



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

Writ Petition No.2714/2022

Shobha d/o Ramkrishna Gathe
@ Shobha w/o Vinayak Shankhpal,
Age 69 years, Occ.-Pensioner,
R/o Vakratund Apartment,
Jalamb Road, Vitthal Nagar,
Khamgaon, Tq. Khamgaon, Dist. Buldhana. Petitioner.

Versus

1. The State of Maharashtra
Department of Tribal Development, Mantralaya, Mumbai-32,
Through its Secretary.
2. The Scheduled Tribe Certificate Scrutiny Committee,
Amravati Division, Amravati, Through it Member Secretary.
3. The Collector, Office of the Collectorate, Buldana,
Tq. & Dist. Buldana. Respondents.

Mr. S.C. Yeramwar, Advocate for the Petitioner.

Ms. N.P. Mehta, Addl.GP for the respondents.

CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ

DATE : 18-03-2024.

J u d g m e n t (Per Abhay J Mantri, J.)

Heard finally with the consent of learned Counsel
for the parties.

2. **Rule.** Rule is made returnable forthwith.

3. The petitioner being aggrieved by the order dated 31-03-2022, passed by respondent no-2 Member-Secretary, the Scheduled Tribe Certificate Scrutiny Committee, Amravati (for short - *the 'Scrutiny Committee'*), whereby the claim of the petitioner as that of belonging to '*Thakur*' Scheduled Tribe category came to be rejected, has preferred this petition.

4. The petitioner belongs to the '*Thakur*' Scheduled Tribe community. Accordingly, on 01-09-1982, Tahsildar and Executive Magistrate, Khamgaon, issued a caste certificate in her favour that she belonged to the '*Thakur*' Scheduled Tribe category. On 24-02-1984, she was appointed as a Junior Clerk with the office of respondent no.3-Collector, Buldana against the Scheduled Tribe category. She stood retired from service on 30-11-2011, by superannuation.

5. On 09-03-1990, the caste certificate of the petitioner was referred to the Committee for its verification. However, initially, her caste claim was invalidated by the Committee on 06-11-1997. Against which, she had preferred Writ Petition No.743/1998 before this Court. By an order dated 25-04-2013, this Court has set aside the invalidation order and remanded the matter to the Committee for fresh consideration. After considering the documents produced by the petitioner and the vigilance report, respondent no.1 has rejected the claim of the petitioner. Hence, this petition.

6. Learned Advocate for the petitioner strenuously argued that the petitioner in support of her claim has produced as many as 07 documents before 1950 pertaining to her father, grandfather, great-great-grandfather, and aunt which depicts that they belong to '*Thakur*' Scheduled Tribe category. However, without considering these documents, respondent No. 2 has rejected the application contrary to the settled position of law. Hence, he has prayed for setting aside the impugned order.

7. *Per contra*, learned Additional Government Pleader Ms. Mehata vehemently submitted, that though the petitioner has submitted 07 pre-Constitutional era documents, however, these documents are only to be considered after verification by the Vigilance Cell. The finding of the Vigilance Cell appears adverse, to the claim of the petitioner and therefore these documents are not helpful for the petitioner in support of her claim. She further submitted that one entry in the birth register pertains to the grandfather of the petitioner denotes his caste as '*Bhat Thakur*'. Also, she argued that the petitioner had failed to prove the affinity test thereby failing to discharge the burden cast upon her. Therefore, she urged for the dismissal of the petition.

8. It is pertinent to note that during the argument learned Advocate for the petitioner has submitted that the Scrutiny Committee has issued caste validity certificates in favour of Bhushan Subhash Gathe, Krushna Gathe, and Subhash Pralhad

Gatte who are in blood relations of the petitioner. Therefore, in view of the law laid down by the Division Bench of this Court in the case of *Apoorva d/o Vinay Nichale vs Divisional Caste Certificate Scrutiny Committee No.1 and others (2010(6) Mh.L.J. 401)*, the petitioner is entitled to obtain the validity certificate.

9. We have considered the rival contentions of the parties. Perused the impugned order and record. On perusal of the documents on record, it indicates that the petitioner has produced as many as 24 documents before the Committee, out of them, 07 documents are from the pre-Constitutional era between 1927 and 1950, pertain to the father, grandfather, great-grandfather, and paternal aunt of the petitioner, wherein their caste is shown as 'Thakur'. These documents are public documents such as School Registers, Birth and Death entries, and revenue entries. The genuineness of these documents is neither disputed nor denied by the Vigilance Cell. Therefore, there is no reason for the Committee to discard the same.

10. It is pertinent to note that, the petitioner has produced the caste validity certificate issued in favour of her blood relatives i.e. her cousin brother. It further appears that by an order of this Court in Writ Petition Nos.5110/2019 and 5111/2019, it is held that Bhushan and Krushna Gathe belong to 'Thakur' Scheduled Tribe and directed the Committee to issue a validity

certificate in their favour. Accordingly, the Committee has issued validity in their favour.

11. It seems that in the light of such adjudication by this Court, which has not been stated to be further challenged, the petitioner would be entitled to similar relief in view of the judgment in the case of Apoorva Nichale (supra). Moreover, the Hon'ble Apex Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs State of Maharashtra and others* reported in 2023(2) *Mh. L.J. 785*, while dealing with the aspect of affinity test has held in paragraph 20, 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."

12. Secondly, in view of the judgment in the case of *Jaywant Dilip Pawar vs State of Maharashtra and others*, reported in 2018(5) *All MR 975 (S.C.)*, the Hon'ble Apex Court has held that the question of area restriction does not arise as same has been removed. Likewise, the question of affinity test is concerned in the

judgment of the Hon'ble Apex Court in the case of *Anand vs Committee for Scrutiny and Verification of Tribe Claims and others*, reported in *2011(6) Mh. L.J. 919*, it is held that the affinity test cannot be termed as a litmus test.

13. In the aforesaid backdrop, the rejection of the claim of the petitioner is solely based on the affinity test and area restrictions is not sustainable in the eyes of the law, particularly, since the petitioner has furnished the pre-Constitutional era documents indicating his ancestors' caste as the '*Thakur*', as well as the case of the petitioner is covered by the law laid down in the case of *Apoorva Nichale* (supra). In view of the same, the petitioner is entitled to get the validity certificate based on pre-constitutional documents that she belongs to the '*Thakur*' Scheduled Tribe.

14. In the aforesaid background, in our opinion, the Committee has erred in rejecting the claim of the petitioner. Therefore, the said order is liable to be set aside. For the aforesaid reasons, we proceed to pass the following order :-

- (a) The impugned order dated 31-03-2022 passed by respondent no.2 Scrutiny Committee is hereby quashed and set aside.
- (b) It is declared that the petitioner has proved that she belongs to the '*Thakur*' Scheduled Tribe.

- (c) Within a period of four weeks from the receipt of a copy of this judgment respondent no.2- Scrutiny Committee shall issue a Caste Validity Certificate in favour of the petitioner.
- (d) As a sequel of the above, respondent no.3 is directed to release forthwith the final pension, Provident Fund, gratuity, and other pensionary benefits, if any, in favour of the petitioner.

15. Rule is made absolute in the above terms with no order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J)

Deshmukh