



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

WRIT PETITION NO. 4373 OF 2023

Sharad S/o Harishchandra Pawar
Age 47years, Occ. Service,
R/o. Pragati Nagar, Kaulkhed,
Akola

....PETITIONER

...VERSUS...

1. Schedule Tribe Caste Certificate Scrutiny
Committee, Amravati Division, Old By
Pass Road, Chaprashipura Amravati,
Through its Vice Chairman/Jt.
Commissioner
2. The Superintendent of Police, Akola

...RESPONDENTS

WITH

WRIT PETITION NO.6891 OF 2023

Lokesh S/o Sharad Pawar
Age 19 years, Occ. Student,
R/o. Pragati Nagar, Kaulkhed,
Akola

....PETITIONER

...VERSUS...

Schedule Tribe Caste Certificate Scrutiny
Committee, Amravati Division, Old By
Pass Road, Chaprashipura Amravati,
Through its Vice Chairman/Jt.
Commissioner

...RESPONDENT

Shri A.P. Kalmegh, Advocate for petitioner
Shri A.M. Ghogare, AGP for respondents

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.)

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally at the stage of admission by consent of respective counsel.

3. Sharad s/o Harishchandra Pawar in Writ

Petition No. 4373/2023 and Lokesh s/o Sharad Pawar in Writ Petition No.6891/2023, both are father and son. Therefore, these petitions are taken up together to decide. Claim of both the petitioners were invalidated by the Schedule Tribe Caste Certificate Scrutiny Committee, Amravati, by common order dated 03/07/2023.

4. Petitioner Sharad on the basis of caste certificate dated 06/04/2019, issued by Executive Magistrate, Balapur, came to be appointed on the post of Police Constable from the Scheduled Tribe category on 13/08/2001. Accordingly, the petitioner has submitted the caste certificate along with necessary documents to the respondent No.2 for verification through the respondent No.1, Caste Scrutiny Committee. It is submitted that the petitioner along with aforesaid proposal forwarded the documents prior to year 1950, related to paternal side relatives of petitioner, wherein, entry in regard to tribe 'Thakur' is clearly mentioned. He also placed on record a family tree. Scrutiny Committee

forwarded the claim of the petitioner for Vigilance Cell enquiry. The Scrutiny Committee served the Vigilance Cell Report along with show cause notice dated 06/02/2023 and called the written submission of the petitioner.

5. It is further submitted that after perusal of the Vigilance Cell Report, it is apparent that the Enquiry Officer has observed that the entries in the documents submitted by the petitioners are of Caste 'Thakur' and found genuine. However, Research Officer raised certain objections in respect of affinity, which is unsustainable in law. It is further submitted that without considering all documents of 1931 and 1916, the Caste Scrutiny Committee erroneously invalidated caste claim of the petitioners by common judgment.

6. Heard learned Assistant Government Pleader, who has supported the order passed by the Caste Scrutiny Committee. With the assistance of Assistant Government

Pleader, we have perused the record and proceeding of the Caste Scrutiny Committee. Though, learned Assistant Government Pleader has supported the order passed by the Scrutiny Committee, he has fairly conceded that there are consistent entries in the documents related to the relatives of the petitioner are showing entry 'Thakur'. Petitioner produced as many as 56 documents in support of his claim out of those, following are the documents which are of pre-independence era.

अ. क	कागदपत्राचे स्वरूप	कागदपत्रावरील व्यक्तीचे नाव	जमात	दिनांक	अर्जदार क.१ चे नाते
१.	शाळा सोडण्याचे प्रमाणपत्र	लक्ष्मध जगदेव ठाकूर	ठाकुर	जन्म दि.०१.०७.१९१७ शाळेत दाखला दि.१३.६.१९२६ शाळा सोडल्याची दि. २१.०७.१९२६	चुलत आजोबा
२.	जन्म नोंद	जगदेव ठाकूर यांना एक मुलगा झाल्याची नोंद	ठाकुर	२२.१.१९१६	अर्जदार क.१ चे पणजोबा
३.	शालेय निर्गम उत्तरा	रामचंद्र जगदेव	ठाकुर	९.१०.१९१५	अर्जदार क.१ चे आजोबा
४.	जन्माचा उत्तरा	जगदेव यांना मुलगी झाल्याची नोंद	ठाकुर	जुलै-१९१३	अर्जदार क.१ चे पणजोबा
५.	जन्माचा उत्तरा	जगदेव यांना मुलगा झाल्याची नोंद	ठाकुर	२०.०१.१९१६	अर्जदार क.१ चे पणजोबा

६.	शाळा सोडल्याचे प्रमाणपत्र	गीता रामचंद्र ठाकूर	ठाकुर	१.४.१९४६	अर्जदार क.१ ची आत्या
७.	शाळा सोडल्याचे प्रमाणपत्र	रूख्मा पिता रामचंद्र	ठाकुर	जन्म दि.०५.१०.१९४० शाळेत दाखला दि.०९.०८.१९४९	अर्जदार क.१ ची आत्या
८.	शाळा सोडल्याचे प्रमाणपत्र	भरत भगवान	ठाकुर	जन्म दि.०१.०७.१९१६ शाळेत दाखला दि.२.७.१९२५	अर्जदार क.१ चे चुलत आजोबा
९.	शालेय निर्गम उतारा	भरत भगवान	ठाकुर	२.७.१९२५	अर्जदार क.१ चे चुलत आजोबा
१०.	जन्माचा उतारा	भगवान यांना मुलगी झाल्याची नोंद	ठाकुर	२९.५.१९२१	अर्जदार क.१ चे चुलत पणजोबा
११.	जन्माचा उतारा	भागू यांना मुलगी झाल्याची नोंद	ठाकुर	१४.०९.१९२४	अर्जदार क.१ चे चुलत पणजोबा

7. Even in, all the 56 documents entry is shown as 'Thakur'. As such, Caste Scrutiny Committee has failed to consider these documents. On perusal of order, it appears that the Caste Scrutiny Committee, without any reason invalidated the caste claim of the petitioners. The Caste Scrutiny Committee in respect of entry of 1916, held that relation of Bhagu is not clear with the petitioner. It appears that Bhagwan is a great great grandfather of the petitioner

and his name is written as Bhagu. It appears that in that entry, it is shown that Bhagu has given birth to a girl child. Even if, it is presumed that Bhagu is not Bhagwan and is not in relation with the petitioner, still there are so many documents prior to 1947, wherein, entry shown in respect of paternal relatives of the petitioners as 'Thakur'. There are so many documents in respect of Ramchandra, therefore, there was no reason for the Caste Scrutiny Committee to doubt any entry.

8. Learned Counsel for petitioner relied on *Priya Pramod Gajbe Vs. State of Maharashtra and others, 2023 SCC OnLine SC 909* and *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra, 2023 (2) Mh.L.J. 785*.

9. In *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*, it is held that :

“20. It is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the

case to Vigilance Cell. One of the tests is as laid down in the case of Kumari Madhuri Patil. It lays down that the documents of the pre-Constitution period showing the caste of the applicant and their ancestors have got the highest probative value. For example, if an applicant is able to produce authentic and genuine documents of the pre-Constitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations provided to the Tribes included in the ST order. In such a case, a reference to Vigilance Cell is not warranted at all.”

10. Hon’ble Apex Court in the *Adiwasi Thakur Jamat Swarakshan Samiti’s* case referred to the judgment of *Anand Vs. Committee for Scrutiny and Verification of Tribe Claim and others, 2011(6) Mh.L.J. 919*, wherein, it is held as under :

“30. 22. ..

(i) ..

(ii) *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, 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 tribes' 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.”

11. As such, the Caste Scrutiny Committee erred in holding that the petitioners are not belonging to ‘Thakur’ Schedule Tribe, specifically when, there are entries consistently since 1916, showing the blood relatives from the paternal side of the petitioners as belonging to ‘Thakur’. As such, the order passed by the Caste Scrutiny Committee is illegal, unjustified and unsustainable and liable to be quashed and set aside. Accordingly, we proceed to pass the following order the following order :

ORDER

- i) Both the Writ Petitions are allowed.
- ii) The order passed by the Schedule Tribe Caste Certificate Scrutiny Committee, Amravati in;
1) प्रकरण क्र सआ/अजप्रतस/अम/5-ST/2002/10031 and
2) 5/501/Edu/012022/205117, dated 03/07/2023, is hereby quashed and set aside.
- iii) It is declared that petitioner belongs to 'Thakur' Schedule Tribe, Entry No. 44.
- iv) The Caste Scrutiny Committee, is hereby directed to issue caste certificates to both the petitioners within a period of four weeks.

Rule is made absolute. No order as to the cost.

(SMT. M.S. JAWALKAR,J) (AVINASH G. GHAROTE, J.)

Jayashree..