

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

**WRIT PETITION NO.14062 OF 2019**

Onkar s/o Dhondiram Suryawanshi,  
Age 22 years, Occu. Student,  
R/o Vaibhav Nagar, Malegaon Road,  
Behind Jain Mandir, Nanded,  
Taluka and District Nanded,  
At present – Hali, Taluka Udgir,  
District Latur.

... 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 S.D.O., Udgir,  
District Latur.

... RESPONDENTS

.....  
Mr. M.A. Golegaonkar, Advocate for petitioner  
Mr. P.N. Kutti, A.G.P. for respondents No.1 to 3  
.....

**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 claim of the petitioner to have belonged to Thakar - Scheduled Tribe has been negated by the respondent No.2 - Scheduled Tribe Certificate Scrutiny Committee (Scrutiny Committee) vide its order dated 31/8/2017. The petitioner is, therefore, before this Court.

3. Shri M.A. Golegaonkar, learned counsel for the petitioner would submit that, by the impugned order, the tribe claim of the petitioner and his cousin Vaibhav Suryawanshi came to be negated. It was a common order. Vaibhav had also taken exception to the impugned order. The Division Bench of this Court (at Principal Seat) by its order dated 5/10/2017 passed in Writ Petition No.10318 of 2017 (Vaibhav s/o Dattatray Thakur Vs. The State of Maharashtra and others), set aside the impugned order with a direction to the Scrutiny Committee to grant Vaibhav Scheduled Tribe validity certificate. The claim of the petitioner and Vaibhav had been negated on the basis of common evidence. In view of this Court's judgment in case of Vaibhav Suryawanshi (supra), the petitioner is entitled for grant of tribe validity certificate on the ground of parity.

4. Turning to the merits of the case, learned counsel for the petitioner would submit that, the Scrutiny Committee laid undue emphasis on area restrictions. The vigilance cell, during the enquiry, collected school record of one Chandrakant Dattatraya Suryawanshi, wherein his caste is shown as Hindu Maratha. The petitioner filed affidavit denying to have any relationship with Chandrakant Dattatraya Suryawanshi. According to learned counsel for the petitioner, one Chandrakant Pandurang Suryawanshi is a relation of the petitioner. His school record ought to have been obtained by the vigilance cell. The Scrutiny Committee did not place reliance on the school record of the petitioner, his father and other relations, wherein their caste has been shown as Hindu Thakar, Thakar etc. Hindu is not a caste, it is a religion.

5. Learned counsel for the petitioner would further submit that, the Apex Court, in case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and ors., (2012) 1 SCC 113**, has held that, affinity test is not a litmus test. The Scrutiny Committee observed the petitioner to have failed to clear affinity test. It has, therefore, negated the petitioner's claim. In fact, most of the answers given to the questions put during the enquiry were consistent with traits, culture, other characteristics of Thakar – Scheduled Tribe. The learned

counsel ultimately urged for allowing the petition.

6. Shri P.N. Kutti, learned A.G.P. representing respondents No.1 to 3 would, on the other hand, submit that the Scrutiny Committee has given sound reasons to negative the petitioner's claim. The impugned order runs into 43 pages. The petitioner failed in affinity test. Vigilance Cell report runs counter to the petitioner's claim. Although area restrictions are no longer in vogue, the Scrutiny Committee is justified in observing the petitioner and his forefathers to have not hailed from the places wherefrom members of Thakar – Scheduled Tribe come. During vigilance enquiry, it has been found that neither petitioner nor his forefathers have migrated from any of such places. Their permanent residence is of village Hali, Taluka Udgir, District Latur. The learned A.G.P. reiterated the reasons given by the Scrutiny Committee and ultimately urged for dismissal of the petition.

7. Before the Scrutiny Committee, the petitioner placed on record 53 documents in the nature of school record, revenue record, voters list etc. The said record pertains to the period from 1954-55 to the year of filing of the claim before the Scrutiny Committee i.e. in year 2017. In those documents, the petitioner and his blood relations have been

shown to have belonged to caste – Thakar, Hindu Thakar, Hindu Hatkar Thakar. The vigilance cell obtained school admission record of some of relations of the petitioner. In the said record, the caste of those relations has been recorded as Thakar, Hindu Thakar, Hindu Maratha. The vigilance cell relied on the school record of Chandrakant Dattatraya Suryawanshi, wherein his caste is shown as Hindu Maratha. The petitioner before the Scrutiny Committee itself filed an affidavit, denying to have any relation with Chandrakant Dattatraya Suryawanshi. According to him, it is Chandrakant Pandurang Suryawanshi is related to the petitioner. As such, it appears that, the Scrutiny Committee has relied on a record of Chandrakant Dattatraya Suryawanshi who is not at all related to the petitioner.

8. The Scrutiny Committee also refused to rely on service book of the petitioner's uncle Dattatraya, wherein his caste has been shown as Thakar (Scheduled Tribe). For discarding the entries in the school record relied on by the petitioner, the Scrutiny Committee observed that, those entries came into being on the basis of information given by parents and the same is, therefore, not an independent record. It is not known what kind of evidence the Scrutiny Committee expected from the petitioner to establish his claim.

9. As stated above, the claim of the petitioner and his cousin Vaibhav had been negated by the Scrutiny Committee by the common order. In Vaibhav's case (supra), the Division Bench of this Court (at Bombay) has set aside the order. The Scrutiny Committee did not dispute the relationship between the petitioner and Vaibhav. The impugned order has been passed on the basis of common evidence. Since the impugned order has been set aside in a Writ Petition filed by Vaibhav, on the principle of parity, the same needs to be set aside in the case of the petitioner as well.

10. Before the Scrutiny Committee, the petitioner has relied on tribe validity certificate granted in favour of his blood relation. Moreover, the judgment in Vaibhav's case (supra) records that, Vaibhav's father and two real sisters have been granted tribe validity certificates. The petitioner herein being a nephew of Dattatraya, father of Vaibhav, is entitled to have benefit of tribe validity certificate granted in his (Dattatray's) favour.

11. 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.”*

12. 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.

13. So long as the tribe validity certificates granted in

favour of blood relations of the petitioner stand, the petitioner is entitled to grant of tribe validity certificate. Moreover, in the Writ Petition preferred by Vaibhav, the impugned order has already been set aside. It was a common order passed against the petitioner and his cousin Vaibhav. It was based on common evidence. On the ground of parity as well, the petition deserves to be allowed.

14. In the result, the petition succeeds in terms of the following order :-

Impugned order dated 31<sup>st</sup> August, 2017 passed by Respondent No.2 Scrutiny Committee is quashed and set aside. Respondent No.2 Committee is directed to forthwith issue requisite validity certificate to the petitioner of being 'Thakur' Scheduled Tribe, which would be subject to decision, in proceedings if are reopened in case of any validity holder relied on by petitioner, as it is stated that validity holder's tribe claim is being re-investigated. If the proceeding for cancellation of caste validity holder is answered against such certificate holder, it shall be open for the respondent committee to issue show cause notice to the petitioner as to why the validity certificate granted to the petitioner 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 certificate issued to the petitioner is subject to the outcome of the proceeding for cancellation of validity issued in favour of his blood relations.

Rule made absolute in above terms.

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

**( SUNIL P. DESHMUKH )**  
**JUDGE**

fmp/-