



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

WRIT PETITION NO. 5226/2019

Vaishnavi D/o. Madhukar Thakur,
Age: 17 years, Occ. Student,
through natural guardian (father)
Madhukar S/o. Namdeo Thakur,
Age: 52 yrs., Occ: Service,
R/o. Dasarkhed, Tq. Malkapur, Dist.
Buldhana, Presently residing at A-9, New
Prerna Co-op. Housing Society, Thane (W).

....**PETITIONER**

....**VERSUS**....

1. Scheduled Tribe Caste Certificate Scrutiny
Committee, Irwin Chowk, Amravati Division,
Amravati. Through its Vice Chairman/Jt.
Commissioner.

2) Kelkar Education Trust's
V.G. Vaze College of Arts, Science and
Commerce, Mithagar Road, Mulund (East)
Mumbai-400 081, through its Principal
(R-2 deleted as per Court's order
dated 9/1/23)

....**RESPONDENTS**

Shri A.P. Kalmegh, Advocate for petitioner.
Shri A.M.Joshi, AGP for respondent no. 1/State.

CORAM : **AVINASH G. GHAROTE AND**
SMT. M.S. JAWALKAR, JJ.

DATE OF RESERVING THE JUDGMENT:

12/04/2024

DATE OF PRONOUNCING THE JUDGMENT :

26/04/2024

JUDGMENT (PER: SMT. M.S. JAWALKAR, J.)

Rule. Rule made returnable forthwith.

2. Heard finally by consent of learned counsel appearing for the parties at the stage of admission.

3. The petitioner has approached before this Court challenging the invalidation order dated 17/07/2019 passed by the respondent no. 1 - Joint Commissioner & Vice-Chairman, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati (hereinafter referred to as "Caste Scrutiny Committee").

4. The petitioner belongs to the 'Thakur' Scheduled Tribe which is recognized at Sr. No. 44 in the list of Scheduled Tribe in notification. The petitioner obtained the caste certificate of 'Thakur' Scheduled Tribe on 17/06/2017 duly issued by S.D.O., Malkapur. The caste claim of the petitioner was referred to the respondent - Caste Scrutiny Committee, Amravati for verification.

5. She has submitted the following old documents along with other documents:-

Name	Relation	Document	Date of document	Caste
Namdeo Rupsingh Thakur	Grandfather	School Leaving Certificate and Extract of record of Students.	01/04/1947	Thakur
Damu Rupsingh Thakur	Grandfather	School Leaving Certificate and Extract of record of Students.	01/03/1933	Thakur
Rupsingh Suryabhan Thakur	Great Grandfather	Revenue Record (Birth Entry)	17/11/1927	Thakur
Waman Rupsingh Thakur	Grandfather	School Leaving Certificate and Extract of record of Students.	01/04/1942	Thakur
Rusingh Suryabhan Thakur	Great Grandfather	Revenue Record (Birth Entry)	10/03/1935	Thakur
Dama Rupsingh	Grandfather	Dakhal Kharij Extract	1936	Thakur
Namdeo Rupsingh	Grandfather	Dakhal Kharij Extract	1947	Thakur
Waman Rupsingh	Grandfather	Dakhal Kharij Extract	1942	Thakur
Rupsingh Suryabhan Thakur	Great Grandfather	Revenue Record (Birth Entry)	02/08/1923	Thakur

6. After conducting enquiry by Vigilance Cell, she has submitted a reply, however, on 17/07/2019, her caste

claim was invalidated by the Scrutiny committee.

7. The petitioner has submitted voluminous documents pertaining to the pre-presidential period i.e. prior to 1950 belonging to 'Thakur' Scheduled Tribe in respect of her father and forefathers.

8. The learned counsel for the petitioner relied on following citations:-

1) *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti V/s. State of Maharashtra* [2023(2) Mh.L.J. 785]

2) *Anand V/s. Committee for Scrutiny and Verification of Tribe Claims & ors.* [(2012) 1 SCC 113]

9. The learned Assistant Government Pleader supported the order passed by the Caste Scrutiny Committee, however, he has fairly conceded that the entries in the oldest documents also consistently shown as 'Thakur'. There is no dispute over genealogy. If the above documents are perused, the old documents are found.

10. The oldest entry is of 1923 wherein Rupsingh Suryabhan was shown as 'Thakur'. The above entries of 1927,

1933, 1935, 1942, 1947 and subsequent entries are shown as 'Thakur' consistently. In view of these old documents having great probative value, the Caste Scrutiny Committee would not have discarded the caste claim of the petitioner on the ground of affinity or area restriction. The area restriction is already removed and so far as the affinity test is concerned, the Hon'ble Apex Court referred the judgment of *Anand V/s. Committee for Scrutiny and Verification of Tribe Claims & ors.* (supra) in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (Supra). In *Anand*, the Hon'ble Apex Court observed as under:-

"While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar

anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim. (emphasis added)”

11. Thus, the affinity test is not the litmus test to apply in each case when there are old documents having great probative value. There is no necessity to harp upon the affinity. In view of the above law position and in view of the documents submitted by the petitioner, we are of the considered opinion that, the Caste Scrutiny Committee passed an erroneous order and rejected the claim of the petitioner of 'Thakur' Scheduled Tribe. There cannot be any addition or subtraction in the entries of the list of Scheduled Tribe, in view of the fact that, there is no adverse entry in the documents produced by the petitioner or collected or procured by the Vigilance Cell. As such, the impugned order is liable to be set aside. Accordingly, we proceed to pass the following order:-

ORDER

- 1) The Writ Petitioner is allowed.

2) The impugned order dated 17/07/2019 passed by respondent no. 1 - Joint Commissioner & Vice-Chairman, Scheduled Tribe Certificate Scrutiny Committee, Amravati in the matter of the petitioner - Vaishnavi D/o. Madhukar Thakur, in Case No. 5/500/Edu/032018/112034, is hereby quashed and set aside.

3) It is declared that the petitioner has duly established that she belongs to 'Thakur' Scheduled Tribe, which is entry No. 44 in the Constitution (Scheduled Tribes) Order, 1950.

4) The respondent no. 1 - Joint Commissioner & Vice-Chairman, Scheduled Tribe Certificate Scrutiny Committee, Amravati to issue validity certificate of 'Thakur' Scheduled Tribe to the petitioner within a period of four weeks.

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

(Judge)

(Judge)

B.T.Khapekar