

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

WRIT PETITION NO. 4439 OF 2012

Kishor S/o Nagnath Pawar,
Age : 22 Years, Occu. : Student,
R/o Shahartkali, Tq. Shevgaon,
Dist. Ahmednagar,
Presently residing at
"Mauli Krupa", Vijaynagar,
Nagar-Pathardi Road,
Bhingar, Dist. Ahmednagar.

.. Petitioner

Versus

1. The State of Maharashtra,
Department of Tribal Development,
Mantralaya, Mumbai - 32,
Through its Secretary.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nashik Division, Nashik
through its Member Secretary.
3. The Sub Divisional Officer,
Ahmednagar, Dist. Ahmednagar.
4. Maharashtra University of Health
Sciences, Wani Road, Mhasrul,
Nashik, through its Registrar.
5. The Dean,
B. J. Medical College,
Jay Prakash Narayan Road,
Sasoon Hospital Compound,
Pune - 411 001.

6. The Director General of Health Science,
Ministry of Health and Family Welfare
Delhi.
7. Medical Counseling Committee,
Under the Director General of Health
Services, Ministry of Health and
Family Welfare, Delhi. .. Respondents

Shri Anil S. Golegaonkar, Advocate along with Shri Madhur A. Golegaonkar, Advocate for the Petitioner.
Shri S. B. Pulkundwar, A.G.P. for Respondent Nos. 1 to 3 & 5.
Shri K. C. Sant, Advocate for the REspondent No. 4.
Shri S. B. Deshpande, A.S.G. for Respondent Nos. 6 and 7.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.
DATE : 22ND APRIL, 2019.**

ORAL JUDGMENT (*Per S. V. Gangapurwala, J.*) :

. Mr. Golegaonkar, the learned counsel for the petitioner submits that, the petitioner's tribe claim as Thakar (Scheduled Tribe) has been invalidated only on the ground of area restriction and affinity test. The learned counsel submits that, the documents right since the year 1942 record tribe as Thakar. The Committee has also observed that the petitioner is in position to prove his tribe by virtue of documents, but only on the ground of area restriction and affinity has negated it. The learned counsel further submits that, the affinity is not litmus test. The learned counsel relies on the judgment of the Apex Court in a

case of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others reported in (2012) 1 SCC 113. The learned counsel submits that, even vigilance report testify that the documents are genuine. The validity granted in favour of real sister is also not considered. Validity is granted in favour of real paternal cousin of the petitioner. Same is also not considered.

2. Mr. Pulkundwar, the learned Assistant Government Pleader for respondents/State submits that the place of residence is also required to be considered. The petitioner is from Ahmednagar district, which is not a scheduled place for the residence of Thakar tribe. The learned A. G. P. further submits that, the petitioner has miserably failed in the affinity test. Affinity test is corroborative evidence to conclude about the tribe of the petitioner. The committee has considered judgment of the Apex Court in a case of **State of Maharashtra Vs. Milind and others decided in Civil Appeal No. 2294 of 1986** thereby arrived at correct conclusion.

3. While deciding the issue, the Committee has observed that the documents produced by the applicant shows caste entries as Thakar. The applicant has also produced the copy of the validity certificate issued in the name of applicant's sister Savita Nagnath Pawar by the same committee. The Committee has

further observed that, prima facie, the applicant can prove his tribe claim by way of documentary evidence. The observations of the committee at page Nos. 77 of the paper book of writ petition reads thus :

"5.1 Issue No. 1 – Whether the applicant is able to prove his tribe claim by way of documentary evidence ?

Yes, the documents produced by the applicant shows caste entries as Thakar. Secondly the applicant has produced the copy of the validity certificate issued in the name of the applicant's sister Savita Nagnath Pawar by this Committee. Hence, prima facie the applicant can prove his tribe claim by way of documentary evidence. But in the light of the latest legal positions, the tribe claim of the applicant cannot solely be decided on the basis of documentary evidence only."

4. The petitioner has produced on record pre-independent era documents. The pre-independent era documents have more probative value. Even the vigilance has confirmed the same. In view of overwhelming documentary evidence in favour of the petitioner, the rejection of the tribe claim on the ground of affinity and area restriction would not be proper. It has been observed by the Apex Court in the case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others** referred (supra) that the affinity test is not litmus test. With the migration the person from the tribe may not know the traits with precision.

5. Considering the validity certificate issued in favour of the real sister of the petitioner and also consistent documentary evidence on record right since from 1942, which has more probative value, the judgment of the scrutiny committee is set aside. The Committee shall issue the validity certificate to the petitioner of belonging to Thakar (Scheduled Tribe) within a period of three (03) days from today.

Rule is made absolute in above terms. No costs.

6. The learned counsel for the petitioner submits that, the petitioner has been allotted the P. G. seat in opthalmology at Government Medical College, Nanded. The respondent Nos. 6 and 7 shall not cancel the allotment of the P. G. seat of the petitioner only on the ground that as yet validity is not produced. The petitioner shall produce the validity immediately on getting it from the Committee.

7. The parties to act on authenticate copy.

Sd/-
[A. M. DHAVAL, J.]

Sd/-
[S. V. GANGAPURWALA, J.]

bsb/April 19