

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

WRIT PETITION NO. 3236 OF 2020

Ashish Madanrao Kadam

..Petitioner

Versus

Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
through its Member Secretary and ors.

..Respondents

Mr S.S. Phatale, Advocate for petitioner
Mr K.N. Lokhande, A.G.P. for respondents no. 1 and 2
Mr S.G. Karlekar, Advocate for respondent no.3

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 23rd October 2020

PER COURT:

1. The caste claim of the petitioner as Thakur - Scheduled Tribe is invalidated.
2. The learned Counsel for the petitioner submits that father of the petitioner is issued with the validity certificate of Thakur - Scheduled Tribe. According to learned Counsel, all the documents including pre-Constitutional documents in the school record of the petitioner, his father, grandfather and other paternal relatives depict caste recorded as 'Thakur'. Learned Counsel further submits that at the time of issuance of validity certificate of father, the vigilance enquiry was conducted. Affinity was held to be proved and only on the basis of statement of one Manik, respondent has negated the claim of the petitioner.
3. The learned A.G.P. submits that the statement of Manik is recorded and he has clearly admitted that the profession of his family is to perform

marriages and to praise the persons, which shows that the family of the petitioner is *Bhat* by caste. The said aspect has been considered while issuing validity certificate to the father of the petitioner. The vigilance enquiry was not conducted in the proper manner and the statement of Manik was not available. Learned A.G.P. further submits that even in the revenue record, the entry of the land being allotted to tribal as per Sections 36 and 36-A of the Maharashtra Land Revenue Code is also not recorded. The Committee has threadbare considered all the aspects. The show-cause notice is sought to be issued to the father of the petitioner.

4. The petitioner has placed on record the following documents :

अ. क्र.	दस्तऐवजाचे नाव	दस्तऐवजधारकाचे नाव	अर्जदाराशी नाते	जातीची नोंद	प्रवेश/नोंदणी दिनांक
१.	जात प्रमाणपत्र	आशिष मदनराव कदम	स्वतः	ठाकूर	१४/०१/२०१९
२.	शपथपत्र (नमुना फ)	मदन किसनराव कदम	वडील	ठाकूर	२१/०१/२०१९
३.	शपथपत्र (वैधता/ वशावळ /अशिक्षित)	मदन किसनराव कदम	वडील	ठाकूर	२१/०१/२०१९
४.	शालेय प्रवेश व निर्गम उत्तरा	आशिष मदनराव कदम	स्वतः	ठाकूर	११/०६/२००७
५.	शालेय प्रवेश व निर्गम उत्तरा	आशिष मदनराव कदम	स्वतः	ठाकूर	२९/०६/२०११
६.	शालेय प्रवेश व निर्गम उत्तरा	मदन किसनराव कदम	वडील	ठाकूर	०१/०७/१९७७
७.	शालेय प्रवेश व निर्गम उत्तरा	मदन किसनराव कदम	वडील	ठाकूर	२५/०६/१९८३
८.	शालेय प्रवेश व निर्गम उत्तरा	किसन नारायण कदम	आजोबा	ठाकूर	१३/०४/१९४०
९.	शालेय प्रवेश व निर्गम उत्तरा	आदित्य मदनराव कदम	भाऊ	ठाकूर	१५/०६/२०१२
१०.	सेवापुस्तकाचे पहिले पानाची प्रत	मदन किसनराव कदम	वडील	ठाकूर	--

११.	जात वैधता प्रमाणपत्र	जितेंद्र विनायक कदम	चुलत भाऊ	ठाकूर	२८/०८/२०००
१२.	जात वैधता प्रमाणपत्र	मदन किसनराव कदम	वडील	ठाकूर	१९/०९/२००५
१३.	जात वैधता प्रमाणपत्र	संगीता रामराव कदम	चुलत आल्या	ठाकूर	१९/०९/२०११
१४.	जात वैधता प्रमाणपत्र	प्राची वसंत कदम	चुलत बहीण	ठाकूर	०७/१०/२०१०
१५.	शाळा सोडल्याचे प्रमाणपत्र	आशिष मदनराव कदम	स्वतः	ठाकूर	२९/०६/२०११
१६.	शाळा सोडल्याचे प्रमाणपत्र	मदन किसनराव कदम	वडील	ठाकूर	--
१७.	शाळा सोडल्याचे प्रमाणपत्र	मदन किसनराव कदम	वडील	ठाकूर	२५/०६/१९८३
१८.	शाळा सोडल्याचे प्रमाणपत्र	प्राची वसंतराव कदम	चुलत बहीण	ठाकूर	१४/०६/२००४
१९.	शाळा सोडल्याचे प्रमाणपत्र	अनिमेष वसंतराव कदम	चुलत भाऊ	ठाकूर	१२/०६/२००१

The Committee directed vigilance enquiry to be conducted and found the following entries :

अ. क्र.	शाळेचे नाव	प्रवेश अ.क्र.	विद्यार्थ्याचे नाव	अर्जदार याचे शी नाते	नमूद जात	प्रवेश दिनांक	शेरा
१.	जि.प.उ. प्रा.शा. च्यांगेफळ ता. सिदखेडराजा	३२०	किसन नारायण कदम	आजोबा	ठाकूर	१३/०४/१९४०	--
२.	जि.प.उ. प्रा.शा. च्यांगेफळ ता. सिदखेडराजा	४९९	माणिकराव नारायण ठाकूर	चुलत आजोबा	ठाकूर	०२/०७/१९४८	--
३.	जि.प.उ. प्रा.शा. च्यांगेफळ ता. सिदखेडराजा	४९९	माणिकराव नारायण	चुलत आजोबा	ठाकूर	१५/०४/१९५०	--
४.	जि.प.उ. प्रा.शा. च्यांगेफळ ता. सिदखेडराजा	६७२	अनुसया नारायण	चुलत आजोबा	ठाकूर	२२/०४/१९५३	--
५.	जि.प.उ. प्रा.शा. च्यांगेफळ ता. सिदखेडराजा	७०८	विनायक दगडूबा	चुलत चुलता	ठाकूर	२८/०४/१९५४	--

६.	जि.प.उ. प्रा.शा. चांगेफळ ता. सिदखेडराजा	जीर्ण	वसंत दगडुजी	चुलत चुलता	ठाकूर	२७/०६/१९६६	--
७.	जि.प.उ. प्रा.शा. चांगेफळ ता. सिदखेडराजा	३८७	रामराव नारायण लहानू	चुलत आजाबा	ठाकर	१२/०६/१९४२	--
८.	जि.प.उ. प्रा.शा. चांगेफळ ता. सिदखेडराजा	१५४७	मदन किसनराव कदम	वडील	हिंदू ठाकूर	०१/०७/१९७७	जात रकान्यात हिंदू लिहिलेले अस्ताना वडिलाचे दाखल खाराज प्र.क्र. ३२ वरून जातीची नाद ठाकूर अशी नादविषयात आलेली आहे.

5. Perusal of the documents filed by the petitioner depicts that caste is recorded as 'Thakur' in the school record of the petitioner's grandfather, cousin grandfather, father consistently. The contra entries do not appear.

6. The Apex Court has, in case of **Anand vs Committee for Scrutiny and Verification of Tribe Claims and Ors.** reported in **(2012) 1 SCC 113** held that the affinity test is not the litmus test. Father of the petitioner is already issued with the validity certificate and while issuing validity certificate in his favour, it is held that his affinity with the tribe claimed, has been proved. There are no contra documents on record. Even the documents prior to the Presidential Order of the petitioner's grandfather, cousin grandfather record caste as 'Thakur'.

7. The show cause notice is issued to the father, as to why his validation proceeding should not be re-opened. Considering the above, we pass the following order:

ORDER

- (i) The impugned judgment and order is quashed and set aside.
- (ii) The Committee shall issue validity certificate to the petitioner of Thakur - Scheduled Tribe subject to the decision that will be taken in the validation proceeding of the father of the petitioner.

8. Writ Petition accordingly disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)

vvr