



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

WRIT PETITION NO. 5891 OF 2022

1. Pravin s/o Madhukar Suryawanshi
Aged about 48 Years, Occupation-Service;
2. Ku. Priyanka d/o Pravin Suryawanshi
Aged about 18 Years, Occupation-Student;

Both R/o Santosh Nagar, Murtizapur, Tah.
Murtizapur, Distt. Akola.

... PETITIONERS

VERSUS

1. The Vice-Chairman/Member-Secretary
Scheduled Tribe Caste Certificate Scrutiny
Committee, Chaprashipura, Amravati
Division, Amravati.
2. The President,
Zakir Hussain Education Society
At Post Brahmi, Tah. Murtizapur, Distt.
Akola.
3. The Head Master
Mahatma Jyotiba Fule Vidyalaya, Brahmi,
Tah. Murtizapur, Distt. Akola.
4. The Education Officer (Secondary)
Zilla Parishad, Akola.

... RESPONDENTS

Ms. P. D. Rane, Advocate for Petitioners.

Mr. A. S. Fulzele, Additional Government Pleader for Respondent Nos.1
and 4.

CORAM : A. S. CHANDURKAR & ANIL L. PANSARE, JJ.
DATE : DECEMBER 12, 2022.

ORAL JUDGMENT - [PER ANIL L. PANSARE, J.]

. Heard Ms. Rane, learned Counsel for the Petitioners and Mr. Fulzele, Additional Government Pleader for Respondent Nos.1 and 4.

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

3. By this Petition, the Petitioners take exception to the order dated 18/8/2022 passed by the Respondent No.1 – Scrutiny Committee, thereby invalidating the tribe claim of the Petitioners as belonging to ‘Thakur’ Scheduled Tribe.

4. The Petitioner No.1 is father and Petitioner No.2 is daughter. The Petitioners have filed 28 documents in support of their claim. Out of those documents, five documents were pre-constitutional. According to the Petitioners, Natthu Thakur is their common ancestor and that he is great grandfather of the Petitioner No.1.

5. Ms. Rane, learned Counsel for the Petitioners has drawn our attention to the various documents, viz – (i) Extract of birth and death register dated 20/3/1926. It shows that a son was born to Natthu Thakur; (ii) Extract of birth and death register dated 29/2/1945. It shows that a son Pralhad was born to the grandfather of the Petitioner No.1; (iii) Extract of birth and death register dated 29/4/1942. It shows that a son

was born to cousin grandfather of the Petitioner No.1; (iv) Extract of birth and death register dated 12/2/1945. It shows that a daughter Sunder was born to the cousin grandfather of the Petitioner No.1; and (v) The School Leaving Certificate dated 2/12/1924 in the name of Parasram Natthu Thakur, grandfather of the Petitioner No.1. The caste 'Thakur' is mentioned in all these documents. There are other documents as well showing the caste of the ancestors of the Petitioners to be 'Thakur'. However, the Respondent No.1 – Scrutiny Committee has ignored these documents and has rejected the tribe claim of the Petitioners on the ground that the documents obtained by the Vigilance Cell show that the ancestors of the Petitioners belong to 'Bhat' Caste. 'Bhat' Caste being upper caste, claim of the Petitioners as belonging to 'Thakur' Scheduled Tribe has been rejected. The tribe claim has also been rejected on the ground of affinity test and area restriction.

6. Ms. Rane, submits that Thane Scrutiny Committee has validated the tribe claim of the cousin brother of the Petitioner No.2. The Respondent No.1, however, ignored the said certificate on the ground that Thane Scrutiny Committee has not passed a speaking order. Ms. Rane, has drawn our attention to the validity certificate. The certificate is issued in Form 'G'. She has referred to the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (*for short, 'the Tribe Rules of 2003'*). Sub Rule 2 of Rule 12 provides that if the Scrutiny Committee is not satisfied with the documentary evidence produced by the Applicant, the Scrutiny Committee shall forward the application to the Vigilance Cell for conducting the school, home and

other enquiry. Clause (a) of Sub Rule 9 of Rule 12, however, provides that after personal hearing, if the Scrutiny Committee is satisfied regarding the genuineness of the claim, Validity Certificate shall be issued in Form 'G'.

7. It is, accordingly, argued that the Validity Certificate having been issued in Form 'G', it could be presumed that the Thane Scrutiny Committee was satisfied as regards the genuineness of the claim, and that therefore, there was no need to pass speaking order. Thus, according to her, the order of Respondent No.1 is contrary to the provisions of the Act, so also the Tribe Rules of 2003. She further submits that since the validity could be issued on the basis of documentary evidence, the affinity test and area restriction will be insignificant.

8. As against, Mr. Fulzele, the learned Additional Government Pleader has supported the impugned order on the point that affinity test is an integral part of the determination of the correctness of the tribe claim of the Petitioners and that the Petitioners have failed to prove the same. He further contends that the Scrutiny Committee has given reasons to ignore the validity certificate issued in favour of the cousin brother of the Petitioner No.2. He then submits that the Vigilance enquiry was conducted and that it was revealed that great grandfather of the Petitioner No.2 was belonging to 'Bhat' caste. Accordingly, supported the impugned order.

9. We have gone through the impugned order dated 18/8/2022 passed by the Scrutiny Committee. The Scrutiny Committee has not really disputed the existence of the documents except for the document of great grandfather of the Petitioner No.1. As stated earlier, the name of great

grandfather of the Petitioner No.1 is Natthu Thakur. The Vigilance Cell has obtained revenue entries in the name of Natthu showing caste as 'Bhat'. The revenue entries are dated 9/2/1912 and 24/2/2015. The Petitioners have filed their reply against these documents mentioning therein that these entries are not of the great grandfather of the Petitioner No.1, but are of different person having same name 'Natthu'. The Scrutiny Committee has not considered this reply and proceeded to record finding that the caste of Natthu is 'Bhat' and that 'Thakur' and 'Bhat' are two different castes having different social and cultural status.

10. Thus, it appears that the Scrutiny Committee has given weightage to the documents obtained by the Vigilance Cell. The Scrutiny Committee, as such, is well within its powers to give weightage to appropriate document and decide the evidentiary value considering the nature and source of documents, however, the Scrutiny Committee is expected to give reasons for such consideration. The Petitioners have submitted certain documents in the name of Natthu showing caste as 'Thakur'. The Scrutiny Committee ought to have given reasons to ignore those documents, particularly when the documents were pre-constitutional. Merely because certain documents in the name of Natthu were obtained by the Vigilance Cell, would not by itself carry more weightage than the documents submitted by the Petitioners. The Committee ought to have given reasons, if it was to hold that the documents obtained by Vigilance Cell, and not of the Petitioners, were trustworthy.

11. We, however, need not go into these details as we find that the

tribe claim of the Petitioners has been established by the Petitioners on the basis of the validity certificate issued by Thane Scrutiny Committee in favour of the cousin brother of the Petitioner No.2. The Scrutiny Committee has ignored the same by stating that the Thane Scrutiny Committee has not rendered a speaking order to validate the claim. The Scrutiny Committee has also expressed doubt whether the Thane Scrutiny Committee has conducted Vigilance enquiry in the matter.

12. In our view, the Scrutiny Committee must be mindful of the fact that it is not an appellate authority to test correctness of the order of validation issued by the another Scrutiny Committee. The Scrutiny Committee while examining the caste claim or tribe claim of the applicants is duty bound to rely upon the validity certificate issued by the competent committee in favour of the relatives of the applicants. The Validity Certificate can only be ignored in the event of receiving evidence that the validity has been obtained by playing fraud. In such cases, the Scrutiny Committee is required to open the earlier case for re-examination to be done by the competent Committee.

13. In the present case, such is not the case. The Scrutiny Committee has merely stated that the order by which the tribe claim of cousin brother of Petitioner No.2 was validated is not a speaking order. The Scrutiny Committee must understand that such approach would result into anomaly in the family, in the sense that members of one family will have different social status. In the present case, the cousin brother of the Petitioner No.2 will have social status as belonging to 'Thakur'

Scheduled Tribe, but the Petitioners will have status of upper caste 'Thakur'. It will be illogical to even think of having two different social status of the members of a family having common ancestor. Thus, the approach of the Scrutiny Committee to ignore the validity certificate of cousin brother of the Petitioner No.2 is not sustainable.

14. On the point of affinity test, however, we will be little conscious. The Hon'ble Apex Court in the Special Leave to Appeal (C) No. 24894/2009 was testing the correctness of the judgment of Full Bench of the Bombay High Court in *Writ Petition No. 5028/2006* in *Shilpa Vishnu Thakur V/s State of Maharashtra & Ors.* The Full Bench has held that the affinity test is an integral part of the determination of the correctness of the claim of the caste certificate. The said Judgment was referred by the Hon'ble Apex Court in a judgment reported as *(2010) 14 SCC 489 Vijaykumar V/s State of Maharashtra & Ors.*, wherein, a certificate issued to the uncle of the appellant was found to be of no use as such certificate is/was not found to be validated by the Scrutiny Committee. However, in another judgment reported as *(2012) 1 SCC 113, Anand V/s Committee for Scrutiny and Verification of Tribe Claims and Ors.*, the judgment of Full Bench of Bombay High Court was referred to. In the latter, the Hon'ble Apex Court has held that the affinity test is not a litmus test and that the document of pre-constitutional era is of highest probative value in the eyes of law. In the circumstances, the Hon'ble Apex Court has framed the question as to what should be the parameters available to the Scrutiny Committee for verification of caste certificate, and referred the same to the larger Bench of three Judges for authoritative decision.

15. In the light of above, when the question as to whether affinity test is an integral part of the determination of the correctness of the claim of the caste certificate is pending consideration before the larger Bench of the Hon'ble Apex Court; and when the Petitioners had submitted number of documents, which were pre-constitutional documents, having high probative value showing caste of the ancestors of the Petitioners as 'Thakur'; and when the cousin brother of the Petitioner No.2 holds a tribe validity; and when the caste 'Thakur' has been included in the Presidential Order, 1950 as Scheduled Tribe; and when the Petitioner No.2's education is at stake for want of Tribe Certificate, we are of the considered view that the tribe claim of the Petitioners ought to have been considered by the Scrutiny Committee, giving appropriate weightage to the tribe validity certificate issued in favour of the cousin brother of the Petitioner No.2, so also the pre-constitutional documents. The Co-ordinate Bench of this Court in the case of ***Apoorva d/o Vinay Nichale V/s Divisional Caste Certificate Scrutiny Committee No.1 and others, 2010(6) Mh.L.J. 401*** has held that where the caste claim of a person has been scrutinized and accepted and one committee has given a finding about the validity of his caste, another committee ought not to refuse the same status to his/her blood relative who applies subsequently.

16. Of course, we do not intend to convey that the affinity test does not carry any significance, but when the question to that effect is pending consideration before the Hon'ble Apex Court, the caste/tribe claim, if could be decided on the basis of the documents and evidence placed before the Scrutiny Committee, the Scrutiny Committee would be

justified in doing so. The affinity test is not the only test to issue validity certificate of tribe claim or caste claim. The appropriate approach, according to us, where the tribe validity is issued in favour of one of the relatives and where the pre-constitutional documents of the persons like Petitioners show that their caste is recorded as 'Thakur', is to consider the documents along with other evidence and to issue validity certificate, subject to outcome of the final decision of the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 24894/2009 (*Mah. Adiwasi Thakur Jamat Swarakshan Samiti v/s The State of Maharashtra and Ors.*).

17. We are conscious of the fact that 'Thakur' community also belongs to upper caste and that 'Thakur' is also a title of the upper caste community, but, when the caste 'Thakur' is mentioned in the pre-constitutional document and when the said caste has been included in the Scheduled Tribe category, the documents, particularly tribe validity issued in favour of cousin brother of the Petitioner No.2, ought to have been considered by the Scrutiny Committee. Having failed to do so, we find the approach of the Scrutiny Committee to be unreasonable. The Scrutiny Committee, therefore, committed error which according to us requires correction.

18. So far as area restriction is concerned, it has been held in catena of judgments that the significance of the same has been scaled down because of migration of the tribe families for their livelihood. Thus, the tribe claim of the Petitioners could not have been rejected on this count as well.

19. Accordingly and since the Petitioner No.2 is a student and is aspiring to get admission in medical college, we deem it appropriate to direct the Scrutiny Committee to issue 'Thakur' Scheduled Tribe validity certificate to the Petitioners. We, accordingly, proceed to pass the following order.

ORDER

- (i) The order dated 18/8/2022 passed by the Scrutiny Committee is quashed and set aside.
- (ii) It is declared that the Petitioners have proved that they belong to 'Thakur' Scheduled Tribe. The Respondent No.1 – Scrutiny Committee shall within a period of 10 days from receipt of copy of this order issue validity certificate to the Petitioners accordingly.
- (iii) It is, however, made clear that the issuance of validity certificate is subject to the final decision of the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 24894/2009, that has been referred to the larger Bench.
- (iv) Till the Petitioners receive validity certificates, they are free to refer to the copy of this order to indicate that they have been held entitled to receive validity certificate.

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

Parties to act upon the authenticated copy of this order.

(ANIL L. PANSARE, J.)

(A. S. CHANDURKAR, J.)

Yadav VG