

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

WRIT PETITION NO.5646/2021

Ram S/o Vijay Ingle,
Aged 19 Yrs., Occ. Student,
R/o Bhongaon, Tq. Shegaon,
Dist. Buldhana.

... Petitioner

- Versus -

Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati,
Old By Pass Road, Chaprashipura,
Amravati, through its Vice
Chairman / Joint Commissioner.

... Respondent

Mr. A.P. Kalmegh, Counsel for the Petitioner.
Ms. N.P. Mehta, Assistant Government Pleader for the Respondent.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 26.6.2023

ORAL JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The caste claim of the petitioner has been rejected by the Scheduled Tribe Caste Certificate Scrutiny Committee which is the subject matter of challenge in this writ petition. The petitioner belongs to Thakur Scheduled Tribe which is recognized at Serial No.44 in the list of Scheduled Tribe in notification. The petitioner obtained the caste certificate dated 22.9.2016 of Thakur Scheduled Tribe, duly issued by the Sub-Divisional Officer, Khamgaon. For availing the benefit prescribed for reserved category candidate, the petitioner has submitted his caste certificate dated 22.9.2016 along with necessary documents for verification to the College. Accordingly, the tribe claim was forwarded to respondent Caste Scrutiny Committee for verification. The petitioner has filed documents prior to 1950. The original caste certificate, copy of birth and death entry register, extract of school admission register etc. and all other necessary documents of year 1933, 1938, 1946 have been submitted to the Vigilance Cell office. The old documents were verified by the Vigilance Cell and it found that the entry is of

Thakur Scheduled Tribe. The oldest entry in documents of Thakur Scheduled Tribe is of 1933. This document is prior to issuing Presidential Order, 1950 and other oldest documents also show caste Thakur which is not denied by the respondent. The petitioner has also submitted the copy of validity certificate issued in favour of his cousin uncle Bhupendra Devidas Ingle which was issued after following due procedure and after conducting the Vigilance Cell Inquiry and pursuant to the judgment of this Court in Writ Petition No.7361/2018. The validity certificates issued to the paternal side relatives of the petitioner have attained finality. The family tree submitted by the petitioner reveals that the validity holder is the paternal side blood relative of the petitioner.

3. The learned counsel for the petitioner relied upon the judgement in the case of Apoorva Vinay Nichale V/s. Divisional Caste Scrutiny Committee No.1 and others reported in **2011 (2) BCR 824** in support of his statement about the validity certificate

issued to his blood relatives. The petitioner has given the written submissions to the notice issued by the Vigilance Cell. The paternal uncle of the petitioner has answered the questions. The statement recorded by the Vigilance Cell of the paternal uncle of the petitioner has broadly resembled with Thakur Scheduled Tribe.

4. We have gone through the Vigilance Cell Report and the documents filed on record. During Vigilance Cell Inquiry the Vigilance Cell has also collected certain documents. The Vigilance Officer has expressed opinion that he has verified the record from old documents from the year 1950 and the entries are of Thakur Caste which reaffirms genuineness of the pre-constitutional entries of Thakur Caste. The Committee has rejected the petitioner's caste claim on area restriction and failure in affinity test. In this regard, the learned counsel for the petitioner has relied on the judgment of Jaywant Pawar V/s. State of Maharashtra reported in **2018(5) ALL MR 975** wherein it is

held that the claim cannot be rejected on the basis of area restriction. In recent judgment of the Hon'ble Supreme Court in the case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti V/s. State of Maharashtra and others reported in **2023(2) Mh.L.J. 785** it is observed that affinity test is not a litmus test. In the case of Anand V/s. Committee for Scrutiny and Verification of Tribe Claim and others reported in **2012(1) SCC 113** it is held that while dealing with the documentary evidence, greater reliance may be placed on pre-independence documents because they furnish higher degree of probative value to the declaration of status of a caste, as compared to the post-independence documents. It holds that the affinity test may not be recorded as litmus test for establishing the link of the applicant with Scheduled Tribe. The affinity is to be used to corroborate the documentary evidence and it is not to be used as the sole criteria to reject a claim. Moreover, the respondent Committee has issued validity certificate dated 1.12.2022 to cousin brother Ajinkya Sanjay Ingle, on the basis of same documents and validity

certificates are also issued to cousin uncle and cousin sister in view of the judgment in Writ Petition No.7361/2018 and Writ Petition No.7137/2018 and to substantiate the relationship of the petitioner with the validity holder i.e. uncle Sanjay Prabhakar Ingle (father of validity holder Ajinkya) has given affidavit dated 10.4.2023 with family tree.

5. The relationship of petitioner with the person in whose name pre-constitutional entry stands is very much established by genealogical tree which is admitted in Vigilance Cell Report. In the circumstances, we hold that the petitioner has duly established his caste claim for Thakur Scheduled Tribe. In consequence, the impugned order is not sustainable in the eyes of law and hence we allow the petition and pass the following order:-

In view of the judgment of this Court in Writ Petition Nos.7137/2018 and 7361/2018, the order passed by the Scrutiny Committee on 20.1.2021 is quashed and set aside. It is declared

that the petitioner has proved that he and his forefathers belong to Thakur Scheduled Tribe. The Scrutiny Committee shall issue a validity certificate to the petitioner as belonging to Thakur Scheduled Tribe within a period of four weeks of receiving the copy of judgment of this Court.

6. Rule is made made absolute in the above terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

Tambaskar.