

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

WRIT PETITION NO. 7764 OF 2020

Shreeharsh S/o Sunil Thakur
Age – 19 years, Occu.: Student,
R/o. Plot No.6. Ganesh Colony
Behind Sawli Building, Karjai Naka,
Chalishaon Takli, Tq. Chalishaon
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.

... Respondents.

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Mr. Sushant C. Yeramwar, Advocate for the Petitioner.
Mr. P.K. Lakhotia, A.G.P. for Respondent Nos. 1 and 2.

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

Closed for Judgment on : 08.12.2020

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.2 / The Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Division, Nandurbar (hereinafter referred to as the “committee”) thereby invalidating caste claim of the petitioner as belonging to “Thakur Scheduled Tribe”, the petitioner has approached this Court by invoking writ jurisdiction under Article 226 of the Constitution of India.

3. The petitioner is a permanent resident of Chalisgaon, District Jalgaon. He is taking education in the college. While studying in the college, tribe certificate of the petitioner as “Thakur Scheduled Tribe” was referred to the committee / respondent No.2 for verification through college authorities along with documentary evidence since the year 1912. The enquiry was conducted by the committee. The vigilance report was submitted to the committee. The vigilance cell report dated 20.09.2020 came to be served upon the petitioner with a show cause notice dated 20.10.2020 to submit the reply. Accordingly, the petitioner has submitted the reply on 26.10.2020. According to the petitioner, while conducting vigilance enquiry, the vigilance officer has collected documentary evidence since the pre-independence era in respect of close blood relatives of the petitioner, which shows his caste as “Thakur”. No contra evidence was found. It is contended by the petitioner that the committee has invalidated his tribe claim vide

impugned order dated 28.10.2020 without considering documentary evidence in his favour. The petitioner is exploring possibility to take admission in the professional course from Scheduled Tribe category. The caste validity certificate is very much necessary at the time of admission. He has appeared for NEET (UG) – 2020 examination as well as MHT-CET-2020.

4. Heard Mr. Sushant Yeramwar, learned counsel for the petitioner and Mr. P.K. Lakhotiya for respondent Nos. 1 and 2 / State. Perused the impugned order passed by the committee, vigilance report and other papers.

5. Mr. Yeramwar, the learned counsel for the petitioner vehemently submitted that the school record of the petitioner since his admission in the school, caste is recorded as “Thakur”. The copies of the school leaving certificates are very much clear, reflecting the caste of the petitioner as “Thakur”. The school leaving certificate of the petitioner’s father also shows caste status as “Thakur” as per the respective school records. In the school record of the petitioner’s real grand father, namely; Jagannath Namdeo Thakur, the caste is recorded as “Thakur” when his was admitted in the school on 22.08.1946. The copy of the school leaving certificate of the petitioner’s real grandfather, which is

pre-independence document is not considered by the committee, which has presumptive value.

6. The extract of the birth register relating to petitioner's cousin grandfather namely; Pundlik Namdeo S/o Jayram wherein the date of birth is shown as 08.12.1957 and caste as "Thakur". The school record of the petitioner's cousin grandfather also speaks his caste as "Thakur" when he was admitted in 1st Standard on 21.07.1955. Mr. Yermawar submitted that cogent documentary evidence was placed before the committee in support of the tribe claim of the petitioner. The committee has not considered the same and overlooked pre-independence document. The vigilance enquiry report nowhere speaks about the contra evidence. The committee has simply relied upon the report of Research officer. He submitted that the committee has referred various citations while rendering impugned order, which are not applicable to the case of the petitioner. So far as point of the affinity test is concerned, in the present case, though the information furnished by the petitioner's father regarding affinity test, the committee has wrongly held that the said information furnished by him does not associate with the "Thakur" Schedule Tribe and not in consonance with the report submitted by the research officer.

7. He submitted that the affinity test is not a litmus test. The caste claim needs to be considered by detail examination of documents. The committee has not considered the important documents, which are of the pre-independence era and recorded findings against the petitioner invalidating the tribe claim of the petitioner. The impugned judgment suffers from serious legal errors. The findings recorded by the committee are not only erroneous, but also contrary to the law laid down by the Hon'ble Apex Court and the Bombay High Court. Mr. Yeramwar, the learned counsel for the petitioner urged to quash and set aside the impugned order of the committee dated 28.10.2020, and prayed to issue a validity certificate of the caste of the petitioner belonging to "Thakur" Scheduled Tribe.

8. Per contra, Mr Lakhotiya, the learned A.G.P. for State supported to the impugned order passed by the committee. He submitted that the committee has taken into consideration all the relevant documents and papers. The committee has also considered the vigilance report and the report submitted by the Research officer. After evaluating documentary evidence, vigilance report and the report submitted by the Research officer, the committee found that the petitioner has failed to prove that he belongs to "Thakur" Schedule Tribe.

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

10. On studying the impugned order passed by the committee, it is found that the committee has invalidated the claim of the petitioner on the following three issues :

- (i) The petitioner has failed to prove his tribe claim by way of documentary evidence.
- (ii) The petitioner has failed to prove his affinity test.
- (iii) The benefit of the certificate of the validity issued in favour of the mother of the petitioner cannot be given to the petitioner.

11. On making scrutiny of the impugned order, it is found that the petitioner's father has given genealogy on affidavit and copies of school record right from his grandfather, cousin grandfather and father. It is not enough, the petitioner has produced the copy of school leaving certificate of the petitioner's real grandfather namely; Jagannath Namdeo Thakur. It appears that, the petitioner's real grandfather Jagannath Thakur was admitted in the school on 22.08.1946. It is not enough, the petitioner has produced the school record of the petitioner's cousin great-grandfather namely; Lala Jayram Thakur, which shows that he was admitted in the school on 27.11.1912. In that

school record, the caste of the petitioner's cousin great-grandfather is recorded as "Thakur". The school record of the petitioner's another cousin great-grandfather namely; Tana Gulab Thakur is placed on record, which speaks that he was admitted in the school on 27.11.1912 and his caste is recorded as Thakur. The school record of the petitioner's father also speaks that his caste is recorded as "Thakur". It is important to note that vigilance is conducted and during the enquiry, no contra evidence was found. 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. There is no justifiable reason to discard the documents of the pre-independence era in absence of any contra evidence. The documentary evidence of the pre-independence era has probative value and it needs to be believed unless contrary entries are shown. The committee has completely overlooked this legal aspect and invalidated the caste claim of the petitioner.

12. 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. We would like to place reliance in case of *Anand Vs. Committee for Scrutiny and Verification of Tribe claim and ors.* reported in *(2012)1 SCC 113*, 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.”

13. On careful scrutiny of the genealogy coupled with the documentary evidence produced by the petitioner right from the pre-independence era make out a clear picture that the caste of the

family of the petitioner is recorded as “Thakur” since the year 1912. In the above background, no more weightage can be given to the affinity test.

14. It is true that benefit of certificate issued in favour of the mother of the petitioner cannot be given to the petitioner, however, as discussed hereinbefore, the petitioner has placed on record voluminous documents in support of his tribe claim right from the pre-independence era. No contra entries are found during vigilance enquiry. No documentary evidence is collected to disbelieve the school record produced by the petitioner. The committee seems to have given unnecessary weightage to the report submitted by the Research officer. The area restriction is not hurdle in the way of the petitioner in getting the tribe validity claim.

15. 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 of the pre-independence era 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.2 / Scrutiny Committee, Nandurbar dated 28.10.2020 is hereby quashed and set aside.
- (ii) Respondent No.2 / Scrutiny Committee, Nandurbar 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