

(2023) 08 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 3784 Of 2023

Shravani

APPELLANT

Vs

Scheduled Tribe Caste Certificate Scrutiny Committee

RESPONDENT

Date of Decision : 07-08-2023

Acts Referred:

Citation : (2023) 08 BOM CK 0016

Hon'ble Judges : A.S. Chandurkar, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : A.P. Kalmegh, A.A. Madiwale

Judgement

A.S. Chandurkar, J

1. Rule. Rule made returnable forthwith and heard the learned Counsel for the parties.

2] The challenge raised in the Writ Petition is to the order passed by the Scrutiny Committee dated 6/9/2022 invalidating the petitioner's claim of belonging to 'Thakur' Scheduled Tribe. In support of her claim, the petitioner relied upon various pre-constitutional documents of her forefathers including the School Entry Register of her grandfather – Narayan indicating his date of birth as 27/8/1929 and having taken admission in School on 4/8/1938. The said document has the entry 'Thakur' in the caste column. The School Leaving Certificate of the petitioner's grandfather indicating the said dates was also relied upon. The petitioner also relied upon the birth extract register of her paternal grandmother – Shanti which indicated that her date of birth was 7/5/1938 with the entry 'Thakur'. The Scrutiny Committee in the impugned order has on the basis of the report of the Vigilance Cell recorded a finding that in the birth extract dated 21/5/1927 indicating a son being born to Narayan – petitioner's grandfather, the caste recorded was 'Bhat'. According to the Scrutiny Committee, the family tree was prepared on the basis of information supplied by the petitioner's father and as it was indicated therein that Narayan had two sons, the

said entry dated 21/5/1927 was from her family itself. On that premise coupled with absence of affinity, the Scrutiny Committee proceeded to invalidate the petitioner's tribe claim.

3] The learned Counsel for the petitioner submitted that various pre-constitutional documents including the document of the year 1938 indicated consistent entries of 'Thakur'. On the basis of entry dated 21/5/1927 which was of a person not from the family of the petitioner, her claim has been rejected. In the reply filed to the report of the Vigilance Cell, a specific stand was taken that the document dated 21/5/1927 was of a person not related to the petitioner. Despite the aforesaid, the Scrutiny Committee invalidated the claim only on the ground that the petitioner's father had indicated that Narayan had two sons and one daughter and by inference that the said document was of Narayan's first son. As regards the aspect of affinity, it was submitted that the same could not be treated as a litmus test in the light of the judgment of the Larger Bench of the Hon'ble Supreme Court in Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others [2023(2) Mh.L.J. 785]. It was thus submitted that the claim as made ought to be accepted and the order passed by the Scrutiny Committee was liable to be set aside.

4] The learned Assistant Government Pleader relied upon the report of the Vigilance Cell as well as the report of the Scrutiny Committee to submit that since the oldest document dated 21/5/1927 had the entry 'Bhat', the claim was rightly rejected. In absence of any affinity with members of the Scheduled Tribe community, the claim of the petitioner was rightly rejected. Hence, there was no reason to interfere with the impugned order.

5] We have heard the learned Counsel for the parties and we have perused the record of the Scrutiny Committee. Undisputedly, the document indicating birth of Krishna – son of Narayan on 27/8/1929 and he having taken admission in School on 4/8/1938 has the entry 'Thakur'.

The name on the said document is 'Krishna Narayan'. The other document pertaining to the petitioner's paternal grandmother indicating her date of birth as 7/5/1938 also has the entry 'Thakur'. In the said document, the name of the father is shown as 'Narayan Bhagwantrao' and the name of the girl child is stated to be Shanti. Even according to the Vigilance Cell, these entries were verified and the said entries were found therein. It is clear from these documents pertaining to the entries of the years 1929 and 1938 that the entry therein is 'Thakur'.

6] The contentious entry on the basis of which the petitioner's claim has been invalidated is dated 21/5/1927. Perusal of this document indicates the words 'Narayan (Bhat)'. Below the said entry, the words 'in the house of Amruta' are mentioned. In the reply filed by the petitioner to the report of the Vigilance Cell with reference to the said entry, the petitioner stated that the said entry was of a person not from the petitioner's family. The name of the father of Narayan or the surname was not mentioned as was mentioned in the other documents.

According to the Scrutiny Committee, since the family tree was prepared by the Vigilance Cell during the course of enquiry with the petitioner's father on 9/3/2022 and he had stated that Narayan had two sons, the Scrutiny Committee proceeded to record a finding that the said entry dated 21/5/1927 was of a child born to the petitioner's great grandfather. As it had the entry 'Bhat', the claim was invalidated.

Perusal of paragraph 8 of the order passed by the Scrutiny Committee indicates that the objection raised by the petitioner to the aforesaid entry has not been accepted by the Scrutiny Committee in the light of the information with regard to the family members given by her father. The family tree does not indicate the name of any son born to Narayanrao besides Krishnarao. In absence of any such name being stated therein coupled with the fact that the entry dated 21/5/1927 does not indicate the complete name of Narayan as is described in the other documents with a further entry that the birth had taken place at the house of Amruta, it cannot be gathered from the impugned order passed by the Scrutiny Committee as to how this document could be linked to the family of the petitioner. The said document is the only one with the entry 'Bhat' while all other documents with the entry 'Krishna Narayan' and 'Shanti Narayan Bhagwantrao' have reference to the caste 'Thakur'. We do not find that the Scrutiny Committee was justified in taking into consideration the stray and incomplete entry dated 21/5/1927 to disregard the petitioner's claim. No reason has been assigned for turning down the petitioner's objection in this regard except for stating that while giving details of the family members, reference was made to an unnamed brother of Krishnarao. Since the birth of Krishnarao has been recorded as 27/8/1929 with the entry 'Thakur' coupled with similar entry as regards his paternal grandmother, on the preponderance of probability, those old entries would have to be given due weightage since they indicate complete names of the family members when compared to the document dated 21/5/1927. It is well settled that due importance has to be given to pre-constitutional documents linked with the claim of the candidate. It is thus held that on the basis of these two documents, the claim of the petitioner would have to be adjudicated.

7] Coming to the aspect of affinity, we find that this aspect has been clarified by the Larger Bench of the Hon'ble Supreme Court in Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra). In a recent decision also of the Hon'ble Supreme Court in Priya Pramod Gajbe Vs. The State of Maharashtra And Others [Civil Appeal No. 7117/2019 decided on 11/7/2023], it has been clearly held that with passage of time, it is not expected that the old traits and customs would be continued to be followed in these modern times. The overall material on record has to be taken into consideration. Thus, when the entire material on record is considered, it can be said that on the basis of pre-constitutional documents, the claim made by the petitioner deserves to be upheld.

8] For the aforesaid reasons, the order passed by the Scrutiny Committee dated 6/9/2022 is set aside. It is held that the petitioner has proved that she belongs

to 'Thakur' Scheduled Tribe. Within a period of three weeks from today, the Scrutiny Committee shall issue the validity certificate to the petitioner of belonging to 'Thakur' Scheduled Tribe. Till such validity certificate is received, the petitioner can rely upon the copy of the judgment to indicate that her claim of belonging to 'Thakur' Scheduled Tribe has been upheld.

9] Rule is made absolute in the aforesaid terms with no order as to costs.