

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5713 OF 2015

Pandurang Sidram More (Bhat),	]	
Age 35 yrs., Occu.Aгри,	]	
R/o. Abdullat, Tal. Shirol,	]	
Dist. Kolhapur	]	... Petitioner

V/s.

1)	State of Maharashtra	]	
	Mantralaya, Mumbai.	]	
		]	
2)	Schedule Tribe Certificate,	]	
	Scrutiny Committee,	]	
	Konkan Division, III Floor,	]	
	Thane Municipal Corporation	]	
	Ward Office Building,	]	
	Opp. Kores Company,	]	
	Vedant Complex, Vartaknagar	]	
	Thane (W) 400 606	]	... Respondents

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Mr. D. V. Sutar, Advocate for the Petitioner.
Mr. P. P. Kakade, AGP for Respondent - State.

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**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

DATED : SEPTEMBER 14, 2015.

JUDGMENT (Per S.B. Shukre, J.)

Heard Mr. Sutar, advocate for the petitioner and
Mr. Kakade, AGP for the respondent - State.

2 Rule.

3 Rule, made returnable forthwith. Heard finally by
consent of parties.

4 By this Writ Petition, the petitioner has challenged
the legality and correctness of the order passed by respondent
no.2 - Committee on 29th August, 2013, thereby invalidating his
caste certificate dated 28th July, 2011, showing him as belonging
to "Thakar (ST-44)", a Scheduled Tribe.

5 Shri D. V. Sutar, learned counsel for the petitioner has
submitted that respondent no.2 - Committee has committed a
serious error of fact and law while passing the impugned order.
He submits that the respondent - Committee has wrongly formed
an opinion that the petitioner has played a fraud, that his
permanent place of residence is not in Raigad district, but in
Kolhapur district and that he does not clear the affinity test. He
submits that when the oldest documents, one of the year 1918,
which is an extract of birth and death register entry concerning
grandfather of the petitioner and the other of the year 1986,

which is a school certificate showing the date of admission of the paternal uncle of the petitioner as 2nd December, 1957, disclosed these relatives of the petitioner as belonging to "Hindu Thakar Community", and have not been shown to be false, fabricated and manipulated documents, there was no reason for the respondent no. 2 - Committee to reject these documents and apply the criterion of affinity test and that too on vague parameters. Therefore, he submits that this is a fit case for interfering with the impugned order.

6 Learned A.G.P. for the respondent no.1 - State supports the impugned order submitting that "Thakar Community", exists in upper caste Hindus as well and, therefore, respondent no.2 Committee has rightly held that existence of old documents showing petitioner's close relatives as belonging to Thakar Community" would not by itself validate the tribe claim of the petitioner and that the petitioner would be required to show something more in support of his tribe claim. He submits that as the petitioner failed to clear the affinity test, respondent no.2 rightly invalidated the caste certificate of the petitioner.

7 We have carefully gone through the paper book of the

petition including the impugned order and also the original record, with the assistance of learned counsel for the petitioner and learned AGP for the respondent - State. Upon going through the original record and the impugned order, we find it difficult to accept the contentions of the learned AGP, rather we largely find merit in the submissions canvassed before us on behalf of the petitioner.

8 By the impugned order, the respondent no.2 Committee has rejected the tribe claim of the petitioner on three grounds, namely:-

- (i) Petitioner has played fraud by changing the information given by him like the surnames of relatives, permanent place of residence, traditional profession etc.;
- (ii) the petitioner is not the original resident of Raigad district, but resident of Kolhapur district, which district is not known for presence of Thakar Tribe; and
- (iii) the test, traditions, customs, rituals and traditional wear of the petitioner and his close relatives do not match with those of the Thakar tribals.

9 According to the Committee giving of different information on different occasions is fraud. But, we must say it here that none of the documents produced before the Committee by the petitioner have been found to be fabricated or false or manipulated nor the learned AGP for the respondent - State could point out any of these documents to be of such a nature. Therefore, petitioners resorting to changing stands by giving one information to the Vigilance Officer and disclosing another kind of information before the scrutiny Committee by itself would not amount to playing of fraud. To hold it be so, it would have to be shown that it has been done deliberately or with an intention to derive undue advantage. But, such is not the case here. This would impel us to find that the Committee was in error to observe that the petitioner worked up a fraud.

10 About the finding that the petitioner is not resident of Raigad district, which district is known to be the original abode of Thakar tribe together with a few more districts and is a permanent resident of Kolhapur district, which does not have Thakar tribals, we are of the view that the finding is clearly against the facts available on record. Vigilance report on this aspect is unwavering. It unequivocally shows that the petitioner

is a native of or original resident of Raigad district and that the school record of his relatives disclose his caste as "Thakar". This conclusion of Vigilance Officer has neither been found to be wrong nor considered to be based upon absence of any evidence. Therefore, only because the petitioner while giving information before the Committee had stated that he was a permanent resident of Kolhapur district, it would not divest him of his status as original resident of Raigad district. There is a sea of difference in permanent residence and original residence. Permanent residence is place where a person intends to reside permanently, whereas original residence refers to a place a person can trace residence of his fore-fathers to. A person can migrate from his original abode to a place he intends to reside permanently. The committee, however, lost sight of this difference. Raigad district is one of the districts together with other districts such as Ahmednagar, Nashik, Kolaba, Pune, Thane, as per the own observation of respondent no.2 - Committee, having population of Thakar tribes in some of their talukas. It is nobody's case that so far as claim regarding Thakar tribe is concerned, there is area restriction. The fact of the petitioner having been established to be originally a resident of Raigad district, therefore, could not have been brushed aside. It was one of the important factors and

while deciding petitioner's tribe claim, it could not have been so easily side tracked by the respondent no. 2 – Committee by saying that the petitioner himself claims to be a permanent resident of Kolhapur. Respondent no.2 – Committee has, in our opinion, committed a serious illegality in finding that the petitioner is not the original resident of Raigad District.

11 This takes us to the third ground on which the impugned order rests. According to the respondent no.2 – Committee, since “Thakar” as a caste exists on different steps of ladder of Hindu caste system, which is a part of Hindu Social Organization, the petitioner could not be said to be belonging to “Thakar” tribe and the petitioner would have to show his customs and rituals as bearing similarity to Thakar tribe with some castes and not Thakar caste. Respondent no.2 committee opines that there is a similarity in nomenclature of many scheduled tribes with some castes and “Thakar” is one such community, which could be either a caste or a tribe. Therefore, relying upon several judgments, such as **(i) Shivaji Ramrao Thakar Vs. State of Maharashtra¹**, **(ii) Shri Shailesh Shankar Maske Vs. State of Maharashtra²**, **(iii) Chetan Yuvraj Thakur Vs. State of**

1) W.P. No.175 of 2000, decided on 30.01.2006.

2) W.P. No.4765 of 2012, decided on 22.11.2012.

Maharashtra³, (iv) Shilp Vishnu Thakur Vs. State of Maharashtra⁴, (v)Nitin Ramdas Chava Vs. State of Maharashtra⁵, (vi) Kumari Madhuri Patil & Anr. Vs. Addl. Commissioner, Tribal Development and Ors.⁶, delivered by this Court and Hon'ble Apex Court, the committee felt that the petitioner must clear the affinity test. The approach of the Committee is correct but its conclusions are not. They suffer from arbitrariness and perversity.

12 While applying affinity test, the respondent no.2 - Committee appears to have been swayed only by the fact that the petitioner is a person who like a chameleon, changes information. Respondent no.2 - Committee has observed that the petitioner took different stands while giving information to the Vigilance Officer and to the respondent no.2 - Committee in respect of surnames of the relatives, permanent place of residence and traditional occupation. On perusal of the original record, we find that the petitioner has given his explanation in this regard. He has submitted that as police of Vigilance cell suddenly paid visit to his house, he and his father developed stress because of which

3) W.P. No. 2791 of 2011, decided on 21.04.2011.

4) 2009(3) Bom. C.R. 497.

5) W.P. No. 2447 of 2007, decided on 25.04.2007.

6) 1995(2) Bom. C.R. 690.

both of them could not give proper and correct information which fact he sought to undo by giving his written explanation together with correct information as regards his family deity, common surnames, marriage, customs, birth rituals and so on. The impugned order does not show consideration of this information in its proper perspective. The impugned order also does not state any reason as to why the explanation so given by the petitioner was not accepted by it. On the contrary, it is seen from paragraph 7 of the impugned order that the information newly furnished to the Committee was by and large consistent with the surnames and place of residence of "Thakar" tribe, as could be seen from the observations of the Committee itself. But, same having not been given at the first instance by the petitioner, the Committee seems to have had its own doubts about the correctness of the information, albeit with no basis and without recording any finding about the information being given by way of an after thought. There is, therefore, no reason for us to reject the information so given by the petitioner.

13 In the circumstances, we find that in the present case, there are old documents of 1918 as well as 1957 both of which show grandfather and paternal uncle of the petitioner as

belonging to “Thakar” community, the genuineness of which is not doubted and there are other factors which satisfy the affinity test, and they are original residence of the petitioner as being in Raigad district and some of the new information given by the petitioner as being consistent with the surnames and place of residence of Thakar tribe, as found by the Committee itself. We are, therefore, persuaded to form an opinion that the impugned order is illegal and perverse warranting interference there with in exercise of our writ jurisdiction. The Writ Petition deserves to be allowed.

14 Writ Petition is allowed.

15 The impugned order is quashed and set aside. Respondent no.2 - Committee is directed to issue to the petitioner a validity certificate in respect of his claim, as belonging to Thakar, a Scheduled Tribe, within two months from the date of the order.

16 No order as to costs.

17 Rule is made absolute in the above terms.

(S. B. SHUKRE, J.)

(NARESH H. PATIL, J.)

CERTIFICATE

Certified to be true and correct copy of the
original signed judgment.