

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

WRIT PETITION NO. 3262 OF 2015

Shri Kartik s/o Ravindra Shinde
Age-23 years, Occu: Student,
R/o-58, Pooja Kunj, Thakurwadi,
Hirapur Road, Chalisgaon,
Dist- Jalgaon

...PETITIONER

VERSUS

- 1) The State of Maharashtra
Department of Tribal Development
Mantralaya, Mumbai-32
Through its Secretary
- 2) The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division, Nandurbar,
Through its Member Secretary
- 3) The Sub Divisional Officer
Pachora Division, Pachara
- 4) North Maharashtra University,
Jalgaon-425001
Through its Registrar
- 5) T. & M. E. Society's
J. T. Mahajan College of Engineering,
Jivram Nagar, Nhavi Marg, Faizpur,
Tq. Yawal, Dist. Jalgaon
Through its Principal

...RESPONDENTS

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Mr. Madhur A. Golegaonkar Advocate h/f. Mr. A. S.
Golegaonkar, Advocate for petitioner
Mr. S. B. Yawalkar, A.G.P. for respondents No.1, 2 and 3
Respondents No.4 and 5 served

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**CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.**

DATED : 10th DECEMBER, 2020

JUDGMENT (Per – R. G. AVACHAT, J.) :-

. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel appearing for the parties.

2. The competent authority granted the petitioner and his sister tribe certificates to the effect that both of them belong to Thakur - Scheduled Tribe. Eventually, both the certificates were the subject matter of scrutiny for grant of validation thereto by respondent No.2 – the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Division, Nandurbar (for short 'the Scrutiny Committee'). The Scrutiny Committee, by its common order dated 18.12.2014 invalidated the tribe certificates of the petitioner and his sister. The petitioner is therefore before this Court in this writ petition.

3. Shri M. A. Golegaonkar, learned Advocate for the petitioner would submit that the Scrutiny Committee ignored

all the documentary evidence, wherein the blood relations of the petitioner are shown to have belonged to the caste 'Thakur'. The Scrutiny Committee, relied on area restrictions in spite of those having been done away with in 1976. A certificate of validity granted in favour of the petitioner's cousin aunt has been ignored without assigning any reason. The Scrutiny Committee ought to have relied on the said certificate, to grant the petitioner validity certificate. According to the learned Advocate, the impugned order deserves to be set aside.

4. Shri S. B. Yawalkar, learned Assistant Government Pleader (AGP), would on the other hand, submit that the Scrutiny Committee has passed a well reasoned order in the light of law laid down by the Apex Court and this Court in various judgments. According to him, there is quite a distinction between a caste and the tribe. The documents relied on by the petitioner simply indicate him to have belonged to 'Thakur'. According to him, there are upper caste 'Thakurs' also. The petitioner miserably failed to establish his claim. Learned AGP supported the impugned order.

5. The petitioner produced before the Scrutiny Committee various documents, mostly in the nature of school record of himself and his blood relations. The genealogy given by the petitioner and the relationship with those in respect of whom the documents have been produced on record are undisputed. Pandit Deochand Shinde was a cousin grandfather of the petitioner. An extract of his school admission record was placed before the Scrutiny Committee. It is a document of the year 1951, wherein his caste has been recorded as – ‘Hindu Thakur’. Hindu is a religion, not a caste. Prefix ‘Hindu’, therefore, needs to be ignored to observe that the petitioner’s cousin grandfather – Pandit was ‘Thakur’ by caste. The Scrutiny Committee ought to have placed strong reliance on this document as it dates back to the year 1951, although not a pre-independence document. The entries in the school record are made in the official course of business. Those therefore carry presumptive value. Then comes the document in the nature of school leaving certificate of the father of the petitioner. It dates back to June 1970. Therein, his caste has been recorded as ‘Thakur – Magaslela’

(Backward). Anil is the uncle of the petitioner. His school leaving certificate dated 08.06.1973 records his caste as 'Thakur'. Same is the case as regards entry in the school admission register of petitioner's uncle Rajendra.

The service-book of the petitioner's father also records his caste as 'Thakur' (Scheduled Tribe). A glance at all the documents relied on by the petitioner would indicate that caste recorded therein of the petitioner and all his relations is 'Thakur', 'Thakur - Scheduled Tribe', 'Hindu Thakur'.

6. The Scrutiny Committee declined to place reliance on the aforesaid documents on the ground that all the documents, except one, do not record therein 'Thakur - Scheduled Tribe'. The one, in which it has been recorded, the committee observed it to have been of recent origin. It further observed that an entry therein has been made to grab a concession meant for members of 'Thakur - Scheduled Tribe'. According to the committee, had the petitioner and his forefathers really belonged to 'Thakur - Scheduled Tribe', so would have been the entries in the documents relied on.

7. For more than one reason, we are not at one with the observations made by the Scrutiny Committee. Unless and until the petitioner or his blood relations are granted certificate validating their caste claim to be 'Thakur - Scheduled Tribe', no such entry is likely to be made in their school or other official record.

8. The observations made by the Scrutiny Committee are based on surmises and conjunctures. There was no contra entry suggesting the petitioner and his blood relations to have belonged to any other caste. The petitioner's paternal cousin aunt has been granted the validity certificate. We shall refer to it in some detail, later on. The Scrutiny Committee ought to have relied on said validity certificate to allow the petitioner's claim.

9. It is reiterated that there are various documents from the year 1951 till date, recording therein the petitioner and his blood relations to have belonged to 'Thakur'. There was nothing to indicate the petitioner to have belonged to upper caste 'Thakur'. The Scrutiny Committee relying on a

document that dates back to 1951 ought to have recorded its finding on point No.1 in the affirmative. Since so has not been done, we have no option but to set aside the said finding.

10. The Scrutiny Committee records that the following information was elicited from the petitioner:

His original place of living is Chalisgaon, district Jalgaon. The relatives of the petitioner hail from Nashik and Nandurbar. Surnames found in their community are Suryavanshi, More, Wagh, Nikumbh, Bhamare. Their family deity is Lord Khandoba and Goddess Mariaai. Petitioner's forefathers were worshipping Satwai, Veermunja, Dongarde, Khavis, Vetar etc.

According to the Scrutiny Committee, the information received during vigilance inquiry was found to have not been resembling with that of members of 'Thakur - Scheduled Tribe'. The Research Officer attached to Vigilance Cell gave his opinion, accordingly.

11. The Apex Court in case of *Anand Vs. Committee for Scrutiny and Verification of Tribe Claim and others* reported in *(2012) 1 SCC 113*, has held :-

"While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that Tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

12. In the case in hand, there is ample documentary evidence to disclose the petitioner and his forefathers to have belonged to 'Thakur'. The petitioner's cousin aunt has been granted validity certificate on due inquiry. It necessarily means the petitioner's aunt had cleared affinity test based on the same parameters as have been applied in the present case to negative the petitioner's claim. In the aforesaid factual backdrop, the Scrutiny Committee ought not to have

given the affinity test, a status of cliffhanger. Finding on this point score therefore interfered with and set aside.

13. The Scrutiny Committee framed the point as under:

Whether the removal of area restriction by Act No.108 of 1976 enables the Thakur community to claim the status of Thakur, Scheduled Tribe?

In our view, the Scrutiny Committee ought not to have answered this point in negative. It observed that removal of area restrictions would not mean that any person who claims to be tribal outside the area where a particular committee was not found earlier, his claim to be accepted merely on the face of it. For such observations the Scrutiny Committee has relied on a judgment of the Apex Court in Special Leave to Appeal (Civil) No(s).14193/2011 filed by Chetan Yuvraj Thakur.

14. In case of *Jaywant Dilip Pawar Vs. State of Maharashtra & ors. 2018 (5) ALL MR 975 (S.C.)*, it has been observed :-

"The short point raised by learned counsel for the appellants in these appeals is that after "The

Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976) was published in the Gazette on 20.09.1976, the area restriction of Scheduled Tribes in the State of Maharashtra for the Thakur community has been deleted and all members of Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar community are treated to be Scheduled Tribes. The Scrutiny Committee has negated the claim of the appellants on the ground that the relatives of the appellants were not residents of the areas mentioned in the Presidential Order, 1956 and further they were not able to give any details of customs and traditions being observed by the said community.

2. In our considered opinion, that is wholly irrelevant. The appellants have only to establish that they belong to community mentioned at Serial No.44 of Part IX of Second Schedule of Act No.108 of 1976."

In view of the aforesaid observations of the Apex Court, the finding recorded by the Scrutiny Committee on this point is set aside.

15. The Scrutiny Committee refused to rely on validity certificate granted in favour of the petitioner's cousin sister.

According to the Committee, each case has to be decided on its own merits. The Committee relied on the following observations of the Apex Court in case of Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and ors –

[2009 (1) MH L. J. SC 1]:

"20. We do not mean to suggest that an opinion formed by the committee as regards the caste of the near relative of the applicant would be wholly irrelevant, but, at the same time, it must be pointed out that only because, by mistake or otherwise, a member of his family had been declared to be belonging to a member of the Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another committee while examining the case of other members of the family at some details. If it is found that in granting a certificate in favour of a member of a family, Vital evidences had been ignored, it would be open to the committee to arrive at a different finding.

21. We reiterate that to fulfill the constitutional norms, a person must belong to a tribe before he can stake his claim to be a member of a notified Scheduled Tribe. When an advantage is obtained by a person in violation of the constitutional scheme, a constitutional fraud is committed."

16. In our view, the Scrutiny Committee has misread the aforesaid observations. The Apex Court observed that the opinion given by the Committee as regards the caste of near relatives of the applicant would not be wholly relevant. If by

mistake or otherwise a claimant's relative had been declared to be belonging to a member of the Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another committee while examining the case of other members of the family at some details.

17. In case of *Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 & ors. [2011 (2) Bom.C.R. 824]*, (Nagpur Bench), the Division Bench of this Court observed in paragraph No.7 as under:

"7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it."

18. Moreover, in case of Prathamesh Ravindra Thakur : Through his father & natural guardian Vs. The State of Maharashtra (Writ Petition No.8298 of 2019 at principal seat at Bombay), the Division Bench of this Court observed that, so long as the certificate of validity has not been doubted or suspected and held to be vitiated by fraud or

misrepresentation of facts, after a show-cause-notice being issued to the certificate holder, a due inquiry as contemplated by law held and the certificate confiscated and cancelled, the same could not have been omitted from consideration or the same could not have been termed as having no probative value.

19. While discussing the point regarding validity certificate granted in favour of the cousin sister, the Committee has not observed it to have been obtained by suppression of facts or by misrepresentation. It has categorically been contended by the petitioner that his cousin sister has been granted validity certificate after following due process of law. Unless and until the validity granted to the petitioner's cousin sister is found to have been obtained by a fraud etc., the same would hold the field and is a vital piece of evidence to place a strong reliance thereon for granting validity to the tribe certificate of the petitioner. The Scrutiny Committee ought to have granted the petitioner validity certificate in view of the fact that his cousin sister holds the validity certificate.

20. For the reasons stated herein above, the petition succeeds, the same is allowed in terms of following order:

21. Impugned order dated 18th December, 2014 passed by respondent No.2 – Scheduled Tribe Certificate Scrutiny Committee, Nandurbar is set aside. Writ petition is allowed in terms of prayer clause “(B)”. Respondent No.2 Committee shall issue validity certificate to the petitioner as “Thakur” - scheduled tribe, in right earnest, preferably within a period of two weeks which would be subject to decision, in proceedings if are reopened in case of any validity holder relied on by petitioner.

22. Rule is made absolute accordingly.

23. Pending Civil applications No.7560 of 2020 and 7588 of 2020 are disposed of.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE