

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.7550 OF 2019

1. Pranita Prabhu More,
Age 20 years, Occ. Education
2. Pratiksha Prabhu More,
Age 23 years, Occ. Education
3. Pranav Prabhu More,
Age 19 years, Occ. Education

All R/o Janpriya Colony,
Karegaon Road, Parbhani,
District Parbhani

... PETITIONERS

VERSUS

1. Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Region, Aurangabad
District Aurangabad,
through its Member Secretary
(Copy of respondent No.1
to be served through office of
Government Pleader, Bombay High Court,
Bench at Aurangabad)
2. Dnyansadhana Institute of Pharmacy,
Dharmapuri Parbhani,
District Parbhani – 431 401
through its Principal
3. Homoeopathic Medical College
and Hospital, Akola,
Rajendra Prasad Road,
Akola, District Akola – 444 001
through its Principal
4. Homoeopathic Medical College
N-5, CIDCO, Gulmohar Colony,
Aurangabad, District Aurangabad
through its Principal

5. Maharashtra University of
Health Science, Nashik,
Vani Road, Nashik,
through its Registrar ... **RESPONDENTS**

.....
Mr. S.S. Phatale, Advocate for petitioners
Mrs. M.A. Deshpande, A.G.P. for respondent No.1
.....

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

DATE : 21st DECEMBER, 2020.

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, taken up for final hearing.

2. The petitioners are the siblings. Their claim to belong to "Thakur – Scheduled Tribe" has been negated by respondent No.1 Scheduled Tribe Certificate Scrutiny Committee (Scrutiny Committee for short) vide order dated 12/7/2018. The petitioners are, therefore, before this Court.

3. Shri Phatale, learned counsel appearing for the petitioners would submit that, pre-constitutional record submitted by the petitioners has not been considered in right earnest. Father of the petitioners, their uncle and other blood relations have been granted Scheduled Tribe validity

certificates. In spite of area restrictions having been done away with, the Scrutiny Committee indirectly relied on area restrictions. Affinity test has been held to be not a litmus test in deciding the caste/ tribe claim. The Scrutiny Committee negated the petitioners' claim on the ground that they failed to clear the affinity test. According to learned counsel, the impugned order is inconsistent with the settled legal proposition and, therefore, needs to be set aside.

4. Mrs. M.A. Deshpande, learned A.G.P. appearing for the Scrutiny Committee would, on the other hand, submit that, the tribe validity certificates relied on by the petitioners have been obtained by suppression of material facts. The proceedings granting those validity certificates have been decided to be reopened. The petitioners did not clear affinity test. The Scrutiny Committee was, therefore, justified in refusing to grant the validity certificates.

5. The petitioners, in support of their claim, have relied on their school record and that of their forefathers. The family tree/ genealogy given by the petitioners is not disputed. The petitioners relied on 25 documents in the nature of school record of themselves and their blood relations. In the entire school record relied on by the petitioners, the caste is recorded as 'Thakur'. As such, the

school record supports the petitioners' claim. There is no contra entry. The school record of the grandfather of the petitioners dates back to April 1940. In his school admission and school leaving certificate, his caste has been recorded as 'Thakur'. Same is the case about the school record of cousin grandfather, which dates back to April 1933.

In case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and ors., (2012) 1 SCC 113**, it has been held :-

“(ii) While dealing with documentary evidence, greater reliance may be placed on pre-independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant.”

In our view, the Scrutiny Committee ought to have relied on pre-constitutional school record of the petitioners' grandfather indicating him to have belonged to Thakur caste.

6. In case of Motilal s/o Namdeo Pawar V/s Scheduled Tribe Certificate Scrutiny Committee, Nashik, 2017 SCC Online Bom. 9778, it has been observed :-

“. . . The entry No.44 of the Scheduled Tribe Order as it stands reads as follows :

44. Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar.”

15. The entry is “Thakur”, which is recognized as the Scheduled Tribe amongst other scheduled tribes in the State of Maharashtra. The entry at serial No.44 is not the “Thakur, the scheduled tribe”. The Scrutiny Committee is, therefore, required to ascertain on the basis of the documentary evidence, whether the person is “Thakur” which is recognized as “Thakur”, scheduled tribe. As long as our experience goes, we have not come across any entry in the documents which are of the pre-constitutional period recording the caste entry as “Thakur scheduled tribe”. Even in the scheduled tribe order made in the year 1950, the entry plainly reads as “Thakur”.

17. the entry in the Scheduled Tribe Order is “Thakur” and a person has to establish his claim as belonging to caste “Thakur”.”

7. To negative the petitioners' claim, the Scrutiny Committee relied on the school record of relations of the petitioners, obtained during vigilance enquiry. The school record of one Garud Shrikant Keshav disclosed his caste – “Thakur – Pooja Path”. The impugned order is silent to state what relation the petitioners have with said Garud Shrikant

Keshav. The school record of others collected during vigilance enquiry reiterates the petitioners' claim to have belonged to 'Thakur'.

8. In case of Anand (supra), it has been observed that the Committee cannot gather evidence on its own to disprove the claim. The vigilance cell appears to have collected documents pertaining to person whose relationship with the petitioners has not been proved. The vigilance cell simply reported that Shri Garud Shrikant Keshav is relative of the petitioners. When there is pre-constitutional record and other record as well, indicating the petitioners and their blood relations to have belonged to Thakur Caste – Scheduled Tribe, the reliance on the school record of said Shri Garud Shrikant Keshav is of no consequence to negative the petitioners' claim.

9. The reasons given by the Scrutiny Committee are based on surmises and conjectures. According to the Scrutiny Committee, when the forefathers of the petitioners were attending schools, they were necessarily upper caste Thakurs. Persons belonging to Thakur – Scheduled Tribe resided in hilly areas and were illiterate. The Scrutiny Committee appears to have ignored the school record that indicates the forefathers of the petitioners were school drop-

outs within a short period of their admission to the school. Without there being any support of material, the Scrutiny Committee observed the petitioners and their forefathers to have obtained Scheduled Tribe certificates with a view to grab advantages attached thereto.

10. The Scrutiny Committee has also observed that, neither the petitioners nor their forefathers are from the place wherefrom members of Thakur – Scheduled Tribe originated. These observations indicate the Scrutiny Committee to have indirectly relied on area restrictions that have long been done away with.

11. In case of **Jaywant Dilip Pawar V/s 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 mentioned Part IX of Second Schedule of Act No.108 of 1976.”

12. Father of the petitioners, his real brother have been granted validity certificates. The tribe claims of the cousin of the petitioners have been validated by this Court way back in March 1994. A person derives his/ her caste from his/ her father. When the father of the petitioners has been held to have belonged to Thakur – Scheduled Tribe, the Scrutiny Committee ought to have granted validity certificate in favour of the petitioners. True, learned A.G.P. submitted that the proceedings wherein the validity certificates granted in favour of the father of the petitioner and his brother would be re-opened. In our view, so long as the father holds the validity certificate, the petitioners have to be recognized to have belonged to Thakur – Scheduled Tribe.

13. The Scrutiny Committee also found the petitioners to have failed to clear affinity test.

In case of Anand (supra), the Apex Court observed :-

(ii) 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, modernization 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.

Burden to prove lies upon applicant – In case material produced by applicant does not prove his claim, Committee cannot gather evidence on its own to prove or disprove his claim."

14. There is on record vigilance cell report submitted in a proceeding of granting validity certificate to the uncle of the petitioners. The said report supports the petitioners' claim. It has been specifically observed :-

"उमेदवाराने नमूद केलेली माहिती, नाते, संबंध आदि 'ठाकूर' अनुसूचित जमातीशी सुसंगत आहे."

In the face of such a report, it is surprising as to how the Scrutiny Committee found the petitioners to have failed in affinity test.

15. For the reasons stated hereinabove, the petition succeeds. Hence the following order :

ORDER

Impugned order dated 12th July, 2018 passed by Respondent No.1 Scrutiny Committee is quashed and set aside. Respondent No.1 Committee is directed to forthwith issue requisite validity certificates to the petitioners of being 'Thakur' Scheduled Tribe forthwith, which would be subject to decision, in proceedings if are reopened in case of any validity holder relied on by petitioners, as it is stated that the validity holders' tribe claims are being re-investigated. If the proceeding for cancellation of caste validity holders are answered against such certificate holders, it shall be open for the respondent Committee to issue show cause notice to the petitioners as to why the validity certificates granted to the petitioners should not be cancelled and it will be open for the Committee to take those proceeding to its logical end. Needless to say that the certificates issued to the petitioners

are subject to the outcome of the proceeding for cancellation of validity issued in favour of their blood relations.

Rule made absolute in above terms.

(R. G. AVACHAT)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

fmp/-