



judg.

1/

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

Writ Petition No.5420/2021

Vivek Tukaram Ingle,
Age 18 years, Occ.-Student,
R/o.-Kaulkhed, Tq & Dist. Akola.

..... Petitioner

- Versus -

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

.....Respondent.

Mr. A.P. Kalmegh, Advocate for petitioner.
Mrs N.P. Mehta, Assistant Government Pleader for respondent.

**CORAM : A.S. CHANDURKAR &
PUSHPA V. GANEDIWALA, JJ.**
DATE : 20-01-2022.

Oral Judgment (Per : Pushpa V Ganediwala, J.)

Rule. Rule made returnable forthwith. Heard finally with
the consent of learned Counsel for the parties.

2. The challenge in this petition is to the invalidation of the
tribe claim of the petitioner by the respondent-Scrutiny Committee
vide order dated 29-10-2020. The petitioner claims to be of 'Thakur'
Scheduled Tribe which is recognized at serial no.44 in the list of
Scheduled Tribe in Notification. Accordingly, Sub Divisional Officer,
Washim has issued caste certificate dated 29-12-2019 of 'Thakur'

Scheduled Tribe in favour of the petitioner. The petitioner is prosecuting his study and for availing the benefit prescribed for reserved category candidate, the petitioner has submitted his caste certificate along with necessary documents for verification through the college which includes documents of the year 1922, 1926, 1928, 1948 etc. showing the entry of 'Thakur' Scheduled Tribe.

3. Accordingly, the claim of the petitioner was forwarded for conducting the Vigilance Cell Enquiry. The report of the Vigilance Cell Enquiry was submitted on 15-10-2020. The respondent-Scrutiny Committee issued show cause notice dated 15-10-2020 to which the petitioner has submitted his written submission on 19-10-2020. The respondent-Scrutiny Committee has invalidated the tribe claim of the petitioner vide impugned order dated 29-10-2020.

4. Learned Counsel Mr. Kalmegh appearing for the petitioner invited our attention to all the pre-constitutional documents on record filed by the petitioner in support of his tribe claim as 'Thakur'. The learned Counsel submitted that the respondent-Scrutiny Committee has failed to consider the oldest entry in the documents of father and grand father etc. consistently showing caste 'Thakur' and hence it is binding on the respondent-Scrutiny Committee to consider the above said documents, particularly documents prior to year 1950 and the same cannot be discarded on the ground of affinity.

5. *Per contra*, Mrs. Mehta, learned Assistant Government Pleader on behalf of respondent-Scrutiny Committee while opposing the claim of the petitioner submitted that the respondent-Scrutiny Committee has rightly invalidated the tribe claim of the petitioner as the alleged pre-constitutional documents are vague in nature as the documents of 1922, 1926 and 1928 do not prove that Vithoba Thakur is from applicant's genealogy. It is stated that the name of son of Vithoba so also name of father of Vithoba is conspicuously absent in the document. Learned Assistant Government Pleader Mrs. Mehta also pointed out from the impugned order that the petitioner has submitted the records from two districts i.e. record is from Akola district and old record is from Washim district upto his father, which create doubt in the claim of the petitioner.

6. We have considered the submissions advanced by learned counsel on behalf of both the sides. We have perused the documents filed on record by the petitioner so also the documents and genealogy tree submitted by the Vigilance Cell before the respondent-Scrutiny Committee. We have also perused the record and proceedings of the respondent-Scrutiny Committee. At the outset, genealogy tree at page no.53 submitted by the officer of Vigilance Cell confirms Vithoba as father of Namdeo (born in 1920), Waman (born on 24-08-1922), Sadashiv (born on 10-06-1926) and daughter Siti (born on 11-12-1928). The genealogy tree would further reflect the name of

Dagadi as daughter of Namdev which is consistent with petitioner's document of 1941 reflecting Dagadi the daughter of Namdev Vithoba Thakur residents of Waghi (Bk), Taluka Malegaon, District Washim. All these pre-constitutional documents filed by the petitioner are related to birth certificates of children of Vithoba Thakur and daughter of Namdev Vithoba Thakur. These documents are consistent with the genealogy tree collected by the officer of the Vigilance Cell during vigilance enquiry. Therefore, the respondent-Scrutiny Committee is not justified in rejecting the tribe claim spacioously on the ground that the birth entries of the children of Vithoba cannot be considered as Vithoba is not from applicant's genealogy. In the aforesaid genealogy tree at page 53, the name of applicant Vivek is reflected as great grand son of Vithoba.

7. With regard to inconsistency of the entry in the document of the year 1937 showing one Kisani as daughter of Vithoba who died at the age of seven months, showing caste of Vithoba as 'Thakur Marathe', the learned Counsel for the petitioner clarified from the genealogy tree that the said Kisani is not related to the genealogy of the petitioner as collected by the Vigilance Officer during enquiry. The learned Counsel for the petitioner has also clarified from the record that Waman, Sadashiv and Sita (Siti) were sons and daughter of Vithoba who were born on 10-06-1926, 24-08-1922 and 11-12-1928 respectively. Sadashiv is grand father of the petitioner. All these documents consistently show 'Thakur' as the caste of the father and

forefathers of the petitioner and therefore as rightly submitted by learned Counsel Mr. Kalmegh that the aforesaid documents being prior to issuance of Presidential Order, 1950, showing caste 'Thakur', have more probative value for determining the tribe claim of the petitioner and the same cannot be discarded on the ground of affinity. The learned Counsel also clarified that initially district Washim was part of district Akola and the same came to be separated in the year 1988 and therefore the contention of the respondent-Scrutiny Committee that the documents have been submitted from two districts does not hold water.

8. In the conspectus of the above facts on record, in our considered view, the respondent-Scrutiny Committee is not justified in rejecting the tribe claim of the petitioner on the spacious ground that the pre-constitutional documents do not clarify the relation of the petitioner with the birth entries in the aforesaid documents. We found merit in the petition and hence the same needs to be allowed and we allow the same accordingly. We pass the following order.

9. The order dated 29-10-2020 issued by respondent-Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati is set aside. The respondent-Scrutiny Committee is directed to issue Caste Validity Certificate to the petitioner within a period of four weeks.

WP 5420.21 judg.

6/

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

11. Petition stands disposed of.

(Pushpa V. Ganediwala, J.)

(A.S. Chandurkar, J.)

Deshmukh