



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

WRIT PETITION NO. 6599/2013

Sanjay s/o. Ukha Ingle,
Aged about 48 yrs., Occ.-Service,
R/o. Mangal Gate Road,
Ward No.17, Malkapur,
Distt. Buldhana.

----PETITIONER

--VERSUS--

1. The Scheduled Tribe Caste Certificate
Scrutiny Committee, Irwin Chowk,
Amravati Division, Amravati.
2. The Superintending Engineer,
Small Scale Irrigation (Water Conservation),
Amravati Circle, Amravati.

----RESPONDENTS

Ms. P. D. Rane, Advocate for Petitioner.

Ms. S. S. Jachak, Assistant Government Pleader for Respondents/State.

CORAM : A.S.CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATED : JULY 06, 2023

ORAL JUDGMENT (PER : A.S.CHANDURKAR, J.)

1. **Rule.** Rule made returnable forthwith and heard finally with consent of the learned Counsel for the parties.
2. The challenge raised in the present Writ Petition is to the order passed by the Scrutiny Committee dated 22.11.2013 thereby

invalidating the petitioner's claim of belonging to 'Thakur' Scheduled Tribe.

3. The petitioner in support of his claim of belonging to 'Thakur' Scheduled Tribe relied upon various documents of the pre-constitutional era having the entry 'Thakur'. Amongst them are the documents dated 11.03.1941 and 25.06.1947 that were collected by the Vigilance Cell. Similarly, the petitioner relied upon the School Leaving Certificate of his grandfather dated 02.03.1936 and 19.08.1937. The Vigilance Cell in its report dated 25.09.2013 noted that though the document dated 29.02.1928 did not have any reference to the tribe of the petitioner, the subsequent documents prior to 1950 had such entries. It further held that in absence of affinity with persons from the Scheduled Tribe Community, the claim of the petitioner was not liable to be accepted.

4. The learned Counsel for the petitioner submitted that in the light of the undisputed facts that all pre-constitutional documents had the entry 'Thakur', there was no reason to disbelieve the claim of the petitioner. Merely because the document of 1928 did not have any entry, the same would not be of much consequence in as much as the subsequent documents of the same person had the entry 'Thakur'. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Maharashtra Adiwasī Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.***

[2023(2) Mh.L.J. 785] 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. On that basis it was clear that the petitioner's claim was established.

5. The learned Assistant Government Pleader for the respondents supported the order. She relied upon the report of the Vigilance Cell to urge that the oldest document of 1928 did not have any entry whatsoever and therefore it could not be relied upon. Though the other documents had the entry 'Thakur', the claim was rightly discarded by the Scrutiny Committee for want of affinity. Hence, there was no case made out to interfere with the order passed by the Scrutiny Committee.

6. Having heard the learned Counsel for the parties and having perused the documents on record, we find that the Vigilance Cell after referring to various pre-constitutional documents noted that though the document of 1928 was without any reference to the tribe of the petitioner, the subsequent documents of the year 1941, 1947 and 1950 had such entry. When the document of 1928 is examined in this context, it is clear that the said document is of the petitioner's grandfather. The documents pertaining to the subsequent period also have the entry 'Thakur'. It is not in dispute that there are no contrary entries in any of the old documents.

Hence due weightage to the pre-constitutional documents would have to be given.

7. As regards the aspect of affinity is concerned, the legal position is now clear in view of the decision in **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (*supra*) wherein it has been held that the affinity test cannot be treated to be a litmus test and that the claim has to be decided after considering the entire material on record. The statements recorded by the Vigilance Cell and the report of the Research Officer indicates that the petitioner had sufficiently established affinity with 'Thakur' Scheduled Tribe. As noted in the aforesaid decision with the passage of time it is likely that all traits and characteristics of the tribe in question may not be available. After taking an overall view of the matter and in the light of the pre-constitutional documents with the entry 'Thakur', we are satisfied with the claim made by the petitioner deserves to be allowed. The Scrutiny Committee erred in giving undue importance to the affinity test thereby ignoring the probative value of the pre-constitutional documents.

8. For aforesaid reasons, the order passed by the Scrutiny Committee is set aside. It is declared that the petitioner has proved that he belongs to 'Thakur' Scheduled Tribe. The Scrutiny Committee shall

within a period of four weeks of receiving the copy of the judgment issue Validity Certificate in favour of the petitioner.

9. Though the services of the petitioner had been discontinued on account of the order passed by the Scrutiny Committee, he was directed to be taken back in service by the interim order dated 28.04.2014. With the setting aside of the order passed by the Scrutiny Committee, the petitioner would be entitled to all benefits flowing from such continuation in service.

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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