



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 11954 OF 2021

Ekta Mahendrasing Thakur,

Age : 17 years, Occu. Education,

represented through natural guardian i.e. Father,

Mahendrasingh Hanumansing Thakur,

Age : 47 years, Occu. Business,

R/o. Chalisgaon, Tq. Chalisgaon, Dist. Jalgaon.

...Petitioner

Versus

1] Director of Medical Education &
Research, CET Cell,
Opp. Government Dental College & Hospital Building,
St. George's Hospital Compound,
Near CST Railway Station, Mumbai.

2] State Common Entrance Test Cell,
Maharashtra, Mumbai, 8th Floor, New New Excelsior,
A. K. Nayak Marg, Fort, Mumbai,
through its Commissioner & Competent Authority.

3] Scheduled Tribe Certificate Scrutiny Committee,
Nandurbar Division, Nandurbar.

....Respondents

.....
Mr. Umesh Gite h/f Mr. Mahesh S. Deshmukh – Advocate for the
petitioner

Mr. V. M. Jaware – AGP for respondent nos. 1 to 3

.....

**CORAM : MANGESH S. PATIL
AND
NEERAJ P. DHOTE, JJ.**

RESERVED ON : 08.12.2023
PRONOUNCED ON : 19.12.2023

JUDGMENT [Per : Neeraj P. Dhote, J.] :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at the stage of admission. Perused the papers.

2. By the present petition, the petitioner, who is the student, has challenged the order dated 04.10.2021 passed by the Respondent No. 3 – Scrutiny Committee invalidating her claim of belonging to “Thakur” Scheduled Tribe.

3. It is submitted by the learned advocate for the Petitioner that, though there is an oldest entry of “Thakur” of pre-constitution period in respect of the great great grandfather of the Petitioner, the Respondent No. 3 – Scrutiny Committee invalidated the claim on the ground that in the subsequent entries in the school record of the grandfather, the cousin grandfather and the father, the caste is mentioned as “Pardeshi Thakur”, “Hindu-Thakur” and “Hindu-Bigar Magas”, respectively, by giving more weightage to them. He submitted that the other grounds on which the Petitioner’s claim has

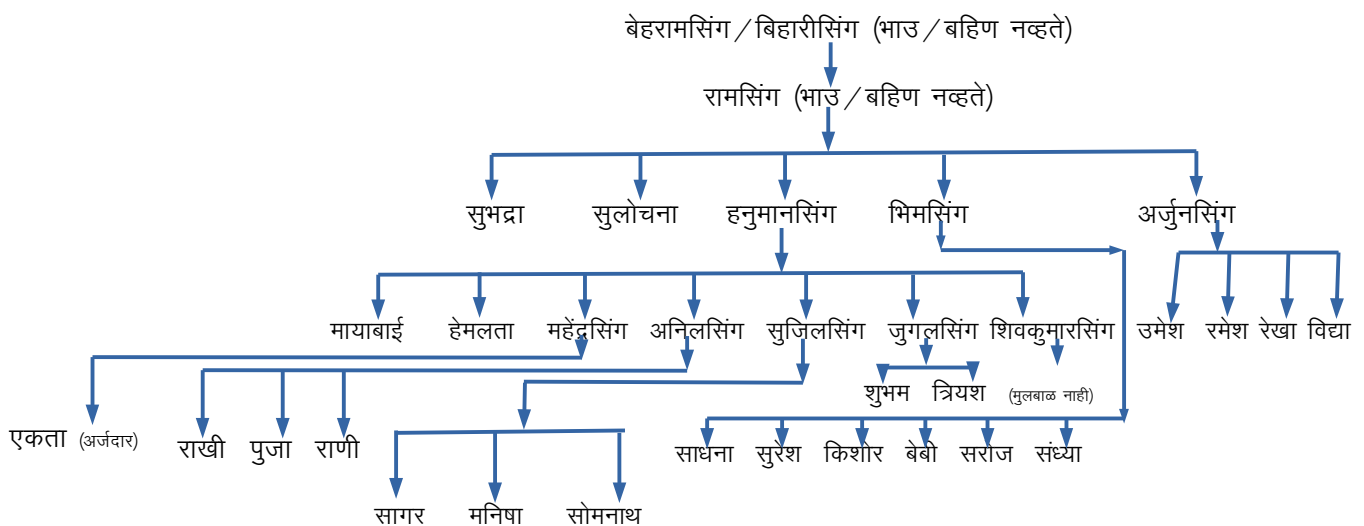
been invalidated are area restriction, affinity and educational background of the family members which are not relevant considerations. He submitted that the impugned order is unsustainable in the eye of law and same be quashed and set aside.

4. It is submitted by the learned AGP that there is no consistency in the caste entries of the Petitioner's blood relatives and, therefore, the Respondent No. 3 – Committee was justified in invalidating the claim and hence the petition be dismissed.

5. Respondent No. 3 – Committee has invalidated the Petitioner's tribe claim on three grounds, viz : -

- (i) The tribe claim of the Petitioner is not proved by way of documentary evidence.
- (ii) The Petitioner could not be given benefit of the validities, issued to the blood relatives
- (iii) The Petitioner could not clear affinity test.

5.1. The admitted genealogy is as follows : -



6. The impugned order shows that the following documents were available during examination of the Petitioner's claim.

अ.क्र.	दस्तऐवजाचा प्रकार	दस्तऐवज धारकाचे नाव	अर्जदाराशी नाते	जतीची नोंद	नोंदणी दिनांक
1	मृत्यु पुरावा	...बेहारीसिंग पुरनसिंग	खापर पंजोबा	ठाकूर	ऑगस्ट 1934
2	शालेय पुरावा	भिमसिंग रामसिंग ठाकूर	चुलत आजोबा	परदेशी ठाकूर	11.06.1938
3	शालेय पुरावा	हनुमानसिंग रामसिंग ठाकूर	आजोबा	हिंदू ठाकूर	04.05.1950
4	शालेय पुरावा	महेंद्रसिंग हनुमानसिंग ठाकूर	वडील	हिंदू बिगर मागास	29.06.1984
5	शालेय पुरावा	एकता महेंद्रसिंग ठाकूर	अर्जदार	हिंदू ठाकूर	27.04.2016

7. The above chart clearly shows that the oldest entry is that of 'Thakur' and it is of August-1934, which is shown to be of great great grandfather of the Petitioner named Beharisingh Puransingh. Undisputedly 'Thakur' is shown at Sr. No. 44 in the Constitution (ST) Order, 1950. Needless to state that it is the settled position in law that the pre-constitutional entries have more probative value. For this proposition, reliance can be placed on the decision in the case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others** reported in **(2011) Mh.L.J.919**. The impugned order is silent as to why the oldest entry was discarded or was not taken into consideration. The Respondent No. 3 – Committee, being a Quasi Judicial Authority is expected to consider the relevant material before it, which it has failed to do. We find that by ignoring the oldest entry of the year 1934, which is 'Thakur' in respect of the blood relative of the Petitioner, the Committee has committed an error in law. It is nobody's case that the oldest entry was made by resorting to any

manipulation. There is no such observation in the impugned order. The papers show that the Vigilance Officer collected the copy of extract from the death register of August, 1934 certified by the Chief Officer, Municipal Council, Bhusawal, showing the entry as 'Thakur' against the name of Petitioner's great great grandfather Beharisingh. Thus, there is no reason to discard the oldest entry.

8. The above chart further shows that the caste as against the names of petitioner, petitioner's father, petitioner's grandfather and petitioner's cousin grandfather, is mentioned as "Hindu-Thakur", "Hindu-Bigar Magas", "Pardeshi Thakur" and "Hindu-Thakur", respectively. These entries have weighed heavily in the mind of Committee while passing the impugned order. Admittedly, the schedule of the Constitution nowhere provides "Pardeshi-Thakur", "Hindu-Thakur", "Hindu-Bigar Magas" and "Hindu-Thakur" as tribe. It is, therefore, debatable whether these entries can be called as contrary entries. Needless to state that Hindu is not a caste but it is a religion. Therefore, the importance given by Respondent No. 3 – Scrutiny Committee to discard the Petitioner's claim since the word 'Hindu' is found in some of the entries one which is of the year 1950, is not worthy of acceptance. Similarly, it is not pointed out by the learned AGP that the 'Pardeshi Thakur' is a different caste. Thus, the rejection of the Petitioner's claim on the issue of entries such as 'Pardeshi Thakur', 'Hindu Thakur' and 'Hindu Bigar Magas' is unsustainable in the eye of law.

9. The Committee has observed that though the document submitted by the Petitioner shows the caste entry as 'Thakur', there is nothing to show that the Petitioner and her family members have migrated from the geographical area inhabited by 'Thakur' Scheduled Tribe community. The Committee further observed that the blood relatives of the Petitioner were taking education since 1938 and were in the main stream of the society. This ground is also not sustainable in the eye of law for the reason that the Scheduled Castes and the Scheduled Tribes Order (Amendment) Act, 1976 has removed the area restrictions placed by the Order of 1950. Moreover, the Petitioner responded to the vigilance report by filing detailed reply on each count i.e. documents, area restriction and affinity. In the reply, the Petitioner has referred to several judgments relating to the issue, however, Respondent No. 3 – Committee remained silent about the contentions made therein. The Petitioner in the reply to the vigilance report has also given reference of the literature in respect of the existence of the 'Thakur' Scheduled Tribe and justified that 'Thakur' Scheduled Tribe were also ordinary residents of Jalgaon district from where her family hails.

10. As regards the second ground is concerned, as there are no validity holders in the Petitioner's family, there was no occasion for the Committee to say anything on this aspect.

11. As regards the third ground of affinity is concerned, in view of the judgment of the Hon'ble Apex Court in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra Ors.** reported in **2023 SCC Online SC 326**, the affinity is not a litmus test.

12. Needless to state that this Court in several matters, in which more or less identical issues were involved in respect of 'Thakur' Scheduled Tribe, filed against the invalidation of the tribe claim directed issuance of validity certificates by setting aside the impugned order therein. Some of them are; **Motial Vs. Scheduled Tribe Certificate Scrutiny Committee, Nashik and Ors.**, MANU/MH/3469/2017, **Dipalee d/o Shivdas Sonawane @ Dipalee w/o Kishor Thakur Versus Scheduled Tribes Certificate Scrutiny Committee & Ors with connected matter**, Writ Petition No. 10687 of 2015 decided by this Court on 25.09.2019 and **Shubham S. Suryawanshi Versus State of Maharashtra and others**, Writ Petition No. 3061 of 2020, decided by the Principal Seat of this Court on 08.01.2021.

13. The grounds as discussed above on which the Respondent No. 3 – Committee has invalidated the Petitioner's tribe claim do not stand the scrutiny of law and the impugned order is liable to be set

aside. For the reasons mentioned above, we proceed to pass the following order.

ORDER

- [i] Writ Petition is allowed.
- [ii] The impugned order passed by Respondent No. 3 – Scrutiny Committee invalidating the claim of the Petitioner of belonging to ‘Thakur’ Scheduled Tribe is set aside.
- [iii] The Respondent No. 3 – Scrutiny Committee is hereby directed to issue caste validity certificate in favour of the petitioner as ‘Thakur’ Scheduled Tribe within a period of one week from the date of this order.

14. Rule is made absolute in the aforesaid terms. No costs.

**[NEERAJ P. DHOTE]
JUDGE**

**[MANGESH S. PATIL]
JUDGE**