



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

WRIT PETITION NO. 759/2023

Madhukar S/o. Namdeo Thakur,
Aged about 56 yrs, Occ. Service,
R/o. Gurukrupa Chawl, Room No.
2, Ramchandra Nagar No. 1,
Kamgar Hospital Road, Thane
(West)

....PETITIONER

....VERSUS....

1. Joint Commissioner & Vice-
Chairman,
Scheduled Tribe Caste Certificate
Scrutiny Committee,
B-Wing, 1st Floor, Dr. Babasaheb
Ambedkar Social Justice Deptt.,
Camp Road, Amravati-444 606.

2. The Secretary,
Sahakari Shikshan Vikas Samuha,
Maratha High School,
Shivram Amrutwar Marg, Warali,
Mumbai - 400013

3. The Head-Master,
Maratha High School,
Shivram Amrutwar Marg, Warali,
Mumbai - 400013

....RESPONDENTS

Shri S.R.Narnaware, Advocate for petitioner.
Shri A.M.Joshi, AGP for respondent no. 1/State.

CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.

DATE OF RESERVING THE JUDGMENT: **12/04/2024**
DATE OF PRONOUNCING THE JUDGMENT : **26 /04/2024**
JUDGMENT (PER: SMT. M.S. JAWALKAR, J.)

Rule. Rule made returnable forthwith.

2. Heard finally by consent of learned counsel appearing for the parties at the stage of admission.

3. The petitioner has approached before this Court challenging the invalidation order dated 28/12/2022 passed by the respondent no. 1 - Joint Commissioner & Vice-Chairman, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati (hereinafter referred to as "Caste Scrutiny Committee").

4. It is contended that the petitioner was appointed as a Peon on 26/11/1992 against the vacancy reserved for the Scheduled Tribe Category. The petitioner has submitted Caste Certificate dated 12/03/1987 issued by the Executive Magistrate, Malkapur, District Buldhana belonging to 'Thakur' Scheduled Tribe. The caste claim of the petitioner was forwarded on 25/10/2013 through respondent no. 3 to

respondent no. 1 – Caste Scrutiny Committee, Amravati for verification of his caste claim belonging to ‘Thakur’ Scheduled Tribe. The petitioner has submitted voluminous documents pertaining to the pre-presidential order period i.e. prior to 1950 belonging to ‘Thakur’ Scheduled Tribe in respect of his father and forefathers. It is further contention of the petitioner that, he has placed on record the validity certificate issued in favour of his wife, who is also in relation to the petitioner. It is his contention that, along with the old documents, the Caste Scrutiny Committee ought to have considered the validity issued in favour of his wife.

5. The learned counsel for the petitioner relied on following citations:-

1) *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti V/s. State of Maharashtra* [2023(2) Mh.L.J. 785]

2) *Anand V/s. Committee for Scrutiny and Verification of Tribe Claims & ors.* [(2012) 1 SCC 113]

6. The learned Assistant Government Pleader supported the order passed by the Caste Scrutiny Committee,

however, he has fairly conceded that the entries in the oldest documents also consistently shown as 'Thakur'.

7. Heard both the parties and perused the record and proceedings of the Caste Scrutiny Committee.

8. There is no dispute over genealogy. If the documents are perused, the old documents are as under:-

Name	Relation	Document	Date of document	Caste
Namdeo Rupsingh Thakur	Father	School Leaving Certificate and Extract of record of Students.	01/04/1947	Thakur
Damu Rupsingh Thakur	Uncle	School Leaving Certificate and Extract of record of Students.	01/03/1933	Thakur
Rupsingh Suryabhan Thakur	Grandfather	Revenue Record (Birth Entry)	17/11/1927	Thakur
Waman Rupsingh Thakur	Uncle	School Leaving Certificate and Extract of record of Students.	01/04/1942	Thakur
Rusingh Suryabhan Thakur	Grandfather	Revenue Record (Birth Entry)	10/03/1935	Thakur
Dama Rupsingh	Uncle	Dakhal Kharij Extract	1936	Thakur
Namdeo Rupsingh	Father	Dakhal Kharij Extract	1947	Thakur

Waman Rupsingh	Uncle	Dakhal Kharij Extract	1942	Thakur
Rupsingh Suryabhan Thakur	Grandfather	Revenue Record (Birth Entry)	02/08/1923	Thakur

9. The oldest entry is of 1923 wherein Rupsingh Suryabhan was shown as 'Thakur'. The above entries of 1927, 1933, 1935, 1942, 1947 and subsequent entries are shown as 'Thakur' consistently. In view of these old documents having great probative value, the Caste Scrutiny Committee could not have discarded the caste claim of the petitioner on the ground of affinity or area restriction. The area restriction is already removed and so far as the affinity test is concerned, the Hon'ble Apex Court referred the judgment of *Anand V/s. Committee for Scrutiny and Verification of Tribe Claims & ors.* (supra) in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (Supra). In *Anand*, the Hon'ble Apex Court observed as under:-

"While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other

communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim. (emphasis added)”

10. Thus, the affinity test is not the litmus test to apply in each case when there are old documents having great probative value. There is no necessity to harp upon the affinity. In view of the above law position and in view of the documents submitted by the petitioner, we are of the considered opinion that, the Caste Scrutiny Committee passed an erroneous order and rejected the claim of the petitioner of ‘Thakur’ Scheduled Tribe. There cannot be any addition or subtraction in the entries of the list of Scheduled Tribe, in view of the fact that, there is no adverse entry in the documents produced by the petitioner or collected or

procured by the Vigilance Cell, the impugned order is liable to be set aside. Accordingly, we proceed to pass the following order:-

ORDER

- 1) The Writ Petitioner is allowed.
- 2) The impugned order dated 28/12/2022 passed by respondent no. 1 - Scheduled Tribe Certificate Scrutiny Committee, Amravati in the matter of the petitioner -Madhukar S/o. Namdeo Thakur in Case No. सआ/अजप्रतस/अम/एम.एन.टी./२२०७/२०१३, is hereby quashed and set aside.
- 3) It is declared that the petitioner has duly established that he belongs to 'Thakur' Scheduled Tribe, which is entry No.44 in the Constitution (Scheduled Tribes) Order, 1950.
- 4) The respondent no. 1 - Scheduled Tribe Certificate Scrutiny Committee, Amravati to issue validity certificate of 'Thakur' Scheduled Tribe to the petitioner within a period of four weeks.

Rule is made absolute in the above terms. No costs.

(Judge)

(Judge)

B.T.Khapekar