



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

WRIT PETITION NO. 6755/2023

Sanskruti D/o. Vijay Nemade,
Aged about 19 Yrs., Occ. Student,
R/o. At-Post – Santosh Colony,
Shreya Nagar, Khadki (Bu.), Akola,
Tah. Akola, Distt. Akola – 444001.

----PETITIONER

--VERSUS--

The Vice-Chairman/Member-Secretary,
Schedule Tribe Caste Certificate Scrutiny
Committee, Amravati.

----RESPONDENT

Ms. Preeti Rane, Advocate with Ms. Himani Kavi, Advocate for Petitioner.
Mr. A. S. Fulzele, Additional Government Pleader for Respondent.

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

DATED : OCTOBER, 09, 2023.

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 the Scrutiny Committee dated 04.09.2023 invalidating the claim of the petitioner of belonging to “Thakur” Schedule Tribe. The petitioner claims to belong to “Thakur” Scheduled Tribe which is enlisted at Serial No.44 of the Scheduled Tribe Order.

3. The petitioner appeared for NEET-2023 Examination and cleared the same. She has forwarded the proposal to the Scrutiny Committee on 30.01.2023 along with documents, which are as under :

- 1] Caste Certificate of petitioner dated 29.01.2021.
- 2] School Leaving Certificate of petitioner of 1st Standard dated 30.04.2009.
- 3] School Leaving Certificate of petitioner of 12th Standard dated 07.06.2023,
- 4] School Leaving Certificate of petitioner's father of 10th Standard dated 20.07.1992,
- 5] Extract of Dakhal Kharij Register of petitioner's father.
- 6] Caste Certificate of petitioner's grandfather dated 03.02.1991,
- 7] Birth Certificate of petitioner's grandfather namely Madhukar (D.O.B. mentioned as 01.07.1951) dated 03.12.1999,
- 8] School Leaving Certificate of petitioner's grandfather namely Madhukar (1952/1967/1970) dated 30.01.1981,
- 9] Extract of Birth of son born to petitioner's great great grandfather namely Nago (1910) dated 21.01.2023,
- 10] Extract of death of petitioner's great great great grandfather namely Zyango (1910) dated 21.01.2023,
- 11] Extract of Birth of daughter born to petitioner's great great grandfather namely Nago (1912),

- 12] School Leaving Certificate of petitioner's great grandfather namely Namdev (1915/1928/1933) dated 30.05.2002,
- 13] Extract of Birth of son born to petitioner's great great grandfather namely Zyabu (1927) dated 21.01.2023,
- 14] Extract of Birth of son born to petitioner's great great grandfather namely Zyabu (1926) dated 21.01.2023,
- 15] Extract of revenue document in respect of cousin great great grandfather namely Nago (1905)
- 16] Extract of revenue document in respect of cousin great grandfather namely Vishwanath (1909),
- 17] Extract of Birth of son namely Digambar born to petitioner's cousin great grandfather namely Pundlik (1927) dated 31.10.1951,
- 18] Caste Validity of cousin uncle namely Gajanan dated 07.07.2020 along with judgment dated 05.01.2020 in W.P. No.6532/2018,
- 19] Judgment dated 30.01.2020 in W.P. No.6305/2019 in the case of Shraddha Nemade,
- 20] Family tree dated 10.02.2023.

4. The caste claims of the petitioner's uncle namely Gajanan and cousin sister namely Shraddha were invalidated and the same were challenged before this Court in Writ Petition Nos. 6532/2018 and 6305/2019 and this Court has quashed and set aside the orders and

directed the Scrutiny Committee to issue validity certificate to the petitioner's cousin uncle and sister.

5. The caste claim of the petitioner's father was forwarded to the Scrutiny Committee in the year 2003 as appointment of the petitioner's father was on the post of Peon. In spite of submitting the proposal before the Scrutiny Committee way back in 2003 till 2007 the claim was not decided. As the appointment of petitioner's father was from reserved category, the Management of the Society insisted the petitioner's father to submit validity certificate as they are not in position to complete the roster. As the petitioner's father could not submit the validity certificate as sought for, the President of Gramin Gurukul Shikshan Sanstha, Tandli (Khurd), Tahsil Patur, District Akola passed a Resolution thereby converting the appointment dated 01.02.2002 of petitioner's father in open category. The Education Officer (Secondary), Zilla Parishad, Akola had granted approval on 30.10.2002 to the appointment of the petitioner's father from open category. The petitioner's father gave up his claim and to that effect the Scrutiny Committee issued an order dated 07.07.2020. The Police Vigilance Cell of the Scrutiny Committee conducted the inquiry in relation to caste claim of the petitioner and accordingly submitted its report on 04.08.2023. At the time of conducting inquiry, the Vigilance Cell

of the Committee recorded the statement of the petitioner's father for the purpose of testing affinity.

6. The caste claim of the real uncle and paternal aunt of the petitioner were invalidated. The said orders were challenged and this Court has remitted back said claim to the Scrutiny Committee for *de novo* inquiry. As the Scrutiny Committee has invalidated the petitioner's claim, the petitioner has filed this petition.

7. The learned Counsel for the petitioner has argued that the pre-constitutional documents submitted by the petitioner and procured by the Vigilance Officer are of "Thakur" caste, which clearly reveals that the same is consistent with the Presidential Order of 1950. The Scrutiny Committee in the impugned order of invalidation had laid main emphasis on the withdrawal of caste claim by petitioner's father. The Scrutiny Committee is required to independently and separately assess the caste claim of the petitioner in view of the settled position of law in the case of ***Kumari Madhuri Patil vs. Additional Commissioner, Tribal Development reported in (1994) 6 SCC 241***, wherein it is held that 'every case has to be decided on its own merits'. Further, the withdrawal of caste claim by petitioner's father is totally in different footing on the facts and circumstances of the said case. In respect of affinity and area restrictions, the petitioner has placed his reliance on the decision of ***Anand Vs.***

Committee of Scrutiny and Verification of Tribe Claims and Others reported in ***2011 (6) Mh.L.J. 919*** and ***Jaywant Dilip Pawar Vs. State of Maharashtra and Others*** reported in ***2018(5) All M R 975 (S.C.)*** in Civil Appeal No.2336/2011 dated 08.03.2017.

8. In view of law laid down by this Court as well as the Hon'ble Apex Court in the cases of *State of Maharashtra Vs. Milind (2001)*, *Palghat Jilla Thandan Vs. State of Kerala (1994)*, *Pandurang Rangnath Chauhan, Gayatrilaxmi Nagpure Vs. State (1996)* and *State of Maharashtra Vs. Mana Adim Jamat Mandal (2006)*, it is evident that entry of the Tribe in the list of Scheduled Tribe has to be read as it is, and no authorities including any Court, can add or subtract anything from such entry. In the present case, the approach adopted by the Scrutiny Committee is totally erroneous and has resulted into tampering with the Presidential order.

9. The Scrutiny Committee at the time of applying affinity test also ought to have seen and followed the guidelines laid down in ***Madhuri Patil's*** case, wherein it is clearly held that -

“That the Vigilance Cell should examine every particulars as envisaged in the proforma in the particulars of the Scheduled Tribes relating to their peculiar anthropological and ethnopolological traits, deities, rituals, customs and mode of

marriage, death ceremony, method of burial bodies etc. by the concerned caste or tribe or tribal communities etc.”

10. By considering the law laid down on this issue, considering the caste claim and the documentary evidence filed on record by the petitioner, the petitioner prayed to set aside the order passed by the Cast Scrutiny Committee.

11. The learned Assistant Government Pleader opposed the petition stating that though there is no any contra entry, the father of the petitioner has gave up the claim and the Scrutiny Committed has passed the order accordingly. Though the validity certificate of one Gajanan is filed, the relation is not proved. Affinity test also does not match, hence prayed to reject the petitioner's claim.

12. Heard both the learned Counsel.

13. The petitioner has filed on record various pre-independence documents which are not denied by the Scrutiny Committee. The emphasis is on the issue that the father of the petitioner has given up the caste claim. On perusal of record, we find that while passing the order the Scrutiny Committee has considered the statement given by the father of the petitioner while giving up the claim of the Schedule Tribe, the Scrutiny Committee has mentioned how the father of the petitioner was compelled

to give up the caste claim as he was considered in open category. The statement given by the father of the petitioner is also perused. It appears that to save his service and as there was delay in receiving the validity certificate, the father of the petitioner has given such statement. The services of the petitioner's father have been thereafter shown in open category by the Education Officer. It is thus clear that the petitioner's father on his own has given up his caste claim, which clearly shows that the reason for giving up his caste claim is the genuine reason.

14. The validity certificates which are filed on record proves as per family tree are in relation with petitioner. There is a validity certificate granted to the petitioner's cousin uncle Gajanan Shriram Nemade on 07.07.2020. This is pursuant to the judgment in *Writ Petition No.6532/2018 (Gajanan s/o. Shriram Nemade Vs. The Vice-Chairman/Member-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati)* decided on 05.02.2020. The aforesaid judgment refers to the earlier judgment in *Writ Petition No.6305/2019 (Ku. Shraddha D/o. Gajanan Nemade Vs. The Vice Chairman/Member Secretary, Scheduled Tribe Caste Certificate Scrutiny committee, Amravati)* decided on 30.01.2020 wherein a direction was issued to grant validity certificate to the daughter of Gajanan – Ku. Shraddha. The names of these blood relatives can be found in the family tree that was

considered by the Scrutiny Committee. It was, therefore, not open for the Scrutiny Committee to discard the aforesaid adjudication. The ratio of the decision in *Apoorva Nichale Vs. Divisional Caste Scrutiny Committee* reported in *(2010) 6 Mh.L.J. 401* is squarely attracted to the facts of the present case.

On the aspect of affinity, we find that in view of the recent decision of the Hon'ble Supreme Court in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.* reported in *2023(2) Mh.L.J. 785*, the affinity test cannot be treated to be the litmus test. A claim cannot be invalidated only on the ground that the claimant is unable to clearly indicate the traits and practices of the concerned caste/tribe. We, therefore, find on considering the overall material on record that the claim of the petitioner of belonging to "Thakur" Scheduled Tribe has been clearly made out.

15. In view of aforesaid, the following order is passed :

- i] The order passed by the Scrutiny Committee dated 04.09.2023 is set aside. It is declared that the petitioner has proved that she belongs to "Thakur" Scheduled Tribe.

- ii] Within a period of three weeks from receiving the copy of the judgment, the Scrutiny Committee shall issue validity certificate to the petitioner.
- iii] Till the validity certificate is issued, the petitioner can rely upon the copy of this order to indicate that her claim for validity has been upheld since she is required to furnish copy of the validity certificate by 5.30 p.m. on 10.10.2023 at the institute where she seeks admission.

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

(MRS.VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

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