



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

WRIT PETITION No. 5149 OF 2023

PETITIONER: : Rajeshkumar Ramkrushna Gathe,
Aged about 50 years, Occ. Service,
working as A.P. I. In Police Control Room,
Akola, r/o. Khamgaon, District
Buldhana.

Vs.

RESPONDENTS : 1 The Schedule Tribe Caste
Certificate Scrutiny
Committee, Chaprasipura,
Amravati, through its
Member Secretary
2 The Superintendent of
Police, Akola Tq. District
Akola.

Shri R.S.Parsodkar, Advocate for the petitioner.
Ms. T.H.Khan, AGP for respondent nos. 1 & 2.

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

RESERVED ON : 06th FEBRUARY, 2024
PRONOUNCED ON : 14th FEBRUARY, 2024

JUDGMENT (Per : SMT. M.S. JAWALKAR, J.)

Rule. Rule made returnable forthwith.

2. Heard finally with the consent of learned counsel appearing for the parties.

3. The challenge in this petition is the order of invalidation of the Caste claim of the petitioner by the Caste Scrutiny Committee, Amravati. The petitioner claims to be belonging to "Thakur" Scheduled Tribe, which is recognized at Sr. No.44 in the Constitution (Scheduled Tribe) Order, 1950. The petitioner is working in police department since the year 1991. It is contended that the petitioner has been granted the caste certificate of 'Thakur' Scheduled Tribe issued by Tahsildar, Jalgaon Jamod dated 26/07/1989. It is further contended that respondent No.2 referred the Tribe claim of the petitioner to respondent No.1-Scrutiny Committee on 31/07/2013 for its verification. It handed over the proposal to the Vigilance Cell.

4. The cousin brother of the petitioner Rajendra Madhukar Gathe has been granted validity of 'Thakur'

Scheduled Tribe by this Court in Writ Petition No. 803/2002 by the judgment dated 12/01/2016. Similarly, the cousin sister of the petitioner Shreya Shridhar Gathe has been granted caste validity certificate in Writ Petition No. 7383/2018. Furthermore, the cousin brother of the petitioner Krushna Sudhakar Gathe has been granted caste validity certificate of 'Thakur' Scheduled Tribe by this Court in Writ Petition No. 5111/2019 vide judgment dated 25/07/2019. The petitioner in support of his Tribe claim filed several documents including pre-independance documents which are as follows :-

Name	Relation	Document	Date of document	Caste
Daulat Ragho	Great grandfather	Birth Register Kotwal Book	02/07/1914	Thakur
Ganu Krushna	Great grandfather	Death certificate	25/05/1936	Thakur
Bhanya	Cousin great grandfather	Death Certificate	26/11/1947	Thakur
Shivram Krushna	Cousin great grandfather	Death certificate	14/07/1950	Thakur
Ramkrushna Gathe	Father of petitioner	1. School Admission Register	Of the year 1934	Thakur
		2. School Leaving	31/03/1940	Thakur

		Certificate		
		3. Municipal Council record at Khamgaon	03/11/1971	Thakur

and also filed validity certificate issued to his blood relatives which were discarded by the Scrutiny committee on the ground of affinity test and one adverse entry in the caste column of one of the person who is not even in relation with the petitioner. Caste Scrutiny Committee invalidated his caste claim and passed an impugned order. We have perused the original record, produced by the learned AGP.

5. On perusal of the order passed by Scrutiny Committee, there is no dispute over family tree or relation placed on record which is reproduced in the order (page 95). There is validity granted in favour of Swaraj s/o Rajesh Gathe who is son of petitioner. The Scrutiny Committee itself granted validity certificate in favour of one of the relative Rajendra Madhukar Gathe. While rejecting claim of Swaraj Rajesh Gathe,

same stand was taken by the Scrutiny Committee that vigilance cell has procured one adverse entry of one Bhuna @ Krushna shown as Bhonya on 12/05/1913 and another entry of Sampat Ganu 'Tha- Kunbi' dated 05/02/1934. In the said scrutiny, the petitioner in Writ Petition No.5898/2023 Swaraj Rajeshkumar Gathe denied said entry stating that entries are not correct as the entry of Bhuna Krushna is of dead person and entry of Sampat is 'Thakur' only and submitted that report is not proper. It was pointed out that his cousin great grand-father was Bhonya whereas said document relates to one Bhona Krushna. The record which was obtained by vigilance cell shows that Bhona is blessed with daughter and name itself is different than that of cousin great grand-father of the petitioner i.e. Bhonya and not Bhona. As regards, the entry of Sampat Ganu Thakur which is produced in the School Zilla Parishad Ucha Prathamik Palshi mentioned as 'Thakur Kunbi'. In this regard Dakhal Kharij Register in which at Sr. No. 563, it is clearly mentioned that Ramkrushna Sampat is admitted to the school and recorded as 'Thakur' and his date of birth is

01/07/1927. The date of entry in the school is 05/02/1934. In view of judgment of *Apoorva Nichale Vs. Divisional Caste Scrutiny Committee reported in (2010) 6 Mh.L.J. 401*, the petitioner's 6 blood relatives are given caste validity certificates by various judgments of this Court, the petitioner is entitled for the validity certificate. Only on the ground that one person by name Bhona who is shown as Kunbi on 05/02/1913 though he is not in relation to the petitioner, the Caste Scrutiny Committee has invalidated his caste claim which cannot be sustained in the eyes of law.

6. In spite of so many validity certificates issued in favour of blood relatives of the petitioner, there was no reason to invalidate caste claim of the petitioner. As held in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and ors. reported in 2023(2) Mh.L.J. 785*, the affinity test is not a litmus test and the documents of pre-independence era have the highest probative value in the eyes of law and have to be considered. The Committee passed

erroneous order as the validity certificates issued to the blood relatives are not considered.

7. It is vehemently submitted by learned Assistant Government Pleader that there is discrepancies in the old document also. However for the reasons stated above, there is no substance in the contention. There are four validity certificates on record of the blood relatives of the petitioner. The names of these persons are there in the family tree. Only on the basis of document in respect of one Bhona, the Scrutiny Committee has invalidated petitioner's claim. It was pointed out by the petitioner that name of the relative of petitioner was Bhonya and not Bhona. After perusing the documents which are produced in paragraph No.2 of the judgment, it can be very well seen that all the entries since 1914 are consistently of 'Thakur'. Overlooking those entries and considering the entry which as per the petitioner is not of his relative, it cannot be held that there is any doubt about petitioner belonging to other category i.e. 'Thakur'. Moreover, the oldest entry in respect of

Daulat Raghu who is cousin great grand-father is clearly showing as him belonging to 'Thakur'. The subsequent entry of 1936 in respect of Balkrushna is also showing belonging to 'Thakur'. The death certificate of 1947 in respect of Bhonya is also shown as 'Thakur'. Entry in respect of Shivram Krushna of 1950 is also showing belonging to 'Thakur'. The admission register/school leaving certificate in respect of father of the petitioner expressly establishes that the father of the petitioner was belonging to 'Thakur'. These documents are of 1934 and 1940 respectively. As such, the old entries will prevail over the subsequent entry. Except the one entry as per Scrutiny Committee, there is no other entry showing any other category to which the relatives of petitioner are belonging. At any rate, these consistent entries of 'Thakur' cannot be disregarded only on the basis of one entry in which also name is not correctly spelt out. The Scrutiny Committee is apparent in error invalidating the caste of the petitioner. As such, we proceed to pass the following order:

ORDER

i) The impugned order dated 28/07/2023 passed by respondent No.1, the Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati in case No.DD/TCSC/AMT/RRG/34012013 is hereby set aside.

ii) It is held that petitioner has duly established that he belongs to 'Thakur' Scheduled Tribe.

iii) The Scrutiny Committee shall issue validity certificate to the petitioner within a period of three weeks.

iv) The services of the petitioner are protected till he receives the copy of validity certificate.

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

(JUDGE)

(JUDGE)

R.S. Sahare