



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

WRIT PETITION NO. 5898/2023

Swaraj S/o. Shri Rajeshkumar Gathe,
Aged 18 years, Occ. : Student,
R/o. Jijau Nagar, Akola.

----PETITIONER

--VERSUS--

1. The Scheduled Tribe Caste Certificate
Scrutiny Committee,
Chaprasipura, Amravati
through its Member Secretary.
2. Common Entrance Test Cell,
Govt. Of Maharashtra,
through its Commissioner and
Competent Authority, 9th Floor,
New Excelsior Building, A.K. Naik Road,
Fort, Mumbai 400 001.

----RESPONDENTS

Shri R. S. Parsodkar, Advocate for Petitioner.
Ms. N. P. Mehta, Assistant Government Pleader for Respondent No.1/State.
Shri Nahush Khubalkar, Advocate for Respondent No.2.

CORAM : A.S.CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : SEPTEMBER 15, 2023

ORAL JUDGMENT (PER : MRS. VRUSHALI V. JOSHI, J.)

1. **Rule.** Rule made returnable forthwith and heard finally with consent of the learned Counsel for the parties.
2. The petitioner has challenged the order of invalidation of tribe claim of the petitioner belonging to 'Thakur' Scheduled Tribe. He has

submitted the documents along with the validity certificate of the cousin uncle Rajendra Madhukar Gathe, which was issued by the Scrutiny Committee as per the judgment passed by this Court. He has filed the death certificate of great great grandfather Ganu Krushna, wherein the entry of his death is 18.07.1937, the death certificate of brother of Ganu, Bhonya, who is cousin great, great grandfather, the entry of his death recorded as 26.11.1974, the death certificate of cousin great, great grandfather Shivrao Krushna recorded the entry of his death as 14.07.1950, Extract of Dakhal Kharij Register dated 01.07.1977 mentioning the Caste as 'Thakur', in School Admission Register of the year 1934 of grandfather of the petitioner Ramkrushna Sampat also mentioned the caste as 'Thakur'. He also submits that the validity certificates had issued to his aunt Shreya Sudhakar Gathe and his cousin uncle Krushna Sudhakar Gathe by the Scrutiny Committee as per the judgment of this Court.

3. The Police Vigilance Cell has produced one adverse entry of one Bhona Walda Krushna is shown as Kunbi on 12.05.1913 and another entry of Sampat Ganu 'Tha-Kunbi' dated 05.02.1934. While giving reply to the Vigilance Cell, the petitioner has denied said entries stating that these entries are not correct as the entry of Bhona Krushna is of dead man and entry of Sampat is 'Thakur' only. He has stated that Vigilance Cell has not submitted correct report. The enquiry was of a different person and

not that of the cousin great grand father Bhonya whereas the said document relates to Bhona Krushna and the cousin great grandfather is Bhonya and not Bhona.

4. The petitioner pointed out in his reply that as regards entry of Bhona Krushna showing the date of birth as 12.05.1913, caste Kunbi and it just appears similar to name, the vigilance cell says that he is cousin great grandfather of the petitioner. In this regard, it is submitted that the said entry is not a cousin great grandfather and actually the cousin great grandfather is Bhonya and not Bhona. The record that has been obtained by Vigilance Officer shows that Bhona is blessed with daughter and the name itself is different than that of cousin great grandfather of the petitioner i.e. Bhonya and not Bhona. About Sampat Ganu Thakur, the entry which is produced in the School Zilla Parishad Ucha Prathamik Shala Palshi mentioned as 'Thakur Kunbi'. As regards the said entry, the petitioner got Dakhal Kharij Register in which at Serial No.563, clearly mentioned that Ramkrushna Sampat is admitted to the school and recorded as 'Thakur' Scheduled Tribe and his date of birth is 01.07.1927 and date of entry in the School as 05.02.1934. In view of Dakhal Kharij entry the pratigya lekh which is tried to be misused is totally incorrect.

5. The learned Counsel for the petitioner has made submission that as per the judgment of this Court in case of ***Apoorva Nichale Vs. Divisional Caste Scrutiny Committee reported in (2010) 6 Mh.L.J. 401*** as

the petitioner's 6 blood relatives are given caste validity certificates by various judgments of this Court, the petitioner is entitled for the validity certificates. 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 is not correct. On the ground of the affinity test, the petitioner relied on the judgment of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.*** reported in ***2023(2) Mh.L.J. 785*** wherein the Hon'ble Apex Court has held that 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. As the validity certificates issued to the blood relatives are not considered, the petitioner has filed this petition challenging the said order.

6. The learned Assistant Government Pleader has opposed the petition stating that the document of great grandfather Sampat creates doubt as there is entry of Kunbi and it is mentioned in another Ink. It is not clear in the Register that he is of 'Thakur' caste. On the other validity certificates on which the petitioner has relied, some of the relatives their caste claims are invalidated and the cases are pending before the Hon'ble Apex Court. Considering the suspicious documents filed on record and entry of one Bhonya is of Kunbi, the Scrutiny Committee has rightly rejected the caste claim of the petitioner.

7. Heard the learned Counsel.

8. Three validity certificates are on record of the blood relatives of the petitioner. Said relatives are found in family tree filed by the petitioner. Only on the basis of the documents of one Bhona, the Scrutiny Committee has invalidated his claim. The petitioner has denied this entry stating that the person is named as Bhona while the person in relation is Bhonya. The document on which the Scrutiny Committee has relied is of one Sampat. The document of Sampat dated 29.06.1944 clearly mentions the entry as 'Thakur'. The School Register and other documents the word 'Tha' is mentioned and it cannot be clearly stated that it is Kunbi. Therefore, without considering the old documents on record, which are of pre-independence era and having the caste 'Thakur' as well as the validity certificates issued to the relatives of the petitioner the claim is invalidated. In view of the decision in ***Apoorva Nichale (supra)***, it is proved that the petitioner belongs to 'Thakur' caste.

9. In the judgment of the Hon'ble Supreme Court in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*** it was submitted that the affinity test could not be treated to be a litmus test so as to disallow the claim and an overall view of the material on record was required to be taken. As there are validity certificates of blood relatives and the pre-independence documents also show that the petitioner

belongs to 'Thakur' Scheduled Tribe, the writ petition is allowed.

Accordingly, the following order is passed :

- I] The order dated 21.08.2023 passed by the Scrutiny Committee is set aside in the light of the judgment in *Krushna s/o. Sudhakar Gathe Vs. The Vice-Chairman/Member-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati [Writ Petition No.5111/2019 decided on 25.07.2019]* and *Shreya d/o. Sudhakar Gathe Vs. The Vice-Chairman/Member Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati & Ors. [Writ Petition No.7383/2018 decided on 21.02.2020]*, it is held that the petitioner has proved that he belongs to 'Thakur' Scheduled Tribe.
- II] Within a period of three weeks from today, the Scrutiny Committee shall issue validity certificate to the petitioner.
- III] Till the petitioner is issued the validity certificate, he is free to rely upon this judgment to indicate that his claim of belonging to 'Thakur' Scheduled Tribe has been upheld.

10. Rule is made absolute in aforesaid terms with no order as to costs.

(MRS.VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

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