



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

WRIT PETITION NO.4000 OF 2023

PETITIONER : Sunil Govindrao Bayaskar,
aged 53 years, occ. Service, r/o
Barshitakli, District Akola

..VERSUS..

RESPONDENT : The Scheduled Tribe Caste Certificate
Scrutiny Committee, Chaprasipura,
Amravati, through its Member Secretary

WITH

WRIT PETITION NO.681 OF 2022

PETITIONER Haribhau Govindrao Bayaskar,
aged 43 years, occ. Selected for the post
of Live Stock Supervisor Barshitakli, Tq.
District Akola.

..VERSUS..

RESPONDENTS 1 The Scheduled Tribes Caste Certificate
Scrutiny Committee, through its
Member Secretary, Chaprasipura,
Amravati.
2 Zilla Parishad, Washim, through its
Chief Executive Officer.

Mr R. S. Parsodkar, Advocate for Petitioners.

Mr I. J. Damle, AGP for Respondent/State.

Mr A. S. Deshpande, Advocate for Respondent No.2 in WP No.681 of 2022.

CORAM : **VINAY JOSHI AND M. W. CHANDWANI, JJ.**

DATE : **31st JULY, 2024.**

ORAL JUDGMENT : **(PER : VINAY JOSHI, J.)**

. Rule. Rule made returnable forthwith. Heard finally with consent of learned counsels appearing for parties.

2. Both petitioners are real brother, whose caste claim for “Thakur” Scheduled Tribe, which is an entry at serial No.44 of the Constitution (Scheduled Tribes) Order, 1950, has been invalidated by the Scrutiny Committee *vide* orders dated 02.11.2019 and 28.12.2022, which is impugned herein.

3. Since both petitioners are real brother, for the sake of convenience, we have heard and disposed the petitions by this common judgment.

4. Since they are real brothers, the documents relied in support of caste claim are almost same, hence for our convenience, we have referred the documents of Writ Petition No.4000 of 2023. We may add that in both petitions, the Committee has relied on two adverse documents of “Bhat” caste, which are referred in the impugned order pertaining to Sunil dated 28.12.2022.

5. The caste claim of both petitioners was forwarded to Caste Scrutiny Committee, Amravati, for verification and issuance of validity. Petitioner (Sunil) has tendered necessary documents alongwith his caste claim. Petitioner's caste claim was forwarded to vigilance cell for enquiry and report. On scrutiny of record and vigilance cell report, the Committee held that the petitioner failed to establish his caste claim for "Thakur" scheduled tribe, which resulted into impugned rejection. The Committee rejected the caste claim by expressing dissatisfaction about the worth of documents, area restriction, failure in affinity and two adverse entries of "Bhat" caste. As regards to the caste claim of petitioner (Haribhau), two more adverse entries as "Bankur" and "Thanur" have been considered.

6. The petitioners have challenged the impugned orders on various grounds. It is urged that despite producing various pre-constitutional documents showing the entry of Thakur caste, the Committee has rejected the claim by sidelining these documents of which, genuineness has not been questioned in vigilance. The petitioner (Sunil) has produced in all 34

documents in support of his caste claim, which are referred by Scrutiny Committee in its order. The petitioner has led particular emphasis on pre-constitutional documents, which are at serial Nos.22, 24, 26, 27, 28, 29, 31, 32 and 34. We have verified all these documents and found that there are Thakur entries, which are pre-constitutional. For ready reference, we are extracting the nature of these documents as below :

Sr. No	Document	Name	Page No.	Caste	Date	Relation
22	Sale Deed	Sampat Raoji	121	Thakur	17.03.2017	Grandfather
24	Birth entry	Birth entry of daughter of Sampat Vald.	36	Thakur	10.1921 (obscure)	Grandfather
26	Birth entry	Birth entry of daughter of Gulabrao Raoji Thakur	26	Thakur03.1911	Cousin grandfather
27	Birth entry	Birth entry of son of Sampat Vald Tawji Malwan	34	Thakur	11.06.1913	Grandfather
28	Birth entry	Birth entry of son of Sampat Vald Raoji Malgan	35	Thakur	17.12.1917	Grandfather
29	Birth entry	Birth entry of son of Kisan Vald Raoji	31	Thakur	17.08.1918	Cousin grandfather
31	Birth entry	Birth entry of son of Sonaji Vald Raoji	33	Thakur	19.10.1919	Cousin grandfather
32	Death entry	Manik Gulabrao Thakur	27	Thakur	13.10.1910	Cousin uncle

34	Birth entry	Birth entry of daughter of Nagoji Balaji	117	Thakur	12.07.1910	Cousin great grandfather
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7. We have gone through the vigilance cell report, wherein pre-constitutional documents have not been disputed. Moreover, the petitioner has produced some post-constitutional documents showing the entries of Thakur caste. It reveals that two adverse documents of the year 1914 having entry of “Bhat” have been collected during vigilance which weighed to the Committee. Though in the case of Haribhau, there are two more adverse entries as “Bankur” and “Thanur”, however, the Committee itself noted that there is overwriting in place of original Thakur entry. It is apparent that those documents bare Thakur entry, which have been tampered.

8. Learned Assistant Government Pleader would submit that though there are some old entries of Thakur caste, however, some of the entries for instance birth extract dated 17.12.1917 bares the insertion of the word “Malgan”, and thus, the said discrepancy has not been explained.

9. In response, Shri Parsodkar, learned counsel for petitioners, would submit that the petitioners were resident of the area called as Malwan or Malgan of Barshitakali, and thus, the said insertion cannot be termed to be adverse to the caste entry, which was referred in the document itself. Learned AGP submits that there is no clarity of the term Malgan, but in our view, admittedly Malgan is not a caste, and thus, the said insertion has no impact on the worth of old documents, which bare the entry of Thakur caste. True, there are two adverse entries showing the caste Bhat to the record of ancestors, however, entire material has to be considered together. As referred above, there are few entries preceding to the year 1914 namely entries at serial Nos.26, 27, 32 and 34, which bare entry of caste Thakur, and thus, they being oldest one much weighed has to be given them.

10. As regards to the aspect of areas restriction and affinity test is concerned, the said issue is well covered by the decision of Apex Court in cases of Jaywant Dilip Pawar vrs. State of Maharashtra and ors, 2018 (5) ALL M R 975 (S.C.) and Anand vrs. Committee for Scrutiny and Verification of Tribe Claims and others, 2011 (6) Mh.L.J. 919. In latter case, the Apex Court has

specifically expressed that greater reliance may be placed on pre-independence documents because they furnish high degree of probative value. It is further observed that the affinity test is merely to be used to corroborate documentary evidence and it is not to be used as the well criteria for rejection of claim.

11. In substance, there are various pre-constitutional and post-constitutional documents in the family of the petitioners showing Thakur cast and oldest documents is of the year 1910. No plea is taken that these documents were either tampered or manipulated. Though, the word “Malgan” is added in some of the old documents, however, that does not carry any sense that “Malgan” is admittedly not a caste. Rather, the petitioner has explained that “Malgan” is a name of area to which, we find support in the statement recorded during vigilance, where the similar word is used for referring the area of village Barshitakali as a place of residence. We find no reason to discard all oldest documents on the basis of two adverse entries of Bhat caste. Taking overall view of the matter, in particular entries of Thakur caste preceding to the year 1914 and continuous entries of Thakur caste post-independence, we hold that the petitioners have

established their claim of “Thakur” scheduled tribe caste.

12. For the reasons stated above, both petitions are allowed and following order is passed :-

The orders dated 02.11.2019 and 28.12.2022 passed by the respondent - Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati, invalidating the claim of the petitioners for 'Thakur Scheduled Tribe', is hereby quashed and set aside.

The claim of the petitioners for Thakur Scheduled Tribe, which is an entry at Serial No.44 in the Constitution (Scheduled Tribes) Order, 1950, is held to be valid and the Committee is accordingly directed to issue caste validity certificate in the name of the petitioners within four weeks from the date of receipt of this order.

Rule is made absolute in the aforesaid terms. No order as to costs.

We direct the Committee to act accordingly.

(M. W. CHANDWANI, J.)

(VINAY JOSHI, J.)

TAMBE