



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

WRIT PETITION NO.26/2023

(Shri Arun S/o Bhimrao Tayade Vs. Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.P. Kalmegh, Advocate for the petitioner.
Mr. H.D. Marathe, A.G.P. for respondent No.1.
Mr. D.M. Kale, Advocate for respondent Nos.2 and 3.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.

DATED: 17.2.2025.

PC.

Heard.

2. On 3.7.1986 the petitioner was issued a caste certificate of belonging to Thakur Scheduled Tribe based on which he has secured employment with the Zilla Parishad.
3. It appears that the tribe claim of the petitioner for verification was forwarded to respondent No.1-Committee which was received by it on 16.7.2013.
4. The petitioner in support of the claim submitted certain documents and respondent No.1-Committee proceeded to evaluate the claim of the petitioner thereby rejecting the claim for issuance of validity on two counts (a) that the entry in the Dakhal Kharij Register of petitioner on 1.5.1978 reflects caste '*Bhat*' and (b) the petitioner has not satisfied the affinity test.
5. The order is assailed by the petitioner on the ground that there are consistent entries of Thakur in the documents in relation to grand-father, paternal aunt, uncle and father from 1929 onwards. The petitioner has relied on the revenue record entries viz. in relation

to birth record of Baburao @ Laxman, grand-father of the petitioner of 7.7.1941, 31.1.1929, 1.9.1932 and 30.9.1937. In addition to above, the caste entries in relation to the father of the petitioner, his uncle and paternal aunt of 1941 and 1949 also reflects caste entries as Thakur.

6. It is alleged that consistently since 1929 the caste entries in the record of blood relatives i.e. grand-father, father, uncle and paternal aunt are there and in such an eventuality, the Committee has fallen in error in relying on the adverse entry of May 1, 1978 in relation to petitioner's school record viz. Dakhal Kharij Register wherein *Bhat* entry is recorded.

7. It is claimed by Mr. Kalmegh, learned Advocate appearing for the petitioner that a person acquires his caste by birth. Hence caste entries of grand-father, father, uncle and paternal aunt are recorded as Thakur, the entry of *Bhat* of May 1, 1978 ought to have been ignored by the Committee in view of the pre-constitutional era entries of grand-father and other blood relatives. It is claimed that the pre-constitutional era entry will have more probative value. According to learned Advocate for the petitioner, in such an eventuality, having established based on the pre-constitutional era documents in relation to blood relations above as regards referred the caste entries of Thakur, the Committee is in error in rejecting the claim based on the isolated entry regarding *Bhat*.

8. A further contention is raised claiming that the Apex Court has already held that the claim for verification cannot be rejected just because the petitioner has failed to satisfy the affinity test. Drawing support from the judgment of the Apex Court in the matter of

Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti V/s. State of Maharashtra and others reported in **2023(2) Mh.L.J.785**, particularly, paragraphs 25 and 36 it is claimed that the Committee is in error in rejecting the claim of the petitioner.

9. As against above, learned Advocate for the respondents including learned A.G.P. would support the order impugned. It is urged that the entry of 1.5.1978 in the Dakhal Kharij Register in relation to petitioner must be explained in the backdrop of the mandate provided under Section 8 of the Act of 2000. It is urged that Section 8 contemplates the burden to be discharged by the claimant like the petitioner and since the petitioner has failed to discharge the burden by explaining the entry of *Bhat* of 1.5.1978 the decision of the Committee cannot be faulted. It is further urged that coupled with the aforesaid adverse entry of 1.5.1978 the Committee is justified in applying the affinity test in which the petitioner has failed to satisfy. That being so, the order impugned came to be passed based on the material discussed hereinabove. As such, the dismissal of the petition is sought.

10. We have considered the rival claims.

11. The petitioner so as to substantiate his claim has brought to the notice of the Committee the entry of *Bhat* in relation to himself of 2.7.1976 in addition to aforesaid documents and the Committee during vigilance cell has found another entry of 1.5.1978 depicting the caste entry of petitioner as *Bhat* in the school record.

12. Though all these entries were pre-constitutional era entries in relation to grand-father namely Babarao Laxman, father Bhimrao Babarao, uncle Purushottam Babarao and paternal aunt Pramila

Babarao, the entries of grand-father of the petitioner Bhimrao Babarao and Babarao @ Laxman are from 31.1.1929, 7.7.1941, 1.9.1932, 30.9.1937 and 7.7.1941 in categorical terms speaks of the as caste Thakur in various documents viz. revenue records in relation to birth. As far as these entries are concerned, the petitioner has produced all these pre-constitutional era documents before the Committee which was subjected to scrutiny through vigilance cell. The vigilance cell upon verification has not found any adversity but the aforesaid entry of Bhat.

13. In such an eventuality, the petitioner can be said to have discharged the burden cast under Section 8 of the Act thereby establishing that the blood relatives of the petitioner viz. his grand-father, father, uncle and paternal aunt are belonging to Thakur. It is also borne out of record that a person acquires his caste by his birth and once the caste of grand-father and father is recorded as Thakur the caste entry of *Bhat* of 1.5.1978 in relation to petitioner ought to have been ignored by the Committee as the pre-constitutional era entries in relation to the blood relatives will have more evidentiary value. In our opinion, while appreciating the evidence the Committee committed an error in relying on an isolated post constitutional era entry of 1.5.1978 for rejecting the claim of the petitioner when the petitioner based on the pre-constitutional era entries has already established from the record that his ancestors viz. grand-father, father and other blood relatives are belonging to Thakur caste. That being so, it is held that based on the documents the petitioner is able to establish that he is belonging to Thakur caste.

14. In the backdrop of the aforesaid findings viz. that the petitioner belongs to Thakur caste we are required to consider whether the Committee can reject the issuance of validity based on the affinity test.

15. In the case of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra), the Apex Court in detail has considered the issue of applicability of affinity test and its sanctity in the backdrop of existence of pre-constitutional era documents. The Apex Court while dealing with the issue particularly in paragraphs 25 and 36 has held as under:-

“25. Now, we come to the controversy regarding the affinity test. In clause (5) of Paragraph 13 of the decision in the case of Kumari Madhuri Patil¹ it is held that in the case of Scheduled Tribes, the Vigilance Cell will submit a report as regards peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, methods of burial of dead bodies etc. in respect of the particular caste or tribe. Such particulars ascertained by the Vigilance Cell in respect of a particular Scheduled Tribe are very relevant for the conduct of the affinity test. The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the applicant. But in a given case, even the parents may be unaware for the reason that for several years they have been staying in bigger urban

areas. On the other hand, a person may not belong to the particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, Shri Shekhar Naphade, the learned senior counsel, is right when he submitted that the affinity test cannot be applied as a litmus test. We may again note here that question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with the material produced by the applicant.

36. Thus, to conclude, we hold that:

(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(b) For the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim; and

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case.”

16. In this background viz. findings recorded hereinabove, we are of the view that the Committee ought not to have rejected the claim of the petitioner for having not satisfied the affinity test as same cannot be termed as a ‘litmus test’ particularly when the petitioner

has established from the pre-constitutional era documents that he belongs to Thakur caste.

17. As a sequel of above, the order impugned, in our opinion, is not sustainable. As such, the impugned order dated 19.12.2022 is hereby quashed and set aside with a declaration that petitioner belongs to Thakur Scheduled Tribe.

18. Consequently, validity certificate be issued to the petitioner within four weeks from today.

19. Writ petition stands allowed in above terms.

(MRS.VRUSHALI V.JOSHI, J.)

(NITIN W. SAMBRE, J.)