

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

70 WRIT PETITION NO.3605 OF 2018

**ANANT SANJAY SURYAWANSHI
THROUGH FATHER SANJAY GAJMAL SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**with
WRIT PETITION NO. 3086 OF 2016**

**SANJAY S/O GAJMAL SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Mr. Golegaonkar Madhur A.
AGP for Respondents/State : Mr. S.G. Karlekar
...

**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.
DATE : 15.07.2019**

PC. :-

The tribe claim of the petitioners as Thakur Scheduled Tribe is invalidated aggrieved thereby the present petitions. The facts are considered from Writ Petition No. 3605 of 2018. The petitioners in both these writ petitions are son and father respectively.

2. Mr. Golegaonkar the learned counsel submits that real uncle of the petitioner Subhash S/O Gajmal has been issued with the validity certificate of Thakur Scheduled Tribe. The school record of the petitioner and his father records the caste as Thakur. The learned counsel submits that the

school record of the cousin grandfather of the petitioner Rajaram (Rajmal) of the year 1929 records caste as Thakur. Even the school record of another cousin grandfather of the petitioner Chandrarao of the pre-independence era records caste as Thakur. The learned counsel submits that the school record of Gajmal was considered by the committee while issuing validity certificate to the real uncle of the petitioner Subhash under its judgment delivered in the year 2001.

3. The learned counsel submits that it is not a case of a suppression of facts. The oldest entry of the year 1929 of the cousin grandfather of the petitioner Rajaram records caste as Thakur, so also entry in the name of Chandrarao of the year 1936 records caste as Thakur. The entry in the name of Gajmal and Narayan appear to be of Bramhabhat, however said entries were before the committee while validating the caste certificate of real uncle Subash and those entries are also discussed by the committee in its judgment. The learned counsel submits that the school record of the father and the petitioner records caste as Thakur. All these aspects ought to have been considered. The other records of the paternal cousin uncle of the petitioner of the year 1954 also records caste as Thakur. The school entry of the real paternal aunt Kamlabai Gajmal of the year 1955 records caste as Thakur. The school record of Ambarsing cousin grandfather of the petitioner of the year 1949 records caste as Thakur. All these aspects are not considered by the

committee in its correct perspective. The learned counsel submits that in view of the area restriction being abolished the place of residence would not be of much avail.

4. Mr. Karlekar the learned A.G.P. submits that considering the contra entries in the school record of the grandfather of the petitioner, the case of the petitioner is assessed. Even Bramhabhats were known as Thakurs. These aspects have been considered. The petitioner does not belong to the place where ordinary Thakur Scheduled Tribe reside. The petitioner has also failed in the affinity test.

5. We have considered the submissions and the record.

6. It appears that one entry in the school record of the grandfather of the petitioner Gajmal records caste as Bramhabhat but on the same page in respect of the real brother of Gajmal namely Chandrarao the caste is recorded as Thakur. Moreover, entry of caste of the year 1929 in the school record of the eldest brother Rajaram (Rajmal) is recorded as Thakur. There is no dispute that the school entries of the paternal aunt, father and the petitioner records caste as Thakur. The judgment delivered by the committee while issuing validity certificate to the real paternal uncle of the petitioner is placed on record. The committee in the said matter relied upon the school record and the entry of caste mentioned in the case of Rajaram (Rajmal) of the year

1929 preferred the said entry and after considering the entries in the school record of Rajaram, Gajmal, Narayan has issued validity certificate to the real paternal uncle of the petitioner. The affinity test is not a litmus test as is held by the Apex Court in the case of **Anand V/s. Committee for Scrutiny and Verification of Tribe Claims and Ors.** reported in (2012) 1 Supreme Court Cases 113. Reference can be made to the judgment of this Court in case of **Apoorva d/o Vinay Nichale V/s. Divisional Caste Certificate Scrutiny Committee No.1 and Ors.** reported in 2010(6) Mh.L.J 401. In the said judgment it is said that if petitioner's relative is granted with the validity certificate and there is no suppression of fact validity should be issued.

7. Considering the fact that the real paternal uncle of the petitioner has been issued with the validity and the oldest record of the paternal cousin grandfather of the petitioner of the year 1929 records the caste as Thakur, so also the consistent entries in the school record of the father of the petitioner and other paternal cousins, we set aside the judgment of the committee and direct the committee to issue validity certificate to the petitioners of Thakur Scheduled Tribe.

8. In case the committee decides to reopen the validity granted to the real uncle of the petitioner Subhash then the committee may take steps in respect of the validity of the petitioner also. The committee shall issue the

validity certificate of Thakur Scheduled Tribe to the petitioners within two days. Writ petitions are disposed of. No costs.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]