

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

WRIT PETITION (WP) 8067/2022

Shantanu S/o Chatrapati Chavan
Age: 18 years, Occ: Student,
R/o Ward no. 6, Sakhar Kherda,
Tah. Sindkhed Raja, Buldhana.

..... PETITIONER

// VERSUS //

1. Schedule Tribe Caste
Certificate Scrutiny Committee,
Old By Pass, Chaprashipura,
Amravati Division, Amravati,
Through its Vice Chairman/
Jt. Commissioner.
2. State Common Entrance Test Cell
Maharashtra State, 8th Floor, New
Excelsior Building, A.K. Nayak Marg,
Fort, Mumbai-400001,
through its Commissioner.

.... RESPONDENT(S)

Amended as
per Court's
order dt.
2.1.2023

Mr. A.P. Kalmegh, Advocate for the petitioner
Mr. M. K. Pathan, AGP for respondent 1
Mr. N.S. Khubalkar, Advocate for respondent 2

CORAM : ROHIT B. DEO AND
Y.G. KHOBRAGADE, J.J.

DATED : 04/01/2023

ORAL JUDGMENT : (PER:- Y.G. KHOBRAGADE, J.)

Heard Mr. A.P. Kalmegh, learned Advocate for the petitioner,
Mr. M. K. Pathan, learned Assistant Government Pleader for respondent
1 and Mr. N.S. Khubalkar, learned Advocate for respondent 2 at length.

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2. **Rule.** Rule made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

3. The petitioner claims that he is belonging to 'Thakur', Scheduled Tribe which is recognized at serial 44 in the list of the Constitution (Scheduled Tribes) Order, 1950. However, on 01.11.2022 respondent 1 - Scrutiny Committee rejected his caste claim. In support of his caste claim, the petitioner produced seventeen documents of which some documents are pre-constitutional. According to the petitioner, the document – 7 pertains to School Leaving Certificate of his great-grandfather, Sakharam Govinda, document – 8 pertains to daughter born to his great-great-grandfather, Govinda Sonaji and document – 9 pertains to daughter born to great-grandfather, Sakharam Govinda and all these documents referred the caste 'Thakur' and the date of entries in Schools showing caste 'Thakur' are 14.06.1926, 26.07.1931 and 01.05.1946. However, respondent 1 – Scrutiny Committee has ignored these documents and rejected the tribe claim of the petitioner on the ground of affinity test and the area restrictions.

4. The learned Counsel for the petitioner submitted that respondent 1 – Scrutiny Committee though considered those documents at serial 4 to 12 and 17 pertaining to father, grandfather, great-grandfather and great-great-grandfather and the caste 'Thakur' reflects

in these documents, however, respondent 1 – Scrutiny Committee held that merely mentioning caste ‘Thakur’ in all these documents does not prove that the petitioner belongs to ‘Thakur’, Scheduled Tribe. Therefore, finding recorded by the Scrutiny Committee is completely illogical, perverse and rejection of caste claim of the petitioner on the ground that he failed to establish his affinity test and ethnic linkage towards ‘Thakur’, Scheduled Tribe ignoring pre-constitutional documents are not tenable.

5. Mr. M. K. Pathan, learned Assistant Government Pleader supported the impugned order on the point that affinity test is an integral part of determination of the correctness of the tribe claim of the petitioner but, the petitioner failed to prove the said affinity test.

6. We have gone through the impugned order dated 01.11.2022 passed by respondent 1 – Scrutiny Committee. On carefully going through the impugned order, it reveals that respondent 1 – Scrutiny Committee has not really disputed the existence of documents pertaining to School Leaving Certificate of Sakharam Govinda, entry in Death and Birth Certificates of Govinda Sonaji and Sakharam Govinda which reflect the caste of the petitioner ‘Thakur’ and these documents are pre-constitutional. However, respondent 1 – Scrutiny Committee has rejected the tribe claim of the petitioner on the ground of affinity test

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and area restrictions. Respondent 1 – Scrutiny Committee further observed that the petitioner failed to prove blood relationship in respect of Priti Sunil Chauhan (document at serial 13) which is pertaining to Caste Validity Certificate. So also, the petitioner failed to prove affinity test as per ratio laid down in the case of ***Shilpa Vishnu Thakur Vs. State of Maharashtra and others*** reported in ***2009 (3) Mh.L.J. 995..***

7. In the case in hand, it appears that the petitioner produced total seventeen documents in support of his caste claim. The documents 7, 8 and 9 are pre-constitutional and all these documents show the caste of the petitioner's great-grandfather and great-great-grandfather being 'Thakur'. Other documents 1 to 6 and 10 to 17 are post-constitutional and all these documents are of the relatives of the present petitioner. Genealogical tree shows that great-grandfather of the petitioner Sakharam Govinda born on 14.06.1926 and one daughter born to Govinda Sonaji (great-great-grandfather) on 26.07.1931 and one daughter born to Sakharam Govinda on 01.05.1946 and in all these three documents their casts is shown as 'Thakur'.

8. The Hon'ble Apex Court in the Special Leave to Appeal (C) No. 24894/2009 was testing the correctness of the judgment of Full Bench of the Bombay High Court in ***Writ Petition No. 5028/2006*** in ***Shilpa Vishnu Thakur V/s State of Maharashtra & Ors..*** The Full Bench

has held that the affinity test is an integral part of the determination of the correctness of the claim of the caste certificate. The said Judgment was referred by the Hon'ble Apex Court in a judgment reported as ***(2010) 14 SCC 489 Vijaykumar V/s State of Maharashtra & Ors.***, wherein, a certificate issued to the uncle of the appellant was found to be of no use as such certificate is/was not found to be validated by the Scrutiny Committee. However, in another judgment reported as ***(2012) 1 SCC 113, Anand V/s Committee for Scrutiny and Verification of Tribe Claims and Ors.***, the judgment of Full Bench of Bombay High Court was referred to. In the later, the Hon'ble Apex Court has held that the affinity test is not a litmus test and that the document of pre-constitutional era is of highest probative value in the eyes of law. In the circumstances, the Hon'ble Apex Court has framed the question as to what should be the parameters available to the Scrutiny Committee for verification of caste certificate, and referred the same to the larger Bench of three Judges for authoritative decision.

9. In the light of above, when the question as to whether affinity test is an integral part of the determination of the correctness of the claim of the caste certificate is pending consideration before the larger Bench of the Hon'ble Apex Court; and when the petitioner has submitted number of documents, which were pre-constitutional

documents, having high probative value showing caste of the ancestors of the petitioner as 'Thakur'; and when the caste 'Thakur' has been included in the Presidential Order, 1950 as Scheduled Tribe; and when the petitioner's education is at stake for want of Tribe Certificate, we are of the considered view that the tribe claim of the petitioner could have been and ought to have been considered by the Scrutiny Committee, giving appropriate weightage to the pre-constitutional documents.

10. Of course, we do not intend to convey that the affinity test does not carry any significance, but when the question to that effect is pending consideration before the Hon'ble Apex Court, it cannot be said to be the only test to issue validity certificate of tribe claim or caste claim. The appropriate approach, according to us, where the pre-constitutional documents of the persons like petitioner shows that his caste is recorded as 'Thakur', is to consider the documents along with other evidence and to issue validity certificate, subject to outcome of the final decision of the Hon'ble Supreme Court in ***Special Leave to Appeal (C) No. 24894/2009 (Mah. Adiwasi Thakur Jamat Swarakshan Samiti v/s The State of Maharashtra and Ors.)***. The Scrutiny Committee, therefore, committed error which according to us requires correction.

11. We are conscious of the fact that 'Thakur' community also belongs to upper caste and that 'Thakur' is also a title of the upper caste

community, but, when the caste 'Thakur' is mentioned in the pre-constitutional document and when the said caste had been included in the Scheduled Tribe category, the documents ought to have been considered by the Scrutiny Committee. Having failed to do so, we find the approach of the Scrutiny Committee to be unreasonable.

12. So far as area restriction is concerned, it has been held in catena of judgments that the significance of the same has been scaled down because of migration of the tribe families for their livelihood. Thus, the tribe claim of the petitioner could not have been rejected on this count as well, ignoring pre-constitutional documents.

13. Accordingly and since the petitioner is student and is aspiring to get admission in various colleges, we deem it appropriate to direct the Respondent No.1 – Scrutiny Committee to issue 'Thakur' Scheduled Tribe validity certificate to the petitioner, subject to the outcome of the ***Special Leave to Appeal (C) No. 24894/2009 (Mah. Adiwasi Thakur Jamat Swarakshan Samiti V/s The State of Maharashtra & Ors.)*** pending before the Hon'ble Supreme Court. Accordingly, the petition is allowed on the following terms;

- (i) Order dated 1-11-2022 passed by respondent 1-Schedule Tribe Caste Certificate Scrutiny Committee, Amravati is quashed and set aside.

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(ii) It is declared that the petitioner has proved that he belongs to 'Thakur', Scheduled Tribe. The respondent 1 - Scrutiny Committee shall within a period of 10 days from receipt of copy of this order issue validity certificates to the petitioner accordingly.

(iii) It is, however, made clear that issuance of validity certificate is subject to the final decision of the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 24894/2009, that has been referred to the larger Bench.

(iv) Till the petitioner receives validity certificate, he is free to refer to the copy of this order to indicate that he has been held entitled to receive validity certificate.

(v) We clarify that notwithstanding that the formal certificate may not have been received by the petitioner – student, he may be admitted in the concerned course acting on this order.

(vi) Steno copy is granted.

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

(Y.G. KHOBRADE, J.)

(ROHIT B. DEO J.)

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