

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

120 WRIT PETITION NO.8194 OF 2019

PRIYA ANNASAHEB NIKAM THROUGH ANNASAHEB NARAYAN NIKAM
VERSUS
DIRECTOR OF TECHNICAL EDUCATION

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Advocate for Petitioner : Mr. Phatale Sagar S.
AGP for Respondents/State : Mr. S.B. Yawalkar
Advocate for R/3: Mr. S.G. Karlekar

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

DATE : 15.07.2019

PC. :-

The caste claim of the petitioner as Thakur Scheduled Tribe is invalidated.

2. Mr. Phatale the learned advocate for the petitioner submits that the father of the petitioner namely Annasaheb Narayan Nikam is issued with the validity certificate of Thakur Scheduled Tribe in the year 2005. Two real sisters of the petitioner namely Puja and Priti daughters of Annasaheb have been issued with the validity certificates of Thakur Scheduled Tribe in the year 2011. The paternal cousin namely Kanchan d/o Gangadhar is issued with the validity certificate under the orders of this Court in Writ Petition No. 3082 of 1995 dated 10.07.1995. Other paternal cousins namely Babaitai, Kiran d/o

Murlidhar are issued with the validity certificates of Thakur Scheduled Tribe. There are other paternal relatives who have also been issued with the validity certificates.

3. According to the learned counsel the committee is relying upon the school entry of one Narayan Bajirao whose date of birth is shown to be 28.05.1949 Narayan Bajirao is the grandfather of the petitioner but his birth is of the year 1922 and date of birth is 13.04.1922. His school record records caste as Thakur. He had left the school on 01.10.1938. The date of birth of grandfather of the petitioner cannot be of the year 1949. The paternal aunt of the petitioner is born in the year 1949. The reliance placed by the committee on the school record of one Narayan allegedly born on 28.05.1949 is misplaced. According to the learned counsel, all the family members of the petitioner were issued with the validity certificate of the Thakur Scheduled Tribe. It is only in the petitioner's case the tribe claim is invalidated.

4. Mr. Yawalkar the learned A.G.P. submits that the school record of the petitioner's grandfather Narayan records caste as Maratha, the same is the case of cousin grandfather of the petitioner Sukhdeo where the caste is recorded as Maratha. In respect of another cousin grandfather Supdu the caste is recorded as Maratha. The committee has considered all these contra entries on record and thereby has properly arrived at the conclusion. The

petitioner has also not been in a position to prove the affinity test.

5. The learned A.G.P submits that while issuing validities to the father and sisters of the petitioners this contra evidence was not considered and was not brought to the notice by the petitioner's father and sisters. Even the petitioner does not belong to the area where the persons of Thakur Scheduled Tribe used to reside. All these aspects have been considered by the committee in its correct perspective.

6. We have gone through the judgment delivered by the committee, the documents and the record.

7. As far as the record of the grandfather of the petitioner Narayan Bajirao is concerned the committee has relied upon the record wherein the date of birth of the said person is recorded as 28.05.1949.

8. The petitioner has produced on record the school record of Narayan Bajirao (T.C.) wherein it is recorded that his date of birth is 13.04.1922 and he had left the school on 01.10.1938. In the said T.C. the caste is recorded as Thakur.

9. It would also appear that the real paternal aunt of the petitioner Kum Lila is shown to have been admitted in the school in the year 1961, another paternal aunt of the petitioner Shakuntala d/o Narayan is shown to

have been admitted in the school on 02.08.1957. Naturally, the date of birth of the grandfather of the petitioner has to be much earlier than 1949. All these aspects ought to have been considered by the committee.

10. Apart from this the other entries in the school record of the petitioner, his father, grandfather, paternal aunts consistently records caste as Thakur.

11. The same committee has issued validated certificate to the father of the petitioner Annasaheb so also to two real sisters Puja and Priti d/o Annasaheb. One of the paternal cousins namely Kanchan d/o Gangadhar is directed to be issued validity certificate under the orders of this Court in Writ Petition No. 3082 of 1995 dated 10.07.1995. The real sister of Kanchan Kum. Krishna d/o Gangadhar is also issued with the validity certificate of the Thakur Scheduled Tribe.

12. Considering the validities issued to the father, two real sisters of the petitioner and also to the paternal cousin whose claim was invalidated by the committee and this Court in Writ Petition no. 3082 of 1995 under order dated 10.07.1995 has directed the committee to issue validity certificate to said Kum. Kanchan d/o Gangadhar, we are inclined to allow the petition and consider the case of the petitioner.

13. It is held by the Apex Court in case of **Anand V/s. Committee for Scrutiny and Verification of Tribe Claims and Ors.** reported in (2012) 1 **Supreme Court Cases 113**, that affinity is not the litmus test in view of the documentary evidence on record more particularly when there is consistent documentary evidence on record.

14. In light of the above, the impugned judgment and order is quash and set aside. The committee shall issue the validity certificate to the petitioner of Thakur Scheduled Tribe immediately. Writ petition is disposed of. No costs.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]