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

Writ Petition No.3487/2022

Subhash s/o Devidas Somwanshi,
Age 56 years, Occ.-Service,
R/o At-Gopalkhed, Post-Gandhigram,
Tq. & Dist. Akola.

.... 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 Education Officer (Secondary),
Zilla Parishad, Ahmednagar, Tq. & Dist. Ahmednagar.
4. Rayat Shikshan Sanstha, Satara. Tq. & Dist. Satara,
Through its Secretary.

.... Respondents.

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

Mr. R.K. Thakkar, Advocate for resp. no.4.

Mr. S.M. Ukey, Addl.GP for the resp. nos. 1 to 3.

Writ Petition No.3492/2022

Gajanan s/o Devidas Somwanshi,
Age 59 years, Occ.-Service,
R/o At-Gopalkhed, Post-Gandhigram,
Tq. & Dist. Akola.

.... 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 its Member Secretary.
3. The Education Officer (Secondary),
Zilla Parishad, Buldana, Tq. & Dist. Buldana.
4. Shri Shivshankar Vidyalaya, Wankhed,
Tq. Sangrampur, Dist. Buldana, through its secretary. Respondents

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

Mr. R.K. Thakkar, Advocate for resp. no.4.

Mr. S.M. Ukey, Addl.GP for the resp. nos. 1 to 3.

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

DATE : 15-04-2024.

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

Rule. Rule made returnable forthwith.

2. Heard finally by the consent of learned Counsel for the parties.

3. These writ petitions are arising out of the order dated 26-04-2022, passed by respondent No. 2- Member-Secretary, the Scheduled Tribe Certificate Scrutiny Committee, Amravati (for short – *the 'Scrutiny Committee'*), whereby the Tribe claim of the petitioners is that of they belong to the '*Thakur*' Scheduled Tribe category came to be rejected.

4. The petitioners in the Writ Petitions are the real brothers. It is claimed that they belong to the '*Thakur*' Scheduled

Tribe community. Accordingly, on 31-03-1980, the Tahsildar and Executive Magistrate, Akola and on 19-03-1999, Sub-Divisional Officer, Akola, had issued Caste Certificates in favour of the petitioners namely Gajanan (in W. P. No.3492/ 2022) and Subhash (in W. P. No.3487/2022) respectively; that they belong to '*Thakur*' Scheduled Tribe.

5. On 15-07-1990, petitioner Gajanan was appointed as a 'Peon' against the Scheduled Tribe Category in respondent no.4- Shri Shivshankar Vidyalaya, Wankhed. As he was appointed from the Scheduled Tribe category, on 28-06-2013, his proposal for verification of the Tribe claim was forwarded to respondent no.2 Committee through his employer along with the documents submitted by him.

6. Similarly, Petitioner Subhash was appointed as an 'Assistant Teacher' against the Scheduled Tribe category by an order dated 24-07-1990 at Shri Shivaji Vidyalaya, Chincholi Gurav. As he was appointed from the Scheduled Tribe category, on 29-06-2002, his proposal for verification of the Tribe claim was forwarded to respondent no.2 Committee through his employer along with the documents submitted by him.

7. It further appears that, initially, on 18-02-2014, respondent no.2 Scrutiny Committee had invalidated the caste claim of petitioner Subhash. Against the said order, petitioner Subhash has preferred W. P. No.3835/2014 before this Court. On

09-04-2014, this Court set aside the said order and remanded the matter to the Committee for fresh consideration.

8. The petitioners in support of their caste claim have produced 24 documents before the Committee. The Committee being dissatisfied with the genuineness of those documents, forwarded the claim to the Vigilance Cell for enquiry. In pursuance of the same, the Vigilance Cell conducted the enquiry and submitted its report before the Committee on 19-07-2018. The Scrutiny Committee after considering the Vigilance Cell report as well as the statement of the petitioners and documents placed before it, passed the impugned order invalidating the claim of the petitioners that they belong to the '*Thakur*' Scheduled Tribe. Hence, this petition.

9. Learned Counsel for the petitioners vehemently argued that the petitioners in support of their Caste claim had produced 24 documents before it. Out of them, six documents are from the pre-constitutional era. However, the Committee has not considered the same and rejected the claim of the petitioners only on the ground that the petitioners failed to prove the affinity test as well as the area notified in the Presidential Order. Therefore, he has urged that the impugned order is liable to be set aside.

10. To buttress his submissions, he has relied upon the Authorities in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs State of Maharashtra and others*, reported in 2023(2) Mh.L.J. 785,

Jaywant Dilip Pawar vs State of Maharashtra and others, reported in 2018(5) All MR 975 (S.C.), and *Anand vs Committee for Scrutiny and Verification of Tribe Claims and others*, reported in 2011(6) Mh.L.J. 919 and prayed for setting aside the order impugned.

11. *Per contra*, learned Additional Government Pleader, has not expressly denied the contention of the petitioners that only on the ground area restrictions and affinity test the petitioners claim for grant of validity as they belong to 'Thakur' Scheduled Tribe was rejected. However, he canvassed that the petitioners failed to prove that they belonged to the 'Thakur' Scheduled Tribe, hence he has urged to dismiss both the petitions.

12. We have appreciated the rival contentions of the parties. Perused the impugned order, documents placed before the Court and the Authorities relied upon by the learned Counsel for the petitioners.

13. On perusal of the documents, it reveals that the petitioners in support of their claim have produced 24 documents before the Scurrility Committee, out of them 07 documents are of the pre-Constitutional era i.e from the period 1912 to 1948 pertain to their father, grandfather, and great-grandfather. In all those documents, their ancestor's caste is mentioned as '*Thakur*'. It is pertinent to note that those documents are neither denied nor disputed by the Vigilance Cell or the respondent no.2 Committee. Therefore, there is no reason to disbelieve those documents. The

Hon'ble Apex Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra) and *Anand* (supra), has held that "*the oldest documents of the pre-constitutional era having greater probative value than the other documents*". Therefore, in view of the dictum laid down in the said judgments, the Committee has to consider those documents in their proper perspective instead of ignoring them.

14. It further seems that based on the concept of area restrictions and the affinity test, the claim of the petitioners was rejected by the Committee. However, as per the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976) published in the Gazette on 20-09-1976, the area restrictions are removed in respect of '*Thakur*' Schedule Tribe. Moreover, in view of the dictum laid down in the case of *Jaywant Dilip Pawar* (supra), the question of area restriction does not arise, as the same has been removed. Likewise, in the case of *Anand* (supra) the Hon'ble Apex Court has held that "*the affinity test cannot be termed as a litmus test*", and therefore in view of the dictum laid down in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*, *Anand* and *Jaywant Dilip Pawar* (referred supra), it cannot be said that the petitioners have failed to prove the affinity test, and the question of area restriction does not arise at all.

15. Having considered the aforesaid discussions and the law laid down by the Hon'ble Apex Court it reveals that, the above

documentary evidence of the years 1912 to 1948 speaks of ancestors of the petitioners, belonging to the '*Thakur*' community. The said entries pertain to various public documents such as; school records and Register of Birth and Death. The documents from the pre-constitutional era have more probative value. Thus, based on the said documents as well as the law laid down by the Hon'ble Apex Court as referred above, in our view, the petitioners are entitled to get a validity certificate as they belong to the '*Thakur*' Scheduled Tribe.

16. In the aforesaid background, it is evident that the order passed by the respondent No. 2 Committee appears contrary to the documents on record and the dictum laid down by the Hon'ble Apex Court. As such, the same is liable to be quashed and set aside. The petitioners are entitled to claim that as they belong to the '*Thakur*' Scheduled Tribe. Thus, in our view, the Committee has erred in rejecting the prayers of the petitioners.

17. In light of the above discussion, we deem it appropriate to allow these petitions and pass the following order :-

- (a) The impugned order dated 26-04-2022 passed by respondent no. 2 Scrutiny Committee, in both the petition is hereby quashed and set aside.
- (b) It is declared that the petitioners have proved that they belong to the '*Thakur*' Scheduled Tribe.
- (c) Within four weeks from the production of a copy of this judgment, respondent No. 2 - the

Scrutiny Committee shall issue a Caste Validity Certificates in favour of the petitioners.

- (d) As a sequel of the above, respondent Nos. 3 and 4 in both the petitions, are directed not to take any coercive action against both petitioners based on order dated 26-04-2022 passed by the respondent no.2 Scrutiny Committee.

18. Rule is made absolute in the above terms.

19. No order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J)

Deshmukh