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wp 6691.14 R.odt

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

WRIT PETITION NO. 6691 OF 2014

SHRI SHIVADAS S/O. VISHVASRAO BHAMARE
Age 40 years, Occ. Service as Assistant Teacher,
R/o. Plot No.52, Telephone Colony,
Gondur Road, Deopur, Dhule.

.. Petitioner

VERSUS

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32
through its Secretary.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division, Nandurbar,
through its Member Secretary.
3. The Executive Magistrate,
Nandurbar.
4. Dhule Education Society,
Office at J.R. City High School,
Near S.P. Office, Sakri Road,
Dhule,
through its Secretary.
5. The Head Master,
R.K. Chitale Secondary School,
Deopur, Dhule.
6. The Education Officer (Secondary)
Zilla Parishad, Dhule.

.. Respondents.

Mr. A.S. Golegaonkar, Advocate for petitioner.
Mr. K.S. Patil AGP for respondent Nos. 1, 3 and 6
Mr. A.B. Tele, Advocate for respondent No.4

Respondent Nos. 4 and 5 served

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 19TH APRIL, 2024.
PRONOUNCED ON : 7th MAY, 2024.**

JUDGMENT (PER S.G. CHAPALGAONKAR, J.]

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned advocates for respective parties.

The petitioner has approached this Court under Article 226 of the Constitution of India impugning the order dated 30.6.2014 passed by Scheduled Tribe Scrutiny Committee – Respondent No.2, thereby invalidating the claim of the petitioner for “Thakur Scheduled Tribe”.

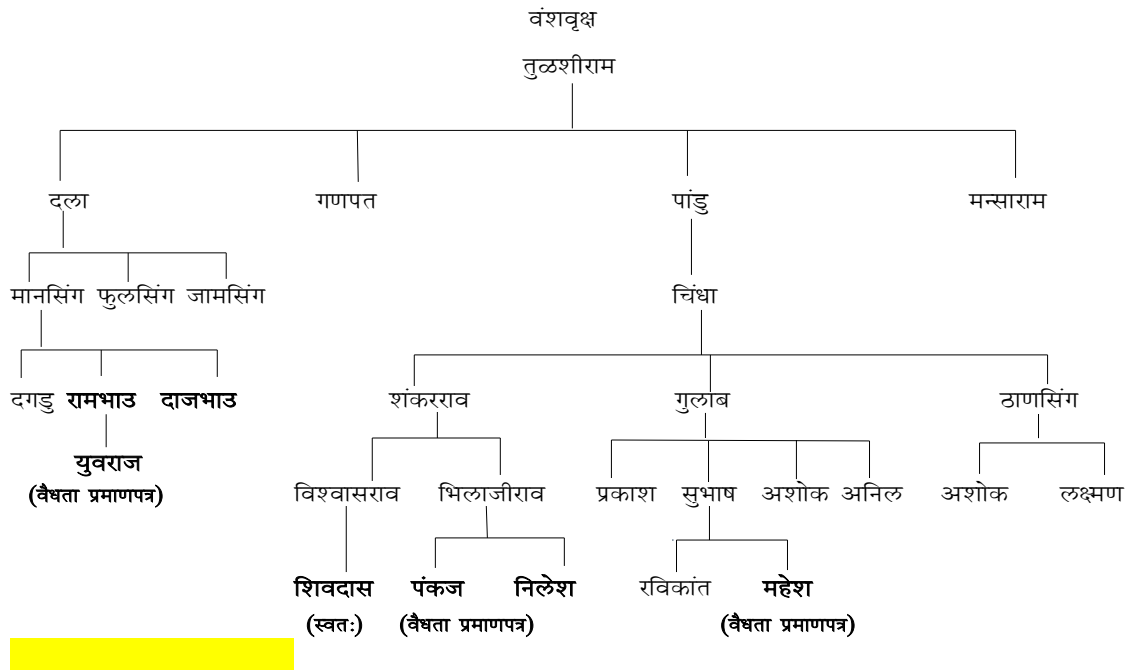
2. Mr. A. S. Golegaonkar, learned advocate for the petitioner submits that the petitioner belongs to “Thakur Scheduled Tribe” community. On 25.9.1992 competent authority i.e. Executive Magistrate, Nandurbar issued the caste certificate to him. In year 1998, he has been appointed as Assistant Teacher with respondent No.4. Since, 1.7.2000 his services have been confirmed. The School management had forwarded the proposal to committee for verification of petitioner’s Tribe claim, as his appointment was made from S.T. Category. It was accompanied with School Admission Record of his cousin grandfather for years 1919, 1923, 1927 and 1933. The caste validities issued in favor of paternal relatives were also made part of the proposal. The Committee was pleased to refer matter to the Vigilance Inquiry. Report of such inquiry is submitted on 3.1.2004 to the Committee. Finally, the

Committee vide the impugned order, invalidated the tribe claim of the petitioner, mainly on the ground that forefathers of the petitioners were not resident of the original geographical area of “Thakur” Schedule Tribe community and that petitioner failed in the affinity test.

3. Mr. Golegaonkar submits that area restriction has been removed by enactment of the Parliament in the year 1976. Affinity test cannot assume significance, when impeccable evidence to support the petitioner’s claim, in the nature of pre-constitutional record of paternal blood relatives is placed before committee in support of Tribe status of petitioners family. He would, therefore, submit that impugned order is unsustainable and liable to be quashed and set aside. Mr. Golegaonkar would further urge to direct the Committee to issue Tribe validity to the petitioner.

3. Mr. K.S. Patil, learned AGP appearing for respondent NO.1, 3 and 6 opposes the petition, He would submit that the Committee has considered the documentary evidence tendered by the petitioner alongwith report of the Research Officer. The petitioner had failed to establish his claim for “Thakur” Scheduled Tribe. The pre-constitutional school admission record of relatives depicts entries either “Thakur” or “Hindu Thakur”, which is different than “Thakur Scheduled Tribe”. He would further submit that the blood relatives of the petitioner were admitted to schools right from 1919 as they were part of the advanced society, which is not the character of the Thakur Scheduled Tribe. Mr. Patil would further submit that once the Committee has formed opinion based on material on record coupled with vigilance report and remarks of Research Officer, this Court may not disturb the finding of the Committee, even though the different view may be possible.

4. We have considered the submissions advanced on behalf of the learned advocate appearing for the respective parties. We have perused the record tendered into service. The petitioner claims that he belongs to “Thakur Scheduled Tribe” community and in support of his contention, he relied on the pre-constitutional school record and validity certificates issued in favour of his blood relatives. For the purpose of better understanding of the relationship of the petitioner with the validity holders and school admission record in respect of the blood relatives, it would be appropriate to refer to the genealogy which is made part of the record of Committee in this claim.



5. The impugned order refers to various documents relied upon by the petitioner. List of such documents is given in the 2nd paragraph of the impugned order. The document at Sr. No 28 is school admission record of Shekhar Chindha Thakur, i.e. grandfather of the petitioner. The entry pertains to his school admission dated 19.7.1923 which records caste as Thakur. The second document is at Sr. No. 29 i.e. School Leaving

Certificate of **Shankar Chindha Thakur**, dated 17.10.1978 which records the caste as Thakur. The document at Sr. No. 67 is School Leaving Certificate of **Thansing Chhindha Thakur** dated 18.2.1933, in respect of **grandfather of the petitioner**. The document at Sr. Nos. 70 and 72 are school admission and school leaving certificates of Jamsing Dala Thakur and Dajbhau Narsingh Thakur i.e. cousin grandfathers of the petitioner. Those entries are dated 2.1.1919 and 4.4.1941 respectively. The Committee referred the aforesaid documents in its order, however, declined to rely upon the same in support of Tribe claim. In para No. XVI of the order, committee refused consideration to those documents drawing adverse inference that petitioners family was economically and educationally advanced since before independence, inconsistent of status of 'Thakur Schedule Tribe'.

6. We find that such approach of the Committee can not be countenanced. When the petitioner has relied upon the pre-constitutional school admission record of the blood relatives, committee could not have taken adverse note of it, treating them from advanced class of society. There cannot be straight jacket formula to appreciate the pre-constitutional documents. The Supreme Court of India in the case of “ *Ku. Madhuri Patil Vs. Additional Commissioner reported in (1994) 6 SCC 241*, observed in para. 10 as under :-

“10. The entries in the school register preceding the Constitution do furnish great probative value to the declaration of the status of a caste. Hierarchical caste stratification of Hindu social order has its reflection in all the entries in the public records. What would, therefore, depict the caste status of the people inclusive of the school or college records, as the then census rules insisted upon. Undoubtedly, Hindu social order is based on hierarchy and

caste was one of the predominant factors during pre-constitutional period. Unfortunately, instead of dissipating its incursion it is being needlessly accentuated, perpetrated and stratification is given legitimacy for selfish ends instead of being discouraged and put an end to by all measures, including administrative and legislative. Be it as it may, people are identified by their castes for one or the other is a reality. Therefore, it is no wonder that caste is reflected in relevant entries in the public records or school or college admission register at the relevant time and the certificates are issued on its basis.”

Similar view is reiterated in recent judgment in case of ***Maharashtra Adivasi Swarakshan Samiti Vs. State of Maharashtra reported in 2023(2) Mh.L.J. 785***. We are therefore of considered view that approach of committee is fallacious in ignoring important documentary evidence relied by petitioner which is having great probative value.

7. The petitioner has also placed reliance on the caste validity certificates issued in favour of his blood relatives supported by their affidavits. The Committee has issued validity to Pankaj Bhikajirao Thakur and Mahesh Subhash Thakur, who are cousins of the petitioner. The other cousin of the petitioner, namely, Yuvraj Rajabhau Thakur, has been granted validity under order of this Court passed in W.P. No. 5731 of 2003. All those documents were made part of the record before the Committee when petitioner’s claim was considered. However, the committee refused consideration to those validities merely observing that each claim has to be decided independently and merely because blood relatives of the petitioners are conferred validity, petitioner can not claim that his claim is established. The Committee has further observed that caste validity certificates issued in favour of Mahesh Bhamre and Yuvraj Bhamre based on observations of the Supreme Court of India without

putting correct interpretation of the ratio in said judgments. We find that observations of the committee cannot be countenanced.

8. Pertinently, committee has not formed opinion that validities granted in favour of petitioner's blood relatives are product of misrepresentation, fraud or suppression of material facts. Those validity certificates are still intact. The Committee has not issued show cause notices to the validity holders nor has proposed to cancel any such validity. The committee nowhere controverted the fact that the validity holders are blood relatives of the petitioner. In that view of the matter, it would be appropriate to refer to certain observations of Division bench of this Court in the case of ***Apoorva Nichale Vs. Divisional Caste Certificate Scrutiny Committee 2010(6) Mh.L.. 401***, wherein the this Court observed thus :-

“7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.”

In the present case, the observations of the committee nowhere indicate that the Committee doubted validity certificates granted in favour of blood relatives of the petitioner for reasons like fraud or suppression of material facts etc. Therefore committee couldn't have ignored such a significant evidence relied by petitioner.

9. Although committee has observed that the petitioner could not clear the affinity test or that family of the petitioner is not resident of the original area of Thakur Scheduled Tribe, that itself cannot constitute ground to discard Tribe claim. The Supreme Court of India in the matter of ***“Maharashtra Adivasi Thakur Samaj Swarakshan Samiti vs. State of Maharashtra”*** reported in AIR 2023 SC 1657, in para. 24 and 25, observed thus :-

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 Patil* 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”.

10. The Supreme Court has consistently observed that the affinity test is not a litmus test. Further, the question of conduct of

affinity test arises only in those cases, where the scrutiny committee is not satisfied with the material produced by the applicant. In that view of the matter, the observations of the Committee, simply relying upon adverse remarks of the Research Officer, would not be sufficient to dislodge petitioner's claim which is otherwise supported by pre-constitutional documentary evidence. In such a case, report of the Vigilance Cell as regards anthropological and ethnological traits, deities, rituals, customs, mode of marriages, surnames etc. may be relevant but cannot form the sole basis to rule upon the claim of the petitioner. As observed in aforesaid paragraphs, the petitioner placed reliance on the pre-constitutional documents in the form of school admission record of his grandfather and cousin grandfathers which clearly indicate that they belong to Thakur community. Apart from pre-constitutional evidence, the competent committee had already conferred validity certificates in favour of the paternal relatives of the petitioner. In light of impeccable evidence on record, although, observations of the Research Officer as regards to the affinity test are not favourable to the petitioner, the Committee could not have declined validity to petitioner.

11. The next point that Committee insisted upon is, as to the area restriction. It is not in dispute that the area restriction has been removed in the year 1976 vide Scheduled Castes Scheduled Tribes Order (Amendment Act) 1976 dated 18.9.1976 and merely because the forefathers of the petitioner were not resident of the area identified as original residence of the Thakur Scheduled Tribe, the claim can not be negated. Unfortunately, in spite of the authoritative pronouncements on this aspect by the Supreme Court of India as well as this Court, similar reasons are incorporated for rejecting the claim. At this stage reference

can be given to observations of Division Bench of this court in the matter of **Madhuri Nitin Jadhav Vs. State of Maharashtra reported in 2014(3) Mh.L.J. 910** in para. 20 and 21 which reads as under :-

*“20. Apart from the broad parameters so announced and declared and as referred by and in the judgments, the fact whether the claimant/applicant is tribal or not, the requisite test, considering the basic factors like Primitive Traits, District Culture, Geographical Isolation, Distinct dialect, Animism, Clean systems, Shyness of nature. Backwardness in view of the rites of passage, life cycle events, hearing rites, construction rituals and agriculture and hunting rituals, also required to be considered. **But, this does not also mean that in cases where, for various reasons, the applicants’ family or forefathers left the original areas and shifted to the other parts of the State of Maharashtra are not entitled for the benefits of Scheduled Tribes. This, in our view, is impermissible approach as it denies their constitutional rights.***

12. In view of the aforesaid observations, the impugned order can not be sustained in law. Hence, we proceed to pass the following order :-

ORDER

[a] Writ petition is allowed;

[b] The impugned order dated 30th June, 2014 passed by the respondent No.2 – Scheduled Tribe Certificate Scrutiny Committee is hereby quashed and set aside;

[c] The respondent No.2 Committee shall forthwith issue validity certificate in favour of the petitioner as belonging to “Thakur”

Scheduled Tribe.

[d] Rule is made absolute in above terms. No costs.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-