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

**WRIT PETITION NO.13445 OF 2019**

Vipul s/o Prakash Shinde  
Age 20 years, Occu. Student,  
R/o Pishor, Taluka Kannad,  
District Aurangabad, at present -  
R/o Plot No.12 & 13, Radhaswami  
colony, Jatwada Road, Aurangabad ... **PETITIONER**

**VERSUS**

1. The State of Maharashtra  
Through its Secretary,  
Tribal Development Department,  
Mantralaya, Mumbai – 32

Copy to be served on Govt. Pleader,  
High Court of Bombay,  
Bench at Aurangabad

2. The Scheduled Tribe Certificate  
Scrutiny Committee, Aurangabad  
Division, Aurangabad, through its  
Member Secretary

3. The Sub-Divisional officer,  
Office of SDO, Aurangabad,  
District Aurangabad

... **RESPONDENTS**

.....  
Shri A.S. Golegaonkar, Advocate for petitioner  
Shri S.B. Yawalkar, A.G.P. for respondents  
.....

**WITH**

**WRIT PETITION NO.13467 OF 2019**

Rohit s/o Prakash Shinde  
Age 19 years, Occu. Student,  
R/o Pishor, Taluka Kannad,  
District Aurangabad, at present -  
R/o Plot No.12 & 13, Radhaswami  
colony, Jatwada Road, Aurangabad ... PETITIONER

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District Aurangabad

... RESPONDENTS

.....  
Shri A.S. Golegaonkar, Advocate for petitioner  
Shri S.B. Yawalkar, A.G.P. for respondents  
.....

**WITH**

**WRIT PETITION NO.13384 OF 2019**

Vaibhav s/o Gorakh Shinde  
Age 18 years, Occu. Student,  
R/o Pishor, Taluka Kannad,  
District Aurangabad, at present -  
R/o Plot No.12 & 13, Radhaswami  
colony, Jatwada Road, Aurangabad ... PETITIONER

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District Aurangabad

**... RESPONDENTS**

.....  
Shri A.S. Golegaonkar, Advocate for petitioner  
Shri S.B. Yawalkar, A.G.P. for respondents  
.....

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

**DATE : 18th 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. These three writ petitions are being decided by

this common judgment since the challenge therein is to the order dated 20/9/2019, passed by respondent No.2 – Scheduled Tribe Certificate Scrutiny Committee (for short Scrutiny Committee), negating the claims of the petitioners to belong to 'Thakur – Scheduled Tribe'. Petitioners Vipul and Rohit are real brothers. Petitioner Vaibhav is their cousin.

3. Shri Golegaonkar, learned counsel for the petitioners would submit that, there was voluminous evidence in support of the claim of the petitioners. The Scrutiny Committee, however, negated their claim for unsustainable reasons. The Scrutiny Committee gave undue importance to area restrictions. It found the petitioners to have not cleared affinity test. The learned counsel, therefore, urged for allowing the petitions. In support of his submissions, the learned counsel has placed reliance on judgments of the Apex Court and this Court as well.

4. The learned A.G.P. would, on the other hand, submit that, according to the Scrutiny Committee, the documentary evidence though indicate the petitioners and their forefathers to have belonged to the caste – Thakur, the same would not clothe them with the status of Thakur – Scheduled Tribe. The petitioners have relied on validity

certificates granted in favour of their blood relations. Those validity certificates, however, have been obtained by suppression of facts. The Scrutiny Committee has, therefore, decided to issue them show-cause-notices for initiating proceedings for recall of their validity certificates. Learned A.G.P. would further submit that, in the facts and circumstances, the Scrutiny Committee was justified in negating the claim of the petitioners. Learned A.G.P. took us through the reasons given by the Scrutiny Committee in support of the impugned order. According to learned A.G.P., no interference is called for therewith.

5. The petitioners have produced before the Scrutiny Committee as many as 51 documents pertaining to themselves and their blood relations, wherein their caste has been recorded as Thakur. There is no contra entry. Oldest of those documents is a school leaving certificate of Sakharam, grandfather of the petitioners. It dates back to July 1934. His caste has been recorded therein as Thakur. Moreover, in Khasra Patrak of the agricultural land of the grandfather of the petitioner, that dates back to 1954-55, his surname is 'Thakur'. In old days and even in the present one, in case of a few of persons, their caste is implicit in their surname. An entry in the Service Book of Prakash, father of petitioners

Vipul and Rohit records his caste as Thakur.

6. Pre-independence document has more probative value. So has been held by the Apex Court in case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and ors. [ (2012) 1 SCC 113 ]**. The Scrutiny Committee, instead of relying on the school leaving certificate of the grandfather of the petitioners, that dates back to the year 1934, lightly brushed it aside on flimsy grounds. According to the Scrutiny Committee, mere entry 'Thakur' does not indicate him to have belonged to Thakur – Scheduled Tribe. In view of the Scrutiny Committee, there are upper class Thakurs as well.

7. Thakurs came to be recognised as Scheduled Tribe first time in the year 1950 by virtue of Presidential Proclamation. Therefore, there could not have been a record indicating a person to have belonged to Thakur – Scheduled Tribe before 1950.

The Division Bench of this Court, in case of **Motilal s/o Namdeo Pawar V/s Scheduled Tribe Certificate Scrutiny Committee, Nashik, 2017 SCC Online Bom. 9778**, observed thus:-

*“. . . 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”. . . . . the scheduled tribe order, for the first time introduced in the year 1950 and the “Thakur” came to be recognized as a scheduled tribe only for the first time in 1950. . . . Since the scheduled tribe order has come into effect in the year 1950, the documents in existence prior to the inclusion of the caste “Thakur” in the scheduled tribe order, therefore, have attained great significance to establish the genuineness.*

The Scrutiny Committee, therefore, ought to have accepted the entry in the school leaving certificate of Sakharam.

8. During vigilance enquiry conducted in a validation proceedings of the petitioners’ relation namely Ajay Shinde, it was found that in the school record of their blood relations namely Pandurang Totaram Patil – Shinde and maternal aunt

Malan Shinde their caste is recorded as Maratha and Bhat respectively. The petitioners have stoutly denied their relationship with Pandurang and Malan, on affidavit. There is no evidence to conclude that Pandurang and Malan are blood relations of the petitioners. In our view, the Scrutiny Committee ought to have relied on pre-independence document and all other documents relied on by the petitioners, wherein they are shown to have belonged to caste 'Thakur'.

9. Moreover, Prakash, father of petitioners Vipul and Rohit has been granted validity certificate. There are five more validity certificates granted to very close/ blood relations of the petitioners. There is prima facie nothing to indicate those validity holders to have obtained validity certificates by misrepresentation, suppression of facts or practicing fraud. According to the Scrutiny Committee, on examination of the proceedings wherein validity certificates have been granted in favour of five relations of the petitioners namely Prakash Shinde, Lata Shinde, Rekha Shinde, Akanksha Shinde and Dagadu Shinde, an affidavit was filed, stating therein that no claim of their relations from parental side has been negated by the Scrutiny committee. The Committee found this affidavit to be untrue since according to the Committee, the

validity certificate of one Prakash Shinde, a cousin of the aforesaid validity holders was negated way back in November 1987. The Scrutiny Committee observed it to be nothing but a suppression of fact. In our view, the said fact does not go to the root of the case so as to negative the claim of the petitioners. So long as those validity certificates are intact, the petitioners are entitled to grant of validity certificates.

10. 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.”*

11. 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.

12. In spite of area restrictions having been removed way back in 1976, the Scrutiny Committee has indirectly placed reliance thereon and observed that, neither the petitioners nor their forefathers hailed from any of the five scheduled districts wherefrom Thakur – Scheduled Tribe originated.

13. 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.”*

In view of the observations in Jaywant's case (supra), the Scrutiny Committee should not have indirectly relied on area restrictions to negate the petitioners' claim.

14. The Scrutiny Committee also found the petitioners to have failed to clear affinity test. The vigilance report is not favourable to the petitioners. It has been held that, surnames of the relations of the petitioners are not those generally found in case of members of "Thakur – Scheduled Tribe". The language of the petitioners is impure Marathi. In all other information elicited during vigilance enquiry, home enquiry, it has been found that the cultural activities and traits of the petitioners are not in conformity with members of Thakur – Scheduled Tribe.

15. The Apex Court in case of **Anand Vs. Committee**

for Scrutiny and Verification of Tribe Claims and ors., (2012) 1

SCC 113, observed as under :

*(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."*

16. In our view, when there was voluminous evidence to indicate the petitioners and their blood relations to have belonged to Thakur and the fact that their relations including father of petitioners Vipul and Rohit hold validity certificates, the Scrutiny Committee ought not to have negated their claim on the ground of failure in the affinity test, area restrictions etc. It is reiterated that, so long as the validity

certificates of the blood relations of the petitioners hold the field, the petitioners are entitled for grant of validity certificates. Interference with the impugned order is, therefore, called for. Hence, we pass the following order :-

**ORDER**

17. Impugned order dated 20<sup>th</sup> September, 2019 passed by respondent No.2 – Scheduled Tribe Certificate Scrutiny Committee, Aurangabad is set aside. Respondent No.2 Committee to issue requisite validity certificate to 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 validity holder’s tribe claims are being re-investigated. In case of cancellation of the validity certificate of the validity holders, it would be open for the committee to issue show-cause-notice to the petitioners as to why their certificates should not be cancelled and take such proceedings to their logical end.

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

**( SUNIL P. DESHMUKH )  
JUDGE**