



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

WRIT PETITION NO.769/2023

Sharda d/o Laxman Shankhpal
(Sharda w/o Gopal Jawanjal)
Aged about 54 yrs, Occ. Service,
R/o Plot No.186, Balaji Park,
Pimpalgaon Road, Near Balaji
Mangal Karyalaya, Yavatmal, Distt.
Yavatmal.

....PETITIONER

...VERSUS...

1. The Vice-Chairman/Member-Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati.
2. The Managing Director,
Forest Development Corporation of
Maharashtra Ltd.,
Ambazari, Hingna Road, Nagpur.
3. The General Manager,
Forest Development Corporation of
Maharashtra Ltd.,
Nagpur Region, Nagpur,
Ambazari, Hingna Road, Nagpur.
4. The Divisional Manager,
Forest Project Division,
Van Bhavan, Civil Lines, Yavatmal.

...RESPONDENTS

Shri Preeti Rane, Advocate for petitioner
Shri N.R. Patil, AGP for respondent No. 1
Shri N.S. Khubalkar, Advocate for respondent Nos.2 and 3

CORAM : VINAY JOSHI AND
SMT. M.S. JAWALKAR, JJ..

DATED : 05/07/2024

ORAL JUDGMENT (PER : VINAY JOSHI, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent and request of learned Counsel for both the parties at the admission stage.

3. The petitioner claims to be belonging to the 'Thakur' Scheduled Tribe which is enlisted at Sr. No.44 in the Presidential (Constitutional Scheduled Tribe) Order, 1950. The petitioner's caste claim was forwarded by the employer for verification and issuance of validity, however, vide impugned order dated

30/12/2022, it has been rejected. The petitioner has assailed the impugned order on various grounds contending that the respondent- Committee failed to appreciate the pre-constitutional documents and only on the ground of affinity, it has been rejected. It is argued that caste claim of petitioner's real cousins namely Jyoti, Prashant and Seema was rejected by the Committee, which has weighed to the respondent- Committee for rejection. In this regard, it is pointed out that the said rejection was challenged before this Court in Writ Petition No.2728/2022 wherein vide order dated 18/03/2024, the caste claim of petitioner's real cousins was validated.

4. Learned Counsel for petitioner took us to various pre-constitutional documents to substantiate her claim. The petitioner has produced in all 19 documents, which are referred in paragraph No.3 of the impugned order. The petitioner has relied on the power of attorney of his grand-father of the year 1918, birth extract of petitioner's father Laxman dated 11/07/1938, death extract of petitioner's grand-father Fakira dated 01/12/1940,

Primary School Certificate of petitioner's father Laxman dated 01/06/1950 and so on. The Committee has not doubted genuineness of these documents nor alleged about the fraud. All these documents bear the pre-constitutional entries of caste 'Thakur' which has more probative value.

5. In the aforesaid background, having regard to the pre-Constitutional entries of the 'Thakur' about the blood relation of the petitioners, it is claimed that the petitioner's claim for validity ought not to have been rejected when the relationship with the aforesaid members is not in dispute. Besides, in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and others*, reported in 2023(2) Mh.L.J. 785.

The Hon'ble Apex Court in paragraph 20, held as under:-

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

6. It is brought to our notice that while rejecting the caste claim, there is a reference that a caste claim of petitioner's cousin namely Pranita was rejected in the year 2004. However, the genealogical tree prepared by the Committee does not disclose the relationship of Pranita. Moreover, police vigilance report also does not bear a reference of Pranita, thus, it is quite doubtful whether Pranita belongs to same family. The impugned order itself discloses that there is no dispute that Jyoti, Prashant and Seema are petitioner's real cousins. In the said background, it necessitates us to heavily weigh the decision of this Court in Writ Petition No.2728/2022, wherein the caste claim of petitioner's real cousins have been validated by this Court. We may profitably refer the decision of *Apoorva Nichale*, wherein it has been held that if the caste claim of blood relatives has been validated, then barring exceptions the other family members are eligible for the validity.

It is not the case of respondents that the order of this Court passed in Writ Petition No.2728/2022 has been challenged. Though, petitioner's caste claim has been invalidated on the ground of affinity, however, in case of *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others, reported in 2011(6) Mh.L.J.*, it has been ruled by the Hon'ble Apex Court that 'the affinity test cannot be termed as a litmus test especially pre-constitutional documents have been produced on record. Moreover, the validity of real cousins which was based on same documents has been upheld by this Court. It is not possible to deviate from the view taken by this Court. In the circumstances, the rejection of petitioner's caste claim would not sustain in the eyes of law. In view of that, we deemed it appropriate to allow the present petition and pass the following order:

ORDER

- i) The petition is allowed.
- ii) The impugned order dated 30/12/2022 passed by the respondent No.1- Scrutiny Committee is hereby quashed and set aside.

iii) It is declared that the petitioner has proved that she belongs to 'Thakur' Scheduled Tribe.

iv) The respondent No.1 Committee is directed to issue Caste Validity Certificate within four weeks from today.

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

JUDGE

JUDGE

R.S. Sahare