

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

33 WRIT PETITION NO.2910 OF 2019

DURGESH NARAYAN THAKUR
VERSUS
DISTRICT COLLECTOR JALGAON AND OTHERS

WITH CA/9303/2019 IN WP/2910/2019

...
Advocate for Petitioner : Mr. Deshmukh Mahesh S.
AGP for Respondents-State : Mr. P. G. Borade.
Advocate for Respondent No.3 : Mr. Deshmukh Bhausheb S.

...

**CORAM : S.V. GANGAPURWALA AND
AVINASH G. GHAROTE, JJ.**

DATE : 11.12.2019

PER COURT :-

1. The caste claim of the petitioner as belonging to 'Thakur' Scheduled Tribe is invalidated.
2. Mr. Deshmukh, the learned counsel for the petitioner submits that there are three pre-constitutional documents in the shape of school record recording caste as 'Thakur' of the grand father of the petitioner and the cousin grand father. The learned counsel submits that two validity certificates are also produced of the paternal relatives. The relationship is not disputed by the Committee. The Committee opined that the said validities are issued prior to the judgment of the Hon'ble Apex Court in case of Madhuri Patil. The

same is erroneous and perverse observation. The said validities are issued after the judgment of the Hon'ble Apex Court in case of Madhuri Patil Vs. State. The learned advocate further submits that the pre-constitutional entries have not been considered by the Committee in the whole judgment. The judgment is delivered by the committee under the premise of area restriction, the same is not relevant.

3. The learned AGP submits that the petitioner has failed in the affinity test. The validity certificates of the near relatives relied by the petitioner are not issued by following due procedure. According to the learned counsel, one entry in the school record of the cousin cousin uncle of the petitioner is recorded as 'Hindu Other Backward'. No caste is recorded and there are some relatives of the petitioner with marriage, whose affinity reflects that of 'Non-Tribal Thakur'. The Committee has considered all these aspects of the matter and has rightly rejected the claim of the petitioner.

4. We have gone through the judgments delivered by the Committee in the validation proceedings. The school record of the father of the petitioner dated 26.06.1970, records caste as 'Thakur'. In case of real uncle of the petitioner also the caste is recorded as 'Thakur' in the school record of the year 1970. In the case of the school record of cousin uncle Ramdas of the year 1951, caste is

recorded as 'Thakur'. In case of real grand father of the petitioner in the school record of the year 1939, the caste is recorded as 'Thakur'. In case of cousin grand father of the petitioner namely Damu in his school record of the year 1921, caste is recorded as 'Thakur'. The relationship of the petitioner with his paternal cousins namely Pramod and Anil is not disputed by the Committee. They have been issued with the validity certificates.

5. The Apex Court in the case of *Anand Vs. Committee, (2012) 1 SCC 113*, has held that the affinity test is not the litmus test.

6. The pre-constitutional documents contain consistent entries of 'Thakur' Scheduled Tribe. The validities are also issued to the paternal cousins of the petitioner. The vigilance also did not find any interpolation in the Thakur caste entries of the pre-constitutional documents.

7. Considering all the aforesaid aspects of the matter, the impugned judgment is quashed and set aside.

8. The Committee shall issue validity certificate to the petitioner of 'Thakur' Scheduled Tribe within a period of four weeks. Writ Petition is accordingly allowed. The Writ Petition is disposed off. No costs.

9. In view of the disposal of the Writ Petition, Civil Application also stands disposed off. None appeared for the applicant in the Civil Application.

(AVINASH G. GHAROTE, J.)

(S.V. GANGAPURWALA, J.)

...

vmk/-