



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

WRIT PETITION NO. 1749 OF 2024

Rahul Shivcharan Gathe, Aged about 32
years, Occ.Private, R/o House No. 11173,
Bhadgaon Road, Near Kalika Nagar,
Pachora, Tah.Pachora, District Jalgaon.

Petitioner

-Versus-

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

Respondent

Ms.P.D.Rane, counsel for the petitioner.
Mr.S.M.Ghodeswar, AGP for the respondent.

**CORAM : NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.**

Date of Reserving the judgment:- 25/11/2024

Date of Pronouncing the judgment:- 06/12/2024

JUDGMENT (Per : Vrushali V.Joshi, J.)

1. Heard. **Rule.** Rule made returnable forthwith. The Criminal Writ Petition is heard finally with the consent of the learned counsel appearing for the parties.

2. The petitioner has challenged the order dated 29/12/2023 passed by the respondent committee invalidating the caste claim of the petitioner of 'Thakur Scheduled Tribe'.

3. The petitioner belongs to 'Thakur' Tribe which is enlisted at Serial No. 44 of the Scheduled Tribes Order. The caste certificate dated 15.03.2021 is issued to the petitioner by the Competent Authority. The petitioner has forwarded the following documents along with his proposal for caste validity.

- Caste certificate of petitioner dated 15.03.2021.
- School leaving certificate of petitioner of 4th Std.dt.21.1.2003.
- School leaving certificate of petitioner of 10th Std.dt.28.06.2007.
- Extract of Dakhal Kharij Register of petitioner.
- Caste certificate of Petitioner's father dated 13.07.2018.
- Extract of birth of petitioner's father namely Shivcharan born to grandfather namely Vitthal dated 06.11.1960 along with typed copy.
- School leaving certificate of petitioner's father of 4th Std.dated 6.12.1985.
- School leaving certificate of petitioner's father of 10th Std dated 11.08.2014.
- Extract of Dakhal Kharij Register of petitioner's father dated 18.07.2013.
- Copy of the letter issued by the grandfather namely Vitthal addressed to the Tahsildar as regards issuance of Extract of Kotwal Book in respect of his birth along with the reply addressed by the Tahsildar that the same is in torn condition.
- Extract of Kotwal Book/Birth of cousin grandfather

namely Namdeo born to Natthu Thakur of the year 1937.

- Extract of Dakhal Kharij Register of Petitioner's cousin grandfather namely Natthu (1937/1943/1945).
- School leaving certificate of cousin grandfather namely Natthu (1937/1943/1945) dated 23.2.1996.
- Extract of birth of son born to cousin grandfather namely Natthu dated 26.08.1913 along with Internet copy.
- Extract of birth of son born to cousin grandfather namely Natthu dated 23.3.1918 along with Internet copy.
- Extract of birth of daughter born to cousin grandfather namely Natthu dated 20.05.1919 alongwith Internet copy.
- Extract of revenue document (pere-patrak) in respect of Extract of birth of son born to cousin grandfather namely Natthu (1948-1949).
- Extract of the 7/12 wherein the names of the petitioner's family namely Vitthal Natthu and Namdeo Natthu is mentioned.
- Family tree of petitioner's family dated 19.05.2023.

4. It is the contention of the petitioner that though documents of pre-independence era are produced on record, same are not properly considered by the Caste Scrutiny Committee. The claim is also rejected on the ground of area restriction and

affinity test.

5. The learned counsel appearing for the petitioner has stated that the similar petitions invalidating the tribe claim on same issues are decided by this Court. The petitioner has placed reliance on the decision of **Anand Katole** reported in **2011 (6) Mh.L.J. (SC)919** and **Jaywant Dilip Pawar in Civil Appeal No.2336 of 2011 dated 08.03.2017** in support of her argument that the findings of Vigilance Officer of the Scrutiny Committee in respect of the affinity and area restriction are not proper. By relying on the many judgments of this Court and the judgment of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others* reported in **(2023) 2 Mh.L.J.785**, wherein it is observed that the affinity test is not a litmus test. The petitioner has prayed to allow the Writ Petition by directing the respondent to issue the validity certificate.

6. The respondent has denied the contents in the petition and stated that as the Tribe claim of the father of the petitioner is invalidated and it was not challenged which means that the father of the petitioner has admitted that he is not from Scheduled Tribe

Community and therefore, the Scrutiny Committee has rightly invalidated the Tribe claim of the petitioner.

7. The main ground of rejection of the Tribe claim is that the Tribe claim of the father of the petitioner is rejected and he has not challenged it. The father of the petitioner was in service and he was appointed against open seat. As it would not affect his service condition, he has not challenged the rejection of Tribe claim.

8. It is observed by the Hon'ble Apex Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others cited* (supra), in the para (a) as under:-

“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. We may again note here that question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with the material produced by the applicant”.

9. As per the aforesaid observation, only if the Committee is not satisfied with the documents produced on record, by the petitioner, then only the Vigilance report about the affinity test can be conducted.

10. It is not disputed that the documents, which are placed on record are of pre-constitution era. The respondent has also admitted that the caste mentioned in the said documents is of ‘*Thakur*’, however, it is specifically not mentioned as ‘Thakur Scheduled Tribe’ which reason for non consideration of said documents sounds unreasonable. Moreover, no one in the family has received the validity by itself will not disentitle the petitioner to seek validity. It appears that it is also not mentioned that they belongs to ‘*Thakurbhat*’ or ‘*Kanjarbhat*’. In all the documents caste is mentioned only as ‘*Thakur*’. Therefore, the said documents are required to be considered while considering the

Tribe claim under the statutory powers Committee is duly bound and is under obligation to decide the claim within the statutory framework and can not reject the same based on hypertechnical reason.

11. The petitioner's father namely Shivcharan was born to Vithhal on 06/11/1960. The birth extract of the said date certifies that the petitioner belongs to 'Thakur' Scheduled Tribe.

Similarly, the extract of Kotwal Book viz. birth of cousin grandfather Namdeo of the year 1937 speaks of entry Thakur Scheduled Tribe. The extract of Dakhal Kharij Register of the petitioner's cousin grandfather namely, Natthu of 1937, 1943 and 1945, his school leaving certificate of the very same years and the birth extract of son being born to Nathhu on 26/08/1913 apparently establishes that the petitioner belongs to Thakur Scheduled Tribe. Though the aforesaid pre-constitutional era documents are produced by the petitioner, the respondent-Committee in spite of there being 'Thakur' entries has refused to accept the same as evidence only on the count that the documents of the post constitutional era speak of the entries as 'Hindu-

Thakur'. The respondent Committee has conveniently not dealt with the pre-constitutional era documents and rather has relied on the post constitutional era documents so as to negate the claim of the petitioner for which there is no justifiable reason on record.

12. Another point on which the claim is rejected is of affinity test. The judgment of the Hon'ble Apex Court, in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra) is a guideline while considering the affinity test in deciding the Tribe claim. The guidelines given are as under:-

(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(b) For the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is

conducted by the 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 for deciding the caste validity claim; and

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case.

Thus, the Tribe claim cannot be rejected only on the ground of affinity test.

13. As per the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 (Act No.108 of 1976) which was published in the gazette on 20.09.2016, the area restriction of Scheduled Tribe in State of Maharashtra for the 'Thakur' community has been deleted and all members of 'Thakur' community are treated to be Scheduled Tribe. The petitioner has relied on the judgment in case of *Jaywant Dilip Pawar V/s. State of Maharashtra and others* reported in **2018 (5) ALL MR 975**.

14. In view of above observations in foregoing paras, the

tribe claim of the petitioner could not have been rejected on the ground of affinity test only. Though the documents reflecting tribe entry of '*Thakur*' are on record, they are not properly appreciated by respondent. Hence, the order passed by the Caste Scrutiny Committee is required to be quashed and set aside.

15. For the aforesaid reasons, the impugned order dated 29/12/2023 passed by the respondent Scrutiny Committee is hereby quashed and set aside.

16. The respondent Committee is directed to issue validity certificate to the petitioner of belonging to 'Thakur Scheduled Tribe' within a period of three months from the receipt of copy of this judgment.

Rule accordingly.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)