

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

WRIT PETITION NO. 3782 OF 2012

Nileshkumar Pruthviraj Thakur, ...**PETITIONER**
Age-24 years, Occu-Education,
R/o. Amalner, Tq. Amalner,
Dist. Jalgaon,
Presently Residing at
Goregaon, Mumbai

VERSUS

1. Scheduled Tribe Certificate ...**RESPONDENTS**
Scrutiny Committee, Nandurbar
Region, Nandurbar,
Through its Member Secretary
2. Maharashtra Animal &
Fishery Sciences University,
High Land Drive, Seminary Hills,
Nagpur-400 006
Through its Registrar
3. Bombay Veterinary College,
Near K.M. Hospital,
Parel, Mumbai-400 012
Through its Principal

Mr.M.S.Deshmukh, Advocate h/f Mr.Sagar S. Phatale,
Advocate for the petitioner
Mr.S.V.Kshirsagar, Advocate h/f Mr.Ajay S.
Deshpande, Advocate for respondent No.2
Mr.A.V.Deshmukh, AGP for the respondent/State

**CORAM : S.V. GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 05.09.2018

ORAL JUDGMENT [PER:S.V. GANGAPURWALA, J.]

. Mr. Deshmukh, learned counsel for the petitioner submits that the committee has erroneously invalidated the caste claim of the petitioner. Father of the petitioner is issued the validity certificate of Thakur-Scheduled Tribe on 12.05.2005. The tribe claim of real uncle of the petitioner namely Bharatbhusahn was negatived by the Committee. Said Bharat Bhushan filed writ petition No.4182/1996 before this Court and this Court under judgment and order dated 20.07.2004 has allowed the writ petition filed by the real uncle of the petitioner holding that real uncle of the petitioner belongs to 'Thakur'-Scheduled Tribe and directed the committee to issue validity certificate of 'Thakur' Scheduled Tribe. Learned counsel submits that the Committee could not have sat over the judgment of this Court. The Committee has tried to discuss the legality of the judgment passed by this Court in the case of his real uncle and held that the Court has conversely interpreted the judgment of the Supreme Court in *Palghar* case. Same was not permissible. All

the documents of the petitioner, his father, uncle and grand-father record the caste as 'Thakur'. The oldest document pertains to the school record of the grand-father dated 08.03.1924 recording the caste as 'Thakur'.

2. Learned AGP submits that only because the documents record the caste as 'Thakur' the same is not necessarily Scheduled Tribe. Thakur also are found in upper class. Same has been considered. The petitioner has failed in affinity test. The Committee has rightly discussed the various judgments of the Apex Court and has passed the order.

3. We have considered the judgments delivered by the Committee and also have gone through the documents placed on record.

4. It is a matter of record that all the documents relied by the petitioner of his grand-father, father, uncle and himself record caste as 'Thakur'. The oldest document of school record pertaining to the grand-father Manikrao Thakur dated 08.03.1924 records the caste as 'Thakur'. The same

documents have been considered by issuing the validity certificate to the father of the petitioner dated 12.05.2005. Real uncle of the petitioner Bharatbhushan had suffered invalidation of the caste claim at the hands of the Committee. He had filed the writ petition No.4182/1996. This Court after considering all the aspects of the matter under judgment and order dated 20.07.2004 allowed the said writ petition and directed the committee to issue validity certificate to the real uncle of the petitioner Bharatbhushan of 'Thakur' Scheduled Tribe. This Court has considered the merits and demerits of the case and thereafter has delivered the reasoned order.

5. It is also settled proposition of law that affinity is not the litmus test to award validity. Because of urbanization traits may undergo change.

6. Considering the aforesaid judgment of this Court passed in writ petition No.4182/1996 filed by the real uncle of the petitioner the impugned judgment passed by the Committee is quashed and set aside. The Committee shall issue validity certificate to the petitioner of 'Thakur' Scheduled

Tribe within four weeks from today.

7. Accordingly, rule made absolute in above terms. No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]