

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

WRIT PETITION NO.5190 OF 2013

Ku.Ojasvi D/o. Mangalsing Mahale, ...**PETITIONER**
Age-18 years, Occu-Student,
Through her father-
Mangalsing S/o. Kewalsing Mahale,
Age-48 years, Occu-Service,
R/o. Vill. Salve, Tq. Sindhkheda,
Dist. Dhule,
Presently residing at 203, Bhoomi Apt,
Plot No.25/25-A, Sec-5, New Panvel (E)
Tq. Panvel, Dist. Raigad.

VERSUS

1. The State of Maharashtra ...**RESPONDENTS**
 Through its Secretary,
 Medical Education,
 & Drugs Department,
 Mantralaya, Mumbai-32
2. The Director of Medical Education
 and Research, St. George's Hospital Compound,
 Opp.Govt. Dental College Building,
 Near CST Terminal,
 Mumbai-400 001
3. The Committee for Scrutiny and Verification
 of Tribe Claims, Nandurbar Region,
 Nandurbar
4. Maharashtra University of Health Science,
 Wani-Dindori Road, Nashik,
 Through its Registrar

5. The Dean,
Sr.G.S.Medical College,
K.E.M.Hospital Premises,
Parel, Mumbai

Mr.S.R.Barlinge, Advocate for the petitioner
Mr.P.S.Patil, AGP for respondent Nos. 1 to 3
Mr.K.M.Suryawanshi, Advocate for respondent No.4

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

RESERVED ON : 31.08.2018

PRONOUNCED ON : 28.09.2018

J U D G M E N T [PER: S.M.GAVHANE, J.]

. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsels of the respective parties.

2. By this petition under Article 226 of the Constitution of India the petitioner has prayed to quash and set aside the order dated 29.09.2012 passed by respondent No.3-Scheduled Tribe Scrutiny Committee, Nandurbar invalidating her caste claim i.e. 'Thakur'-Scheduled Tribe and to issue direction to respondent No.3 to issue caste validity certificate as belonging to 'Thakur'-Scheduled Tribe in favour of the petitioner.

3. Mr.Barlinge, learned counsel for the

petitioner submitted that the petitioner belongs to 'Thakur'-Scheduled Tribe. She was issued the certificate to that effect by the competent authority namely District Supply Officer, Dhule on 05.05.2010. The petitioner was admitted in 11 std in Mahatma School of Academics & Sports Junior College of Arts, Science and Commerce, New Panvel. Said college referred her caste certificate alongwith relevant documents to respondent No.3-Scrutiny Committee for verification. Respondent No.3 invalidated caste claim of the petitioner by impugned order dated 29.09.2012.

4. Learned counsel for the petitioner further submitted that the caste claim of father of the petitioner has already been validated by the competent authority namely Additional Commissioner vide order dated 17.07.1991 as per Exhibit-D. On the basis of validity issued in favour of father of the petitioner, the Scrutiny Committee has already issued validity certificate in favour of cousin and paternal uncle of the petitioner. Moreover, it is submitted that in addition to the validity certificate of father and paternal uncle of the petitioner, the petitioner submitted validity

certificates of Pratibha Liladhar Thakru, Prashant Liladhar Thakur and Nitin Liladhar Thakur who are in blood relation of the petitioner i.e. daughter and sons of cousin uncle i.e. Liladhar Todsing Thakur of the petitioner. It is submitted that Kewalsing Ragho Thakur grand-father of the petitioner was born on 05.01.1926 and he belongs a community 'Thakur'- Scheduled Tribe as per certificate of Domicile (Exh.F) at Page No.46. Petitioner had also submitted documents which would indicate that the caste of her forefather was recorded as Thakur in the record pertaining to pre-constitutional period. According to the learned Advocate when all the documents submitted by the petitioner clearly indicate that the petitioner belongs to 'Thakur'- Scheduled Tribe, there was no reason for the Scrutiny Committee to hold on the basis of documentary evidence that the petitioner has failed to prove her tribe claim. Moreover, it is submitted that if the report of the Vigilance Cell and the statements recorded by the Vigilance Cell are properly appreciated, it would be clear that the petitioner has not only satisfied the Vigilance Cell enquiry in respect of her tribe claim but in the Affinity test also she has through her father given true and correct answers which would

satisfy Affinity test in respect of 'Thakur'- Scheduled Tribe. Thus, according to the learned Advocate, from the documentary evidence as well as affinity test, it would be clear that the petitioner belongs to 'Thakur'- Scheduled Tribe.

5. To support his submissions the learned Advocate for the petitioner has relied upon the decision dated 14.07.2017 of the Division Bench of this Court (**Coram: B.R.Gavai and Riyaz I. Chagla, JJ.**) writ petition No.4504/2014 in the case of **Vaishali Liladhar Mahale Vs The State of Maharashtra and others.** Further the Learned Advocate has also relied upon the decision of the Division Bench of this Court (**Coram: B.R.Gavai and M.S.Karnik, JJ.**) in the case of **Jaywant Dilip Pawar Vs State of Maharashtra and others** in writ petition No.2152/2007 dated 26.09.2017 to support his submission that the petitioner is entitled to validity certificate of her caste belonging to 'Thakur'- Scheduled Tribe. Thus, according to the learned Advocate for the petitioner the impugned order is liable to be quashed and set aside by allowing the petition as Scrutiny Committee has not properly considered the documents referred to above regarding caste of the

father, grand-father, paternal uncle, cousins and cousin sister of the petitioner.

6. Learned AGP appearing for respondent Nos. 1 to 3 and Mr. Suryawanshi, learned Advocate for respondent No.4 supported the impugned order. Learned AGP submitted that by the impugned order dated 29.09.2012 the caste claim of the petitioner as 'Thakur'-Scheduled Tribe has been invalidated by respondent No.3. Said fact was suppressed by *Vaishali Liladhar Mahale* in writ petition No.4504/2014 who seems to be daughter of cousin uncle Liladhar Mahale of the petitioner and as such as the order of invalidating the caste claim of the present petitioner as 'Thakur'-Scheduled Tribe was not placed before the Division Bench of this Court the claim of petitioner *Vaishali Liladhar Mahale* in writ petition NO.4504/2014 was considered and hence the decision in the case of *Vaishali Liladhar Mahale* (supra) cannot be made applicable to the present case to validate the caste claim of the petitioner as 'Thakur'-Scheduled Tribe. Learned AGP submitted that as the impugned order was suppressed while deciding the petition filed by *Vaishali Liladhar Mahale* action be taken against the said

petitioner. It is submitted that respondent No.3 has properly considered the material placed on record and invalidated the claim of the petitioner as 'Thakur'-Scheduled Tribe by the impugned order and there is no reason to interfere with the said order and the petition deserves to be dismissed. To support his submissions the learned AGP has relied upon the following decisions:

- I] Smt. Monika D/o. Satish Thakur Vs The State of Maharashtra and others in writ petition No.10123/2010 with writ petition No.7079/2009 dated 04.05.2018.
- II] Ku.Yogita D/o. Anil Sonawane Vs The State of Maharashtra and others in writ petition No.6103/2010 dated 15.09.2016.
- III] Ku.Chhaya D/o. Jasvantsingh Hajari Vs The Committee for Scrutiny and Verification of Tribe Claims, Amravati in writ petition No.4198/2005 with other connected writ petitions dated 01.08.2018.

7. We have carefully considered the submissions made by learned Advocate appearing for the petitioner, respondent No.4 and learned AGP for the respondent Nos.1 to 3. We have also gone through the documents placed on record, impugned order and the original record before the Scrutiny Committee in the matters of Pratibha Liladhar Thakur, Prashant Liladhar Thakur and Nitin Liladhar Thakur validating their caste claims as 'Thakur'-Scheduled Tribe.

8. It is clear from the record that as per leaving certificate caste of Kevalsing who is grand-father of the petitioner is recorded as 'Thakur'. Said caste is also shown in the extract of General Register. Moreover, in the certificate of age, domicile the caste of grand-father of the petitioner is recorded as 'Thakur'. Moreover, the date of birth of grand-father is shown as 05.01.1926 and he was admitted in the school on 02.08.1930 as per school leaving certificate. The extract of register also shows birth date as 05.01.1926 and said extract also shows his caste as Hindu 'Thakur'. Thus, it is clear from all above record of grand-father of the petitioner which is prior to 1950 that caste of grand-father of the petitioner was 'Thakur'. Similarly, it appears from the record that the caste certificate of 'Thakur'-Scheduled Tribe was issued in favour of the Mangalsing Kewalsing Mahale father of the petitioner and said was set aside by the Scheduled Tribe Certificate Scrutiny Committee, Pune on 02.06.1989. Said order of Scrutiny Committee was challenged before the Additional Commissioner Tribal Development, Nashik in Caste Appeal No.11/1990 and the said appeal was allowed on 17.07.1991 and the order of Scrutiny

Committee was set aside and it was declared that father of the petitioner belongs to 'Thakur'-Scheduled Tribe as per judgment (Exh.D) in Caste Appeal No.11/1990. There is no record to show that said order was challenged by respondents.

9. It is pertinent to note that the caste certificate as belonging to 'Thakur'-Scheduled Tribe was issued in favour of Jaysing Kevalsing Thakur, uncle of the petitioner and certificate of validity was also issued on 15.10.2003 by the Scrutiny Committee. Moreover, the certificate of validity in respect of Pratibha Liladhar Thakur cousin sister of the petitioner as 'Thakur'-Scheduled Tribe was validated by the Scrutiny Committee as per Exh.E on 09.06.2000. Similarly, the caste certificate as 'Thakur'-Scheduled Tribe issued by the Sub-Divisional Officer, Shirpur Division, Shirpur, Dist. Dhule in favour of Prashant Leeladhar Thakur cousin of the petitioner was validated by the Scrutiny Committee on 18.05.2002. On perusal of the record of verification of tribe claim of Nitin Liladhar Thakur who is cousin of the petitioner shows that he belongs to 'Thakur'-Scheduled Tribe and certificate in that respect was issued on 31.12.1992 by the

Executive Magistrate, Sindkheda, Dist. Dhule and certificate of validity was issued by Scrutiny Committee on 18.05.2002.

10. On perusal of the record of verification of tribe claims of cousins namely Prashant, Nitin and cousin sister Pratibha of the petitioner it appears that their caste certificates as 'Thakur'-Scheduled Tribe were validated by the Scrutiny Committee after making enquiry by the Officer of Vigilance Cell and considering the reports of the said Officer. Therefore, certificates of validity of caste of two cousins and one cousin sister of the petitioner are relevant and useful to the case of the petitioner to consider her caste claim as 'Thakur'-Scheduled Tribe. Thus, on the basis of said validity certificates, it can be said that the petitioner belongs to 'Thakur'-Scheduled Tribe caste.

11. In the above circumstances, finding of the Scrutiny Committee while passing the impugned order that the petitioner has failed to prove affinity test is not proper. In fact, as held in the case of **Madhuri Nitin Jadhav and ors Vs State of Maharashtra and ors reported in 2014(4)Bom.C.R. 753** affinity

test is not the sole criteria either to grant and/or refuse caste claim /benefits, although it is a very important element. The Scrutiny Committee can be satisfied upon documents placed on record and grant caste validity certificate based on the same.

12. Apart from the above referred evidence the learned Advocate appearing for the petitioner relying upon the decision in the case of *Vaishali Liladhar Mahale* (supra) submitted that Vaishali Mahale is cousin sister of the petitioner. Her caste claim as belonging to 'Thakur'-Scheduled Tribe was invalidated by the Scheduled Tribe Certificate Scrutiny Committee-respondent No.2 in the said petition on 26.03.2015. Therefore, the said Vaishali Mahale had filed writ petition challenging the said order and said writ petition was allowed on 14.07.2017 by the Division Bench of this Court (Coram: B.R.Gavai & Riyaz I. Chagla, JJ.) and the impugned order dated 26.03.2015 passed by respondent No.2 was quashed and set aside and it was declared that petitioner-Vaishali Mahale belongs to 'Thakur'-Scheduled Tribe and respondent No.2-Scheduled Tribe Scrutiny Committee was directed to issue certificate of validity within four weeks. Learned Advocate for

the petitioner submitted that said decision dated 14.07.2017 has not been challenged by the respondents. The decision in the case of Vaishali Mahale (supra) is given on the basis of the documents and material placed in the said case. In the said case the Court has considered all the documents also relied in present case and considering the fact that Vaishali Mahale is cousin sister of the petitioner, said decision is applicable to the present case. Therefore, relying upon the decision in the case of *Vaishali Mahale* (supra) and on the basis of certificates of validity of caste of uncle, cousins namely Prashant and Nitin and cousin sister Pratibha of the petitioner, issued by the Scrutiny Committee we have no reason to take a different view than the view taken by the Division Bench in the case of *Vaishali Mahale* (supra). In such circumstances argument advanced by the learned AGP that the order impugned in the present petition dated 29.09.2012 invalidating the claim of the present petitioner was suppressed by the petitioner -Vaishali Mahale and therefore the decision in the case of Vaishali Mahale (supra) cannot be made basis to validate caste certificate of the petitioner as belonging to 'Thakur'-Scheduled Tribe, is not

acceptable. The Division Bench of this Court at Principal Seat while allowing the writ petition filed by cousin sister of the petitioner Vaishali Mahale has independently considered the documents on record and has set aside the judgment of Scrutiny Committee invalidating her caste claim. In this view of the matter the decisions relied upon by the learned AGP are not applicable to the present case.

13. For the forgoing reasons we hold that the impugned order passed by respondent NO.3-The Committee for Scrutiny and Verification of Tribe Claims, Nandurbar invalidating the claim of the petitioner as 'Thakur'-Scheduled Tribe is not correct and the same is liable to be set aside by allowing the petition. Therefore, following order is passed:

ORDER

A] Writ petition is allowed.

B] The impugned order dated 29.09.2012 passed by respondent No.3 the Committee for Scrutiny and Verification of Tribe Claims, Nandurbar is quashed and set aside.

C] Respondent No.3 the Committee for Scrutiny and Verification of Tribe Claims, Nandurbar is directed to issue caste validity certificate as belonging to 'Thakur'-Scheduled Tribe in favour of the petitioner within a period of 6 weeks from today.

D] Rule is accordingly made absolute in above terms. No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]