

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2171 OF 2019

1. Padmakar Dayaram Bhamare
Aged 59 years.

2. Smt. Arunabai Mangaldas Bhamare

3. Kum. Manasi Bhaiyasaheb Bhamare
Aged 22 years

All residents of at post Vajirkhede, Tal.
Malegaon, Dist-Nashik

...Petitioners

Versus

1. State of Maharashtra
Through its Secretary, Tribal
Development Department, Mantralaya,
Mumbai – 400 032.

2. Scheduled Tribe Certificate
Scrutiny Committee, Nashik Division,
Nashik, through its Member Secretary,
having its Office at Adivasi Vikas
Bhavan, Old Agra Road, Nashik Dist
Nashik.

3. Zilla Parishad, Nashik
Through its Chief Executive
Officer, having its office at Nashik,
Dist- Nashik.

4. Divisional Controller,
Maharashtra State Road Transport
Corporation, Nashik, Dist- Nashik

5. Executive Engineer,
Malegaon Irrigation Circle, Malegaon,
Dist Nashik.

...Respondents

Mr. R. K. Mendadkar a/w Ms Priyanka Shaw, Ms Jaishri Mendadkar
and Mr. Jagdish Kawle, for the Petitioners.

Ms Pratibha D. Shelake, for Respondent No. 3.

Mr N. C. Walimbe, Addl.G.P. a/w Mr. S. P. Kamble, AGP, for the Respondents-State.

CORAM: SUMAN SHYAM &
MANJUSHA DESHPANDE, JJ.

RESERVED ON: 13th OCTOBER 2025.
PRONOUNCED ON: 17th OCTOBER 2025.

Judgment (Per Manjusha Deshpande J.):

1. Rule is issued in the present matter on 22nd February 2021. Hence, the matter is taken up for final hearing.

2. The Petitioners have challenged the common order dated 1st February 2019 passed by the Schedule Tribe Certificate Scrutiny Committee, Nashik Division, Nashik, invalidating their tribe claim, thereby cancelling the Caste Certificate of Thakur Schedule Tribe issued in their favour by the Competent Authorities. Petitioner Nos. 1 and 2 are brother *in terse*, while Petitioner No. 3 is their niece. Although at the time of filing of the Writ Petition Petitioner No. 2 was alive, however it is informed that Petitioner No. 2 has expired during the pendency of the present Writ Petition. Therefore, he has been represented by his wife, namely Arunabai Mangaldas Bhamare. Petitioner No. 1 was in employment of Zilla Parishad, Nashik, who retired during the intervening period. Petitioner No. 2 was also in employment of Maharashtra State Road Transport Corporation, Nashik (MSRTC). All the three Writ Petitioners were issued certificate of 'Thakur' Schedule Tribe by the Competent Authorities, which was forwarded to Respondent No. 2- Schedule Tribe Certificate Scrutiny Committee, Nashik. The Committee after conducting the vigilance and granting opportunity of hearing to

the respective parties, has invalidated their tribe claim vide order dated 1st February 2019. Respondent No. 2- Committee, while deciding the tribe claim of the Petitioners has relied on the report of Vigilance Cell, wherein it was held that the Petitioners have failed to establish their identity to the 'Thakur' Schedule Tribe.

3. While rejecting the tribe claim of the Petitioners it is observed, by the Committee that it proposes to issue Show Cause Notice to two validity holders from the family of the Petitioners, namely, Bhaiyasaheb Bhamare and Sachin Bhamare, as to why the order granting them validity should not be reviewed. By making the above observations, the Committee rejected the caste claim of the Petitioners which is challenged in the present Writ Petition.

4. Mr. Mendadkar, learned counsel for the Petitioners has vehemently argued that Respondent No. 2-Committee has totally brushed aside the evidence of a pre-constitution document pertaining to the year 1928, in relation to the father of Petitioner Nos. 1 and 2. The Petitioners had produced the extract of general register of Zilla Parishad School, Zodge, Tal- Malegaon, Dist- Nashik, which recorded the caste of Dayaram Sursing Bhamara father of Petitioner Nos. 1 and 2 as Thakur taken in the year 1928. This document is a primary evidence which has not been disputed by the Authorities of the Vigilance Cell. There is no interpolation in the said document, by ignoring the above document and relying on one of the documents wherein the caste has been allegedly recorded as "Maratha", has been relied by the Schedule Tribe Certificate Scrutiny Committee, Nashik, which is totally untenable. The impugned order of the Scrutiny Committee has non-suited the Petitioners on the ground of failure to prove cultural affinity. This

is clearly contrary to the decision of the Hon'ble Apex Court in the case of *Maharashtra Adiwasi Thakur Jamat Sawarkshan Samiti V/s. State of Maharashtra and Ors.*¹ and, more particularly, in clause (b) and (c) of paragraph 38 of the said order, which reads thus:

“(b) For the reason 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 caste.”

5. The learned counsel for the Petitioners also relies on the two validities granted in the family of the Petitioners, one in favour of Sachin Bhamare, and other in favour Bhaiyasaheb Bhamare. He submits that Petitioner No.3 is the daughter of validity holder Bhaiyasaheb Bhamare, therefore, she cannot be treated differently than her father. The relationship of Bhaiyasaheb as well as Mansi with Dayaram Sursing Bhamara, whose caste has been recorded as 'Thakur' in the year 1928, is a credible evidence with strong probative value. Considering that there are already two validity holders in the family, the same benefit needs to be extended to the Petitioners. He also relied on the affidavit filed by Mansi Bhaiyasaheb Bhamare, demonstrating the genealogy and her

¹ 2023 SCC OnLine SC 326

relationship with the two validity holders, which has not been disputed by the Scrutiny Committee.

6. Thus, according to him, the very basis of rejection of the tribe claim of the Petitioners by Respondent No. 2- Committee has become unsustainable, in view of the decision of the Hon'ble Supreme Court in case of ***Maharashtra Adiwasi Thakur Jamat Sawarkshan Samiti (Supra)***. The Hon'ble Supreme Court has unequivocally observed that the affinity test is not a litmus test to decide a caste claim, and it cannot be an essential part in the process of the determination of correctness of a caste or tribe claim in every case. The very foundation of the impugned order is failure on the part of the Petitioners to prove their affinity test with the Thakur Schedule Tribe. Therefore, the order passed by Respondent No.2-Scrutiny Committee needs to be interfered with further directions to Respondent No. 2-Committee to issue Tribe Validity Certificate in favour of the Petitioners.

7. Per contra, Mr. N. C. Walimbe, learned AGP appearing for the State has taken us through the order passed by the Scrutiny Committee and, more particularly, the observations in paragraph 9, wherein it is recorded that, when the Petitioners were called for hearing on 24th July 2018, upon inquiry they stated that their family originally belongs to Village- Kapadane, District- Dhule and their ancestor namely, Sursing Bhamara was engaged in "Bhikshuki" for his survival, which does not support their claim of 'Thakur' Schedule Tribe. The School record of Petitioner No.1 pertaining to the year 1964 itself records his caste as 'Hindu-Maratha'. When such contra entry was found, the Scrutiny Committee thought it appropriate to refer the matter to the

Vigilance Cell for conducting the affinity test. The Petitioners have utterly failed to establish their cultural affinity peculiar to 'Thakur' Schedule Tribe. In addition to that, the Petitioners have stated that the great grandfather of Petitioner No. 3 Sursing Bhamara was engaged in "Bhikshuki" for his livelihood. If all these facts are taken together, the Petitioners could not establish that they belong to 'Thakur' Schedule Tribe. Though there are two validities in the family of the Petitioners, the validity issued in favour of Bhaiyasaheb Dayaram Bhamare was issued on the basis of validity issued to one Sunil Murlidhar Thakur making it subject to the outcome of decision in case of Sunil Murlidhar Thakur. The original file of Bhaiyasaheb Dayaram Bhamare discloses that in his interview before the Committee, he has stated that his caste is 'Bhaat' and his ancestors were engaged in maintaining the genealogy, and record of their ancestors.

8. However, the fact remains that the Committee in its order has observed that it proposes to issue Show Cause Notice to the validity holders and accordingly, Bhaiyasaheb Dayaram Bhamare has been issued a show Cause Notice on 12th April 2019, calling upon him to show cause, as to why the validity issued in his favour should not be cancelled. Thus, the Petitioners have failed to establish their claim of belonging to 'Thakur' Scheduled Tribe, and the Scrutiny Committee has rightly rejected their claims.

9. We have heard the respective Counsel and carefully perused the documents placed on record. Since all the three Petitioners are related to each other, the record in all the three cases is common. Upon perusal of the genealogy the Petitioners, we find that Sursing Bhamare is the original ancestor of the Petitioners. The Petitioners

belong to the branch of Dayaram Sursing Bhamara. The school extract of Dayaram Bhamara recorded on 4th January 1928 shows his caste as 'Thakur'. This genealogy is a part of the Vigilance Cell Inquiry dated 1st July 2017. The genealogy as well as the school extracts remain unchallenged. From the said genealogy, it is evident that Shivaji, Shantaram, Padmakar, Mangaldas and Bhaiyasaheb are the children of Dayaram. Amongst them, Padmakar, Mangaldas and daughter of Bhaiyasaheb, namely, Mansi are the Petitioners before this Court. Sachin, who is son of Shivaji as well as Bhaiyasaheb are the two validity holders in the family, whose validities are still intact and not yet cancelled.

10. The first ground on which the Scrutiny Committee has refused to grant validity to the Petitioners is that, the school record of the Petitioner No.1 recorded in the year 1964 reflects his caste as Hindu Maratha. Therefore, in view of the contra entry, the Committee thought it fit that instead of solely relying only on the entry of 'Thakur' recorded in case of the Petitioners, it would be appropriate to conduct cultural affinity test of the Petitioners. Upon conducting the affinity test, it was found that the Petitioners are originally resident of a place, which is outside the notified area declared for the 'Thakur' Scheduled Tribe. As regards the occupation, it is stated that they were engaged in "Bhikshuki", which is not an occupation peculiar to 'Thakur' Scheduled Tribe. In view of the failure of the Petitioners in the affinity test, the Committee has invalidated their tribe claim.

11. So far as the affinity test is concerned, the Hon'ble Supreme Court in recent decision of *Maharashtra Adiwasi Thakur Jamat Sawarkshan Samiti (Supra)* has already taken a view that the

affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of deciding correctness of caste claim in each of the case. The caste claim of the applicants cannot be rejected solely on the basis of failure in the affinity test.

12. In the present case, though the Petitioners might not have answered the questions in the affinity test satisfactorily, yet, the fact remains that there are two validity holders in the family, namely, Bhaiyasaheb Dayaram Bhamare and Sachin Shivaji Bhamare issued on the same day, i.e., on 13th May 2005. Since the relationship of the Petitioners with the validity holders is not in dispute, the benefit given to the said validity holders, who are the blood relatives of the Petitioners, is also required to be extended to them. The law in this regard has been settled and declared vide judicial pronouncement of this Court in case of ***Apoorva D/o .Vinay Nichale V/s. Divisional Caste Certificate Scrutiny Committee No.1 & Ors.***². The relevant paragraph of the said judgment is reproduced hereinbelow, which reads thus :

“9. In the present case, we find that the committee has disbelieved the petitioner's case that she belongs to Kanjar Bhat after calling the school leaving certificate of petitioner's father and noticing that the original caste written on it was ‘Thakur’ and that was subsequently changed to Kanjar Bhat. The committee observed that the caste has been changed without complying with the procedure prescribed by section 48(e) and 132(3) of Mumbai Primary Education Act. In fact, the caste has been changed on the basis of the affidavit. From the findings of the committee it appears that the committee has observed that the change of caste has been done illegally. Obviously, the committee which decided the caste claim of the petitioner's sister did not hold the same view, otherwise it

2 (2010) 6 Mhlj. 401

would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the petitioner.”

13. It is, therefore, a settled law that once a family member is granted validity, other family members are also required to extend the same benefits. Apart from the validity granted to the two members of the family, there is one old document in respect of father of Petitioner Nos.1 and 2 and grandfather of Petitioner No.3 of the year 1928, which reflects his caste as ‘Thakur’. This being the oldest document recorded prior to coming into force of the Constitution, has a great probative value, since there were no reservations provided to ‘Thakur’ Scheduled Tribe prior to the year 1950. It assumes importance as the entry is taken during the pre-independence era.

14. In the wake of the aforementioned observations and the position of law as laid down by the Hon'ble Supreme Court in the aforementioned judgments, we find that the Scrutiny Committee has wrongly given undue weightage to the affinity test and has failed to consider the law laid down in case of ***Apoorva Vinay Nichale*** (*Supra*), as a result of which, the order passed by the Scrutiny Committee has become unsustainable in the eyes of law, which requires to be quashed and set aside.

15. However, taking note of the fact that the Show Cause Notice is issued to Bhaiyasaheb Dayaram Bhamare on 12th April 2019, in our view, it would be appropriate to direct Respondent No.2-Scrutiny Committee to re-consider the case of the Petitioners and if necessary, issue conditional Validity Certificate to the Petitioner Nos.1 and 3, making it subject to outcome of the Show Cause Notice issued to Bhaiyasaheb Bhamare.

16. Accordingly, the order of invalidation of the Petitioners issued by Respondent No. 2-Scrutiny Committee dated 1st February 2019 is quashed and set aside, and the case of the Petitioners is remanded back to the Respondent No.2-Scrutiny Committee to pass appropriate orders, after taking into account the observations made by this Court within a period of three months.

17. Rule is made absolute in the above terms.

(MANJUSHA DESHPANDE, J.)

(SUMAN SHYAM, J.)

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