

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

WRIT PETITION NO. 5313 OF 2022

Ravindra s/o. Purushottam Thakur,
Age 62 yrs, Occ. Retired,
R/o. Shivragini Apartment 001,
Madhav Nagar, Gaurakshan Road,
Near tukaram Hospital, Akola 444 001

..... **PETITIONER**

...V E R S U S...

1. Deputy Director of Education,
Amravati Division, Amravati

2. Schedule Tribe Caste Certificate
Scrutiny Committee, Amravati Division,
Old Bypass Road, Chaprushipura
Amravati, through its
Vice Chairman/Jt. Commissioner

.....**RESPONDENTS**

Mr. A.P. Kalmegh, Advocate for the petitioner,
Ms. N.P. Mehta, Addl. GP for respondent Nos. 1 & 2/State.

CORAM:- NITIN W. SAMBRE & ABHAY J. MANTRI, JJ.

DATE : 15.04.2024

JUDGMENT (Per : Abhay J. Mantri, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally with
consent of the learned counsel for the parties.

2. Challenge is to the impugned order dated 28.04.2022,
passed by respondent No. 2 - Schedule Tribe Caste Certificate

Scrutiny Committee, Amravati Division, Amravati (*“the Committee”*, for short), whereby the tribe claim of the petitioner that he belongs to ‘*Thakur*’ Scheduled Tribe came to be invalidated.

3. The petitioner claims that he belongs to the ‘*Thakur*’ Scheduled Tribe. Accordingly, on 13.07.1999, Tahsildar, Daryapur issued a caste certificate in his favour. The petitioner was appointed as Supervisor in respondent No. 1 institution vide order dated 1.2.1985. In the year 1993, the petitioner was absorbed as an Assistant Project Officer (Programmer Officer). Thereafter, he was posted in the office of the Deputy Director of Education and Training Center, Akola. As such, the caste claim of the petitioner was forwarded to the respondent No. 2 Committee for verification along with relevant documents.

4. By order dated 28.12.2004, the Committee has invalidated the caste claim of the petitioner, against that order, the petitioner has preferred Writ Petition No. 328/2005. Vide order dated 01.08.2016, this Court has set aside the order of the Committee and remanded the matter back to the Committee for reconsideration. Pursuant to the said order, the petitioner appeared

before the Committee and produced the necessary documents. The Committee, being dissatisfied with the documents produced, forwarded the claim to the Vigilance Cell for enquiry. The Vigilance Cell has conducted a detailed enquiry and submitted its report to the Committee on 19.12.2017.

5. As a sequel of the above, the petitioner was served with show cause notice dated 29.12.2017 by the Committee calling upon his explanation as to the discrepancies that appeared about the entries in the documents as well as failure to prove affinity test. The petitioner appeared and submitted his reply cum explanation on 08.01.2018 along with the documents and validity certificates issued in favour of his three blood relatives. Thus he urged that he is entitled to the validity Certificate.

6. The Committee, after considering the vigilance Cell report as well as the documents placed before it and considering the explanation given by the petitioner, passed the impugned order. Thereby invalidating the caste claim of the petitioner that he belongs to the '*Thakur*' Scheduled Tribe, hence, this petition.

7. Learned counsel Mr. A.P. Kalmegh for the petitioner vehemently submitted that the petitioner in support of his claim has produced 34 documents, out of which, five documents are of the pre-constitutional era from the year 1916 to 1948. However, the Committee has not considered the same and given undue importance to the two documents of the years 1932 and 1943. Wherein the caste of the grandfather of the petitioner was shown as 'Bhat.' He further submitted that the Committee failed to consider the oldest document of the year 1916 pertaining to his cousin grandfather as well as failed to consider the fact that the Committee has issued validity certificates in favour of his three blood relatives. Thus, the Committee erred in rejecting the claim of the petitioner. Hence, he has urged for allowing the petition.

8. To buttress his submissions, the learned counsel has relied upon the judgments of the Hon'ble Apex Court in the cases of

(i) *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Others*, (AIR 2023 SC 1657)

(ii) *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Others*, (2012) 1 SCC 113,

(iii) *Apoorva d/o.Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and Others* [2010(6)Mh. L.J. 401] and

(iv) *Jayvant Dilip Pawar Vs. State of Maharashtra (Civil Appeal No. 2336/2011)*

9. *Per contra*, learned Addl. Government Pleader Ms. N.P. Mehta submitted that during vigilance enquiry, two documents of the year 1932 and 1943 were found contrary to the claim of the petitioner. Thus, the petitioner failed to prove his caste claim. It is further contended that the petitioner has failed to prove the affinity test as well as to show that he was the resident of the area prescribed in the order. Hence, she supports the order impugned passed by the Committee and urges that no case is made out for interference in this Court.

10. We have considered the rival submissions of learned counsel for the parties. Have gone through the order impugned, citations relied upon by the learned counsel for the petitioner, and the documents placed on record.

11. Perusal of the documents shows that the petitioner, in support of his claim has produced as many as 34 documents, out of which, *five* are of the pre-constitutional era i.e. from the year 1916 to 1948 pertaining to his ancestors i.e. father, grandfather, and cousin grandfather. Also, the rest of the documents are for the years from 1952 till 2004. In the pre-constitutional documents, the caste

of the ancestors of the petitioner is shown as *Thakur*.

12. It is to be noted that in paragraph No. 3 of the order impugned, the Committee has referred to the documents at serial No. 9, 10, and 25. These documents are of the years 1947, 1948, and 1916 pertaining to his father and cousin grandfather. However, the Committee has not considered the said documents. In fact, as per the law laid down in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* and *Anand*, (cited supra), the Committee has to consider the oldest document of the year 1916 as the said document has a greater probative value than subsequent document. Moreover, these documents were neither denied nor disputed by the Committee or the Vigilance Cell. *Therefore*, there is no reason to disbelieve or discard the genuineness of said documents.

13. But the Committee failed to consider the entries in the pre-constitutional documents and gave undue importance to the subsequent documents which were found during the Vigilance Cell enquiry. Amongst these documents, one document is of the year 1932 about his grandfather in which the caste of his grandfather is shown as *Bhat*. In the second document of the year 1943, the caste

of the grandfather is shown as *Thakur* (Bhat) and only based on these two documents, the Committee has negated the claim of the petitioner. In fact, the document of the year 1916 i.e. extract of the Birth and Death register pertains to the cousin grandfather of the petitioner Gopal, wherein his caste is mentioned as '*Thakur*'. In the family tree, the name of Gopal is mentioned. The said document is neither disputed by the Committee nor the Vigilance Cell. However, the Committee has not taken into consideration the oldest entry in the document nor discussed it. Therefore, in our view, the Committee erred in rejecting the claim of the petitioner.

14. The second crucial question is that the petitioner has produced three caste validity certificates issued by the Scrutiny Committee, Aurangabad Division, Aurangabad in favour of blood relatives i.e. Prashas and Vikas S/os. Chandrashekhar Thakur who are cousin brothers of the petitioner are shown in the family tree. The relationship between the two validity holders and the petitioner is not disputed by the Committee. While considering the said validity certificates, the Committee has observed that they are issued in favour of the cousin brothers of the petitioner. However, without considering these documents, vaguely observed that these

documents were not helpful for the petitioner in proving his caste claim and discarded the said documents. *In fact*, as per the dictum laid down in the case of ***Apoorva Nichle***, the Committee ought not to have rejected the claim of the petitioner without assigning any cogent reason. However, it was incumbent on the part of the Committee to issue a validity certificate in favour of the petitioner. On that ground alone, the petitioner is entitled to get a validity certificate.

15 *Furthermore*, as per the law laid down in the cases of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti and Anand***, the affinity test cannot be termed as a litmus test, particularly, when pre-independence documents are placed on record. *Besides*, the said test cannot be said to be a conclusive test. *Likewise*, as per the law laid down in the case of ***Jayvant Dilip Pawar***, the question of area restrictions does not arise as the same has been removed.

16. Having regard to the aforesaid discussion and the documents on record, it reveals that the petitioner in support of his claim has relied upon the document of the year 1916 and other pre-constitutional documents pertaining to his father and cousin

grandfather wherein their caste is shown as ‘*Thakur*’. The document of the year 1916 is the oldest one which is not disputed nor denied by the Committee and therefore, the said document has more probative value than the subsequent documents on which the Committee has relied. *Furthermore*, in our view, only two stray entries in the documents of the years 1932 and 1943 which are subsequent documents than 1916 document. Therefore, based on stray entries in these documents, in our view, it would not be proper to discard the claim.

17. Secondly, as per the dictum laid down in the case of *Apoorva Nichle*, it was incumbent on the part of the Committee to issue a validity certificate in favour of the petitioner unless the Committee found that the validity certificates of blood relatives had been obtained by fraud or issued without jurisdiction. In such an eventuality, there was no reason for the Committee to discard these certificates. As a result, it seems that the finding given by the Committee appears contrary to the documents placed on record as well as the dictum laid down in the case of *Apoorva Nichale*. Based on the aforesaid finding, the order cannot be sustained in the eyes of law and therefore, the same is liable to be set aside.

18. *Thus*, in our considered view, the invalidation order passed by the Committee is based on stray entries in the two documents and on the ground that the petitioner has failed to prove affinity tests are not sustainable in the eyes of the law. *Per contra*, it denotes that the petitioner has discharged the burden under section 8 of the Act and demonstrated that his ancestors belong to the '**Thakur**' Scheduled Tribe. Hence, in our opinion, the Committee has erred in rejecting the claim of the petitioner.

19. As such, we deem it appropriate to allow the petition, As a result, we pass the following order:

- (i) The petition is allowed.
- (ii) The impugned order dated 28.04.2022, passed by respondent No. 2 is hereby quashed and set aside.
- (iii) It is declared that the petitioner belongs to the '**Thakur**' Scheduled Tribe.
- (iv) The respondent Committee is directed to issue a Caste Validity Certificate to the petitioner as he belongs to '**Thakur**' Scheduled Tribes within a period of four weeks from the receipt of the copy of this judgment.

20. Rule is made absolute in the above terms with no order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

R. Belkhede