

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8258 OF 2019

Pravin s/o Vasant Gaikwad
Age 46 years, Occu. Service,
R/o Waregaon, Tq. Fulambri,
District Aurangabad

... PETITIONER

VERSUS

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32
(Copy to be served on the
Government Pleader, High Court of
Judicature of Bombay,
Bench at Aurangabad
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division, Aurangabad
Through its Member Secretary,
3. Zilla Parishad, Aurangabad,
Through its Chief Executive Officer,
Tq. & Dist. Aurangabad

... RESPONDENTS

.....
Mr. Sushant C. Yeramwar, Advocate for petitioner
Mr. S.P. Sonpawale, A..G.P. for respondents No.1 and 2
.....

WITH

WRIT PETITION NO.8262 OF 2019

Gayatri d/o Pravin Gaikwad
Age minor, Occu. Student
u/g father, viz.,
Pravin Vasant Gaikwad,
Age 46 years,
R/o Waregaon, Tq. Fulambri,
District Aurangabad

... PETITIONER

VERSUS

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32
(Copy to be served on the
Government Pleader, High Court of
Judicature of Bombay,
Bench at Aurangabad
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division, Aurangabad
Through its Member Secretary,
3. State Common Entrance Test Cell,
Maharashtra State, 8th Floor,
New Excelsior Building,
A.K. Nayak Road, Fort,
Mumbai – 400 001
Through its Commissioner &
Competent Authority

... RESPONDENTS

.....
Mr. Sushant C. Yeramwar, Advocate for petitioner
Mr. S.P. Sonpawale, A..G.P. for respondents No.1 and 2
.....

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

DATE : 15th 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. By this common judgment, both the Writ Petitions

are being decided since the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad (Scrutiny Committee), by its common order dated 28/6/2019, negated the petitioners' claim to have belonged to 'Thakur – Scheduled Tribe'. The petitioner in Writ Petition No.8262/2019 is a daughter of the petitioner in Writ Petition No.8258/2019.

3. Mr. Sushant C. Yeramwar, learned counsel for the petitioners would submit that, the Scrutiny Committee ought to have relied on pre-constitutional school record of the petitioners' forefathers since it carries a great evidentiary value. The Scrutiny Committee has placed reliance on a school record obtained by vigilance cell, of the persons who were not blood relations of the petitioners. The documents relied on by the petitioners unequivocally record therein caste of their forefathers and themselves to be 'Thakur'. In spite of area restrictions having no longer been in vogue, the Scrutiny Committee indirectly placed reliance thereon to negate the petitioners' claim. Two cousins of petitioner Pravin have been granted validity certificates. Based on those validity certificates, the Scrutiny Committee ought to have granted validity to the tribe certificates of the petitioners. Even though the affinity test has been considered to be not a litmus test, the Scrutiny Committee observed the petitioners to

have failed in the affinity test and made it one of the grounds to negate their claim. According to learned counsel, since the impugned order is inconsistent with settled legal propositions, the same deserves to be set aside with a directions to the Scrutiny Committee to grant the petitioners validity certificates.

4. Shri S.P. Sonpawale, learned Assistant Government Pleader (A.G.P.) would, on the other hand, submit that, in the school record of real aunt of petitioner Pravin, her caste has been shown as 'Maratha'. In the school record of other relations of the petitioners, their caste has been shown as 'Bhat', 'Hindu Kanjarbhat' etc. The petitioners failed in affinity test. Vigilance Cell report runs counter to the claim of the petitioners. Cousins of the petitioner Pravin appear to have obtained validity certificates by suppression of material facts. The Scrutiny Committee has, therefore, decided to issue them show-cause-notices with a view to reopen their cases. In the aforesaid backdrop, the Scrutiny Committee was justified to negate the claim of the petitioners. According to him, no interference is called for with the impugned order.

5. The petitioners, in support of their claim, produced before the Scrutiny Committee very many documents. Oldest

one of such documents is the school leaving certificate of the father of the petitioner Pravin. It dates back to June 1954. Therein, his caste has been recorded as - Thakur. Although this is not a pre-independence document, the same carries more probative value compared to the documents of the recent origin. In all the documents relied upon by the petitioners, their caste and that of their forefathers is shown as Thakur or Hindu Thakur. Hindu is not a caste. It is religion. Therefore, the word 'Hindu' appearing before the word 'Thakur' in some of the documents relied on is of no consequence.

6. The Scrutiny Committee referred the claim of the petitioners to the vigilance enquiry. The vigilance officer collected school record of relations of the petitioners. In the said record, caste of some of the relations has been noted as - 'Bhat', 'Hindu Bhat' and 'Hindu Thakur'. In case of school record of paternal aunt of the petitioner Pravin, her caste is shown as 'Hindu Maratha'. This document dates back to July 1972. According to learned counsel for the petitioner, in the school record the entry 'Hindu Maratha' has been made by the school authorities. There is substance in the submissions made by the learned counsel since in the school record of grandfather of the petitioner Pravin, his caste has been shown

as 'Thakur'. The others, whose school record has been collected by the vigilance cell, have been described as relations (नातेवाईक) of the petitioners. The same indicates them to have been distantly related. The others are stated to be cousin cousin uncles of the petitioner Pravin.

7. In our view, the Scrutiny Committee ought to have relied on the school record of the father of the petitioner Pravin that dates back to 1954, wherein his caste has been shown as 'Thakur'. Moreover, the petitioner Pravin's cousins namely Arjun and Vijay have been granted validity certificates way back in 2004 and 2011 respectively.

8. 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.”

9. 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.

10. The Scrutiny Committee relied upon the vigilance report and held the petitioners to have failed in affinity test. The Scrutiny Committee has observed that, during the interview of petitioner No.1, the information given by him relating to traits, traditional profession, cultural activities etc. were found to be inconsistent with that of the members belonging to Thakur – Scheduled Tribe. It appears from the observations made in the impugned judgment that the petitioners, on 4/10/2017, had made a written submissions to the Scrutiny Committee, wherein they have given the details about the language they speak, their God and Goddesses

(family deities), ceremonies of marriage, rituals performed in case of death in family etc., and requested to consider their claim based on the details given therein. The Scrutiny Committee rejected their request.

11. In case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and ors.**, (2012) 1 SCC 113, the Apex Court has observed that, affinity test is not a litmus test.

12. Entry in the school admission register of the petitioner Pravin's father (1954) indicates him to have belonged to Thakur and his two cousins have been granted validity certificate, the Scrutiny Committee ought not to have relied on the information collected during vigilance enquiry and to negate the claim of the petitioners.

13. In spite of the area restriction having been done away with way back in 1976, the Scrutiny Committee still indirectly relied on it so as to observe that neither the petitioners nor their forefathers hailed from six scheduled districts namely, Pune, Ahmednagar, Nasik, Thane, Palghar and Raigad, wherein members of Thakur – Scheduled Tribe originated.

14. At the cost of repetition, it is stated that, the Committee should have relied on the old school record of

petitioner Pravin's father Vasant, wherein his caste has been shown as 'Thakur'. Furthermore, the cousins of the petitioner Pravin have been granted validity certificates. In our view, therefore, the petitioners are entitled to have validity certificate so long as the validity certificates of petitioner Pravin's cousins' validity certificates hold the field. The petition, therefore, deserves to be allowed. Hence the following order :

ORDER

Impugned order dated 28th June, 2019 passed by respondent No.2 - Scrutiny Committee is set aside. Respondent No.2 Committee to issue requisite validity certificates to petitioners of being "Thakur" Scheduled Tribe in right earnest, preferably within a period of one week 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 validity holder's tribe claims are being re-investigated.

**(R. G. AVACHAT)
JUDGE**

**(SUNIL P. DESHMUKH)
JUDGE**

fmp/-