

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

WRIT PETITION NO. 7754 OF 2020

Sheetal Sanjay Chavan

Age – 20 years, Occu.: Education,

R/o. Jaybharat Nagar, Chikhalthana,

Tq. & Dist. Aurangabad.

... Petitioner.

Versus

1. Union of India

Ministry of Education,

Through its Secretary

2. The State of Maharashtra

Department of Tribal Development,

Mantralaya, Mumbai – 32

Through its Secretary

3. The Scheduled Tribe Certificate Scrutiny

Committee, Aurangabad,

Through its Member Secretary.

4. Director of Medical Education & Research,

CET Cell, Opp. Government Dental

College & Hospital Building, St. George's

Hospital Compound, Near CST Railway

Station, Mumbai – 400 001.

5. Commissioner,

State CET Cell Maharashtra

8th floor, New Excelsior Building

CET Cell (DMER), Opp. Govt. Dental

College, St. George's Hospital Campus

Fort, Mumbai – 400 001.

... Respondents.

....

Mr. Sagar S. Phatale, Advocate for the Petitioner.

Mr. D.G. Nagode, Standing Counsel for Respondent No.1.

Mr. K.B. Jadhavar, A.G.P. for Respondent Nos. 2 and 3.

Mr. M.D. Narwadkar, Advocate for Respondent Nos. 4 and 5.

....

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

Closed for Judgment on : 09.12.2020

Judgment Pronounced on : 16.12.2020

JUDGMENT (PER SHRIKANT D. KULKARNI, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of learned counsel of both the sides, heard finally at admission stage.
2. Feeling aggrieved by the order passed by respondent No.3 / The Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, (hereinafter referred to as the “committee”) whereby invalidating caste claim of the petitioner as belonging to “Thakur Scheduled Tribe”, the petitioner has knocked doors of this Court by invoking writ jurisdiction under Article 226 of the Constitution of India.
3. The petitioner is resident of Jaybharat Nagar, Chikhalthana, Aurangabad and now exploring possibility to take admission in Health Science courses. According to the petitioner, she belongs to “Thakur Scheduled Tribe” and she has received tribe certificate to that effect from the competent authority. While prosecuting studies in 12th Standard, her tribe claim was referred by the college to the committee

on 15.09.2020. The petitioner has submitted cogent evidence in the enquiry in support of her tribe claim. She has produced old record right from her grandfather showing her caste as “Thakur” Scheduled Tribe. She has also produced resident certificate dated 16.07.2013 issued by the Police Patil and Gramsevak, Hiwardi, Tq. and Dist. Jalna stating that her grandfather namely Bapurao Namdev (Chavan) Thakur was resident of Hiwardi, Tq. & Dist. Jalna before 1965. She has also submitted her reply to vigilance report in response to the notice issued by the committee.

4. It is contended by the petitioner that the committee vide impugned order dated 09.11.2020 has invalidated her tribe claim as ‘Thakur’ without considering the old record of her grandfather, grandmother and other relatives from the parental side. The documentary evidence placed on record by the petitioner was not properly examined by the committee and invalidated her tribe claim.

5. We have heard Mr. S.S. Phatale, the learned counsel for the petitioner, Mr. D.G. Nagode, Standing Counsel for Respondent No.1 / Union of India, Mr. K.B. Jadhavar, the learned A.G.P. for respondent Nos. 2 and 3 and Mr. M.D. Narwade, the learned Advocate for respondent Nos. 4 and 5.

6. We have perused the impugned order passed by the committee, vigilance report and other papers. We have also carefully gone through the original record / file called from the committee.

7. Mr. Phatale, the learned counsel for the petitioner submitted that the impugned order is illegal, improper and contrary to the provisions of law as well as without properly considering the decisions of the Hon'ble Supreme Court and the Bombay High Court. He submitted that the petitioner has placed on record the extract of the admission register pertaining to her grandfather, grandmother, father and real uncle showing her caste as "Thakur" Scheduled Tribe. These old record prior to the Presidential Order, which has more probative value, is not considered by the committee. The committee has committed an error in applying test of area restriction by observing that neither petitioner nor his relatives are from area restricted for "Thakur" Scheduled Tribe, especially when by Parliament Act No.108 of 1976 area restriction is removed and "Thakur" are recognised as Schedule Tribe throughout the State. He submitted that report submitted by the Research officer also suffers from various errors. The committee has given undue importance of statements of two villagers, which are of vague in nature and turn

down the tribe claim of the petitioner. The impugned order is bad in law and needs to be quashed and set aside.

8. Mr. Phatale, the learned counsel for the petitioner invited our attention to the decision of the Hon'ble Supreme Court in in case of ***Anand Vs. Committee for Scrutiny and Verification of Tribe claim and ors.*** reported in ***(2012)1 SCC 113***. By placing reliance on the decision in case of ***Anand Vs. Committee for Scrutiny and Verification of Tribe claim and ors.*** (supra), Mr. Phatale submitted that affinity test is not a litmus test. The petitioner has given genealogy coupled with documentary evidence and proved her tribe claim.

9. Mr. Phatale also placed reliance on the decision rendered by Division Bench of this Court, Bench at Nagpur in case of ***Sudhirkumar Bhaurao More Vs. State of Maharashtra and others*** (Writ Petition No.4210 of 2000 dated 15.01.2016) and another decision rendered by Division Bench at Principal Seat, Bombay in case of ***Dattatray Vilas Thakur Vs. State of Maharashtra*** (Writ Petition No.452 of 2006 dated 27.06.2017).

10. Mr. K.B. Jadhavar, the learned A.G.P. for respondent Nos. 2 and 3 / State also invited our attention to the impugned order passed by

the committee and submitted that the committee has taken into consideration the documentary evidence produced by the petitioner. The committee has also considered the vigilance report and the report submitted by the Research officer. After careful examination of documentary evidence, vigilance report and the report submitted by the Research officer, the committee found that the petitioner has failed to prove that she belongs to “Thakur” Scheduled Tribe. Mr. Jadhavar, the learned A.G.P. submitted that the findings recorded by the committee are based upon well reasons. The findings are based upon the evidence produced by the petitioner. There is no merit in the tribe claim put forth by the petitioner. Mr. Jadhavar has placed his reliance on decision rendered by the Division Bench of this Court, Bench at Nagpur in case of *Ku. Chhaya d/o Jasvantsing Hajari Vs. The Committee for Scrutiny and Verification of Tribe Claims, Amravati and others* (Writ Petition No.4198 of 2005 with connected matters dated 01.08.2018).

11. Mr. D.G. Nagode, the learned Standing Counsel for respondent No.1 / Union of India and Mr. M.D. Narwadkar, the learned counsel for respondent Nos. 4 and 5 supported the argument advanced by Mr. Jadhavar, the learned A.G.P.

12. We have considered the arguments advanced by the learned counsel for both the sides.

13. Before entering into arena of dispute, it is necessary to place on record that cousin sister of the petitioner namely Yogita Nandkishor Chavan has also applied for tribe validity certificate to the Scrutiny Committee at Aurangabad. In that proceeding, the committee has invalidated her tribe claim as “Thakur” Scheduled Tribe. Being aggrieved by the said decision of the committee, Yogita Nandkishor Chavan has filed Writ Petition No.10365 of 2019 before this Court and that Writ Petition is pending.

14. The committee has invalidated the tribe claim on two issues;

(i) The petitioner has failed to prove her tribe claim as “Thakur” Scheduled Tribe by way of documentary evidence.

(ii) She has failed to prove affinity test.

15. On making scrutiny of the impugned order and the original file / proceeding before the committee, it is found that the petitioner’s father has given genealogy. The petitioner has produced her caste certificate coupled with affidavit, wherein her caste has been shown as “Thakur”. She has placed on record her school record and college

record, wherein her caste is recorded as “Thakur”. She has also placed on record the extract of school record / extract of admission register / school leaving certificate pertaining to her grandfather, father, uncle cousin sister and cousin brother. She has produced in all 33 documents in number in support of her tribe claim. The old record pertaining to petitioner’s grandfather namely Bapurao Namdev Chavan (Thakur) is of dated 10.06.1954, wherein his caste is recorded as “Thakur”. Smt. Laxmi Ramkrushna happens to be grandmother of the petitioner and her school record dated 12.10.1958 speaks that her caste is recorded as “Thakur”. The same is the case of petitioner’s father, uncle, real brother, cousin brother and sisters. We do not find any contra entry in the record.

16. We have also perused the vigilance report. There is no documentary evidence collected by the vigilance officer to disbelieve the documentary evidence placed on record by the petitioner in support of his tribe claim. The committee has placed much reliance on the statements of two villagers namely Bhagwan Anjubhau Bhutekar, Age – 75 years and Sahebrao Murlidhar Bhutekar, Age – 66 years both resident of Hiwardi, Tq. & Dist. Jalna. According to the observations of the committee, the statements of the above said two villagers speak that the family profession of the petitioner’s ancestors

was settling marriages, singing songs in the marriage, and they were getting money and clothes for that work. They fall in the category of “Non-tribal Bhat Thakur”. We do not agree with the observation made by the committee referred above. When there is reliable documentary evidence right from the petitioner’s grandfather of 1954, no more reliance can be placed on oral statements of the above said two villagers. It is evident from the record that right from the petitioner’s grandfather, grandmother since the year 1954 and 1957 respectively, in their family, the caste is recorded as “Thakur”. No contra entries or contra evidence is brought on record by the vigilance officer to disbelieve the above said documentary evidence. We do not see any justifiable reason to discard the documentary evidence of the year 1954, which speaks that petitioner’s grandfather’s caste is shown as “Thakur”. The said record is more than 30 years old and it has probative value and it needs to be believed unless contrary entries are shown by the vigilance officer. The committee has completely overlooked this legal aspect and invalidated the caste claim of the petitioner.

17. Now coming to the another finding recorded by the committee regarding failure to prove the affinity test. The genuineness of a caste claim needs to be considered not only by way of detail examination of

the documents but also on the affinity test, which would include the anthropological and ethnological traits etc. of the petitioner. The affinity test is not a litmus test. In this context, it may be useful to place reliance in case of ***Anand Vs. Committee for Scrutiny and Verification of Tribe claim and ors.*** (supra), wherein it is observed by the Hon'ble Supreme Court, which read thus:-

“The genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc. of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, the following broad parameters could be kept in view while dealing with a caste claim:

(i) 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.

(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, 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. 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.”

18. The learned A.G.P. has placed heavy reliance on the Judgment in case of *Ku. Chhaya d/o Jasvantsing Hajari Vs. The Committee for Scrutiny and Verification of Tribe Claims, Amravati and others* (supra). It was group of the matters decided by common judgment. The Division Bench of this Court, Bench at Nagpur observed that findings recorded by the Scrutiny Committee that “Thakur” can not be determinative and caste with similar names exists in Kshtriya, Rajpur, Vaishya, Pardeshi and Sindhi communities. “Thakur” in different communities is Balutedar caste, such as Grambhat and Bramhabhat. In the light of above observation, the Division Bench has upheld the findings recorded by the Scrutiny Committee. The facts of the case on hand are distinguishable from the facts of the cited case. In the case on hand, there are consistent entries, showing the caste of the petitioner’s grandfather right from 1954 as “Thakur”. No contra entries are found during vigilance enquiry. The record produced by the petitioner is more than 30 years old, it has probative value. Therefore, the above said decision rendered by the Division Bench of the this Court, Bench at Nagpur in case of *Ku. Chhaya d/o Jasvantsing Hajari Vs. The Committee for Scrutiny and Verification of Tribe Claims, Amravati and others* (supra) does not render any help. The decision rendered in case of *Anand Vs. Committee for*

Scrutiny and Verification of Tribe claim and ors. (supra) governs field.

19. On careful scrutiny of the genealogy coupled with the documentary evidence produced by the petitioner right from the year 1954, makes out a clear picture that the caste of the family of the petitioner is recorded as “Thakur” since the year 1954. In the above background, no more weightage can be given to the affinity test.

20. It is true that the tribe claim of the petitioner’s cousin sister, namely Yogita Nandkishor Chavan has been invalidated by the committee and that decision is challenged before this Court by filing Writ Petition No.10365 of 2019, and now the matter is subjudice. It is not a hurdle in the way of petitioner to get the validity certificate of “Thakur” Schedule Tribe.

21. Having regard to the above reasons and discussion, it is clear that the findings recorded by the committee are erroneous. The committee has not properly considered the documents, which are more than 30 years old and arrived at incorrect conclusion. There are no contra entries to throw away the tribe claim of the petitioner. The vigilance report also nowhere speaks about contra evidence. The impugned order rendered by the committee invalidating tribe claim of

the petitioner needs to be quashed and set aside. The petitioner is entitled to get the tribe validity certificate. With these reasons, we conclude and proceed to pass the following order.

ORDER

- (i) The order / decision rendered by respondent No.3 / Scheduled Tribe Certificate Scrutiny Committee, Aurangabad dated 09.11.2020 is hereby quashed and set aside.
- (ii) Respondent No.3 / Scheduled Tribe Certificate Scrutiny Committee, Aurangabad shall issue validity certificate to the petitioner of being a member of "Thakur Scheduled Tribe" forthwith
- (iii) Rule is made absolute accordingly.
- (iv) The writ petition is disposed of. No order as to costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

S.P. Rane