilance report. The Caste Scrutiny Committee invalidated the claim contrary to the judgment of Hon'ble Apex Court on area restriction and affinity, and rejected the documents including documents of pre-independent era.

4. The petitioners placed before the Caste Scrutiny Committee, documents along with following old documents:

| Name | Relation | Document | Date of document | Entry |
|--------------------|-------------------|---|------------------|--------|
| Digambar Bayaskar | Grandfather | School leaving certificate and admission register | 02/07/1958 | Thakur |
| Rama Mahadu Thakur | Great-grandfather | Revenue Record | 09/05/1946 | Thakur |

| | | | | |
|----------------------------|--------------------------|--|------------|--------|
| Mahadu Shawan Thakur | Great-great-grandfather | Revenue Record (mentioning birth of son) | 27/03/1912 | Thakur |
| Rama Mahadu Thakur | Great-grandfather | Sale-deed | 09/05/1946 | Thakur |
| Rama Mahadu | Great-grandfather | Revenue record | 04/1946 | Thakur |
| Sadashiv Laxman | Cousin great-grandfather | School leaving certificate | 03/04/1937 | Thakur |
| Daughter of Mahadu Shravan | Great-great-grandfather | Birth entry register | 06/08/1919 | Thakur |
| Rama Mahadu | Great-grandfather | Jamabandi patrak | 1943-44 | Thakur |
| Rama Mahadu | Great-grandfather | Jamabandi Patrak | 1949-50 | Thakur |
| Rama Mahadu | Great-grandfather | Revenue Record | 09/05/1946 | Thakur |

There is no dispute over the genealogy produced on record.

5. It is submitted by learned Counsel for the petitioners that all entries including old entry of 1912, the tribe of great-great-grandfather is shown as 'Thakur'. Consistently, thereafter entries in the documents shown as 'Thakur'. There is no adverse entry. In view thereof, the respondent- Scrutiny Committee ought to have validated the claim that the petitioners belong to 'Thakur' Scheduled Tribe.

6. The learned Counsel for the petitioners relied on following citations:

- 1) *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others reported in 2023 (2) Mh.L.J. 785,*
- 2) *Anand Vs. Committee for Scrutiny Committee and Verification of Tribe Claims and others, 2011 (6) Mh.L.J. 919,*

7. The learned Assistant Government Pleader, though supported the order passed by the Caste Scrutiny Committee fairly conceded that there is no dispute over the family tree nor over the facts that consistently there are entries of 'Thakur' in the documents placed by the petitioners.

8. We have heard both the parties at length. Perused record and proceedings of Caste Scrutiny Committee produced by the learned Assistant Government Pleader. In the documents dated 27/03/1912

as well as 06/08/1919, the great-great-grandfather of the petitioners Mahadu Shravan is recorded as 'Thakur' Scheduled Tribe in the birth register when he was blessed with a son and daughter, respectively. There is record of 03/04/1937, wherein petitioners' cousin-great-great-grandfather Sadashiv is recorded as 'Thakur' Scheduled Tribe, in the school register. In the record of 1943-44 and 1949-50, petitioners' great-grandfather Rama Mahadu is recorded as 'Thakur' Scheduled Tribe in Revenue entry. Similarly, revenue record of 1946 shows great-grandfather Rama Mahadu is recorded as 'Thakur' Scheduled Tribe in Revenue entry. There are subsequent documents of 1946 i.e. sale-deed and in record of Rights, said Rama was shown as belongs to 'Thakur' Scheduled Tribe.

9. On perusal of the order passed by the Caste Scrutiny Committee, the Caste Scrutiny Committee observed in school record of blood relatives of the

petitioners, there is mention of entry of 'Thakur'. It is also observed that the entries are verified by the vigilance cell and approved to be 'Thakur'. In spite of all these facts, the Scrutiny Committee erroneously observed that though entry of 'Thakur' in the documents are there, they do not make it clear that they are 'Thakur' Scheduled Tribe. The Caste Scrutiny Committee has not considered the relevant material placed on record and placed reliance on the material, which is not at all relevant to determine the validity of caste claim of the petitioner. The Scrutiny Committee mentioned the names of number of people, whose caste claim was declared as invalid. It is a matter of fact that each claim has to be tested on the evidence produced by each of the claimants. Thus, caste claim of some of the applicants were invalidated or withdrawn has nothing to do with the claim of the petitioners specifically when they are not in relation with the petitioners.

10. It is also held by the Caste Scrutiny Committee that petitioners have not satisfied the affinity test. The Full Bench of this Court held in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*, has held as under:

"25. The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the applicant. But in a given case, even the parents may be unaware for the reason that for several years they have been staying in bigger urban areas. On the other hand, a person may not belong to the particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, Shri Shekhar Naphade, the learned senior counsel, is right when he submitted that the affinity test cannot be applied as a litmus test."

11. *Anand Vs. Committee for Scrutiny Committee*

and Verification of Tribe Claims and others (supra),
wherein the Hon'ble Apex Court, in paragraph No.12
read thus:

"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, 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.”

12. In Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No. 108/1976) was published in the Gazette on 20/09/1976, the area restriction of Scheduled Tribes in the State Maharashtra for the ‘Thakur’ community has been deleted.

13. Thus the Hon’ble Apex Court held that question of area restriction does not arise as the same has been removed.

14. Having considered the aforesaid facts and law laid down by the Hon’ble Apex Court, the order passed by the Caste Scrutiny Committee is unsustainable, erroneous and liable to be set aside. The documents placed on record clearly establish that those are pertaining to year 1912 onward and are consistently showing entry of ‘Thakur’. The said documents are various public documents, such as, school record, register

of birth and death, service record and revenue record. As such, only on the basis of affinity or area restriction, the claim of the petitioners cannot be invalidated. The documents of the pre-constitutional era have great probative value, which clearly shows the caste of the blood relatives from paternal side of the petitioners belong to 'Thakur'.

15. In view of above discussion and law position, the order passed by the Scrutiny Committee is not only unjustified, arbitrary but contrary to the law and precedent. As such, same is liable to be set aside. Accordingly, we pass the following order:

ORDER

- i) The Writ Petition No.6959/2023 and Writ Petition No.7579/2022 are allowed.
- ii) The impugned order in Writ Petition No.6959/2023 dated 16/06/2023 passed by the respondent- The Vice-

Chairman/Member-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati, in Case No.सआ/अजप्रतस/अम/5-ST/Edu/062022/205999, and the order in Writ Petition No.7579/2022 dated 11/11/2022 passed by the respondent- The Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati in case No. ST-5/501/Edu/092020/167607 are 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 Schedule Tribe Caste Certificate Verification Committee, Amravati shall issue validity certificate to the petitioners within a period of four weeks from today.

v) Till such time, this judgment shall be treated as a document certifying the validity of the petitioners being entitled to the benefits of 'Thakur' Scheduled Tribe.

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

(Judge)

(Judge)

R.S. Sahare