

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

**WRIT PETITION NO. 1848 OF 2011**

Dipak S/o Vilas Thakur

Age : 29 years, Occu.: Service,

R/o. Chopda Road, Tilak Tank,

Post Dharangaon, Dist. Jalgaon

At present R/o C/o. A.D. Bavane,

Chaityanwadi, Malkapur, Tq. Malkapur,

Dist. Buldhana

... Petitioner.

**Versus**

1. Scheduled Tribe Certificate

Scrutiny Committee, Nandurbar,

Through its Member Secretary.

2. Zilla Parishad, Buldhana

Through its Chief Executive Officer

Buldhana, Jai Stumbh Chowk,

Buldhana, Dist. Buldhana.

... Respondents.

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Mr. Mahesh S. Deshmukh, Advocate for the Petitioner.

Mr. S.P. Tiwari, A.G.P. for Respondent No.1.

Mr. V.S. Panpatte, Advocate for Respondent No.2

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

**Closed for Judgment on : 06.04.2021**

**Judgment Pronounced on : 09.04.2021**

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

1. Rule. Rule made returnable forthwith. With the consent of both the sides, heard finally at admission stage.

2. Being aggrieved by the impugned order passed by respondent No.1 / 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 factual matrix of the case is as under:

3(i) The petitioner is appointed as Gramsevak from Scheduled Tribe category on 16.05.2005. He has submitted tribe certificate for verification along with sufficient evidence including school leaving certificate of his grandfather, showing his caste as “Thakur” with date of admission as 02.04.1934 before the Scrutiny Committee. The committee has conducted vigilance enquiry. The vigilance officer has submitted its report. The petitioner has filed his reply to the vigilance report. The committee has invalidated the tribe claim of the petitioner as “Thakur” Scheduled Tribe by the impugned order dated 24.02.2011.

4. We have heard Mr. M.S. Deshmukh, learned counsel for the petitioner, Mr. S.P. Tiwari, learned A.G.P. for State / Respondent No.1 and Mr. V.S. Panpatte, learned counsel for respondent No.2. Perused the impugned order dated 24.02.2011 and documents and papers annexed with the petition in support of tribe claim. We have also perused the genealogy and original file submitted by the committee through the learned A.G.P.

5. Mr. Deshmukh, learned counsel for the petitioner vehemently argued that the petitioner belongs to “Thakur” Scheduled Tribe. The copy of school admission register extract pertaining to the petitioner’s grandfather namely Late Dharma Nago Khairnar shows his tribe as “Thakur” with date of admission as 02.04.1934. The petitioner has also produced school leaving certificate of his grandfather showing his tribe as “Thakur” and date of admission as 04.08.1939. In addition to that the petitioner has also produced school record pertaining to his father, uncle, cousins as well as his own record demonstrating that they belong to “Thakur” Scheduled Tribe. The petitioner has also produced the certificate of validity issued in favour of the petitioner’s cousin namely Himmatro Gokul Khairnar as well as validity certificate issued in favour of Chandrakant Gokul Khairnar who is another cousin of the petitioner. Both these validity certificates issued by the

Scrutiny Committee, Nashik after taking recourse to crucial affinity test and after conducting vigilance enquiry. Mr. Deshmukh Submitted that the committee ought to have issued validity certificate to the petitioner on the basis of two validity certificates issued in the family of the petitioner. To support his argument, Mr. Deshmukh has placed his reliance on the decision of this Court in case of ***Apoorva D/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others*** reported in ***2010 (6) Mh.L.J. 401***.

6. Mr. Deshmukh submitted that the impugned order passed by the committee is illegal, improper and bad in law. The committee has not considered two validity certificates issued in the family of the petitioner. The committee has overlooked the old documentary evidence. The findings recorded by the committee while invalidating the tribe claim of the petitioner are erroneous and contrary to the decisions of the Hon'ble Supreme Court and the Bombay High Court.

7. Mr. S.P. Tiwari, learned A.G.P. for State / respondent No. 1 submitted that the committee has taken into consideration old documents produced by the petitioner. The committee has also considered the validity certificates issued in the family of the petitioner. The committee after examining all the documentary

evidence, vigilance report and report of the Research officer arrived at the conclusion that the petitioner has failed to prove his tribe claim as “Thakur” Scheduled Tribe. The petitioner has also failed to prove the affinity test. The petitioner is not migrated from the tribal / hilly area as required. The learned A.G.P. submitted that the findings recorded by the committee are well reasoned. There are contra entries on record. The committee has rightly invalidated the tribe claim of the petitioner by giving cogent reasons. The decision rendered by the committee is not defective in the eye of law. It is not a fit case to interfere with the decision of the committee.

8. We have considered the arguments advanced by the learned counsel for the petitioner and the learned A.G.P. for State / Respondent No.1.

9. On perusing 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 in the affinity test.
- (iii) The petitioner is not entitled to claim the status of “Thakur” Scheduled Tribe in view of area restriction by Act No.108 of 1976.

- (iv) The petitioner is not entitled to get benefit of validity certificate issued in his family.

10. On making scrutiny of the impugned order, vigilance report and documents placed on record, it is noticed by us that the petitioner has placed on record 46 documents in number in support of his tribe claim. The petitioner has placed on record two old documents, which are of pre-independence era, (i) a copy of school leaving certificate pertaining to petitioner's grandfather Dharma Nago Khairna dated 04.08.1939, wherein his caste is recorded as "Thakur" and (ii) a copy of an extract of school admission register in respect of petitioner's grandfather Dharma Nago Khairnar, wherein his caste is recorded as "Hindu Thakur" on 02.04.1934.

11. So far as above said two documents are concerned, there is no difficulty to accept those old entries in absence of any contra evidence. The documents of pre-independence era have more probative value and therefore the committee ought to have considered those documents. But the committee seems to have not considered that aspect and arrived at incorrect conclusion. The committee has observed in para VII that document produced by the petitioner at Sr. No.46, which is a copy of first page of service book of petitioner's paternal uncle Shantaram Fakira Khairnar, wherein his

caste is recorded as “Thakur” on 17.12.1976, that the word “Scheduled Tribe” seems to have been added in the bracket beside the caste entry. That document seems to be a copy of service book and that too of the year 1976. What about two old documents produced by the petitioner referred above. The documents which are of pre-independence era, wherein the caste of the petitioner’s family is recorded as “Thakur” needs to be considered, which is the basis to determine the social status of the family of the petitioner. But the committee has rightly observed in para VIII that documents at Sr. No.26 and 35 are the copies of certificates issued by the Vice Chairman, Maharashtra Adiwasi Thakur Jamat Seva Mandal, Jalgaon and Talathi, Dharangaon. They have not authority to issue such kind of caste certificates and the committee has rightly discarded those documents.

12. The petitioner has rightly established his caste as “Thakur” Scheduled Tribe on the basis of two old documentary evidence of his grandfather of the years 1934 and 1939 and those documents need to be accepted and acted upon in absence of any contra evidence on record. The vigilance report also nowhere speaks adverse about those entries.

13. It is material to note that “Hindu” is a religion and not a caste. Therefore, the entry of “Hindu Thakur” can not be said to be a contra evidence. Having regard to the stock of above referred documents, which are of pre-independence era, the committee should not have rejected the tribe claim of the petitioner.

14. The committee has also observed that the family of the petitioner is not migrated from tribal area. That observation made by the committee is erroneous. The Parliament has enacted “The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976”. It is precisely to over come the difficulties of the tribals. After that amendment, it is not permissible to rely on the area restrictions placed by the order of 1950. They are removed in order to enable the persons not residing in the five districts identified as permanently inhabited by Thakurs to claim benefits and concessions so also relaxation in Government employment and elections. That view is expressed in the decision rendered by the Division Bench in case of **Mayuri Sunil Thakur Vs. State of Maharashtra and Ors.** (Writ Petition No.8738 of 2019 dated 09.08.2019 at principal seat Bombay). As such, the observations made by the committee regarding absence of migration of petitioner’s family are certainly erroneous.

15. 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 Verificate 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.”

16. The committee has recorded negative finding on the issue of extending benefit to the petitioner on the basis of validity certificates issued in favour of petitioner’s cousins namely Himmatrao Gokul Khairnar and Chandrakant Gokul Khairnar. It is observed by the committee that both these validity certificates are not issued in ‘G’ Form prescribed under the Rule No.12(9)(a) of Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003. The committee has also referred various decisions of the Bombay High Court. However, the reasons recorded by the committee are erroneous and found contrary to the recent position of law laid down by the Hon’ble Supreme Court and the Bombay High Court. It is observed by the committee that merely because of the tribe claim of the relative of the petitioner has been validated, it would not automatically follow the tribe claim of the candidate should also be validated. These observations are contrary to the ratio laid down in case of **Apoorva** (supra), wherein it is observed by the Bombay High Court that the validity granted to the paternal relatives would be a relevant fact.

17. Having regard to the above reasons and discussion, we arrive at conclusion that the findings recorded by the committee are erroneous. The committee has not properly considered the documents of pre-independence era and arrived at incorrect. There are no contra entries to throw away the tribe claim of the petitioner. The impugned order passed by the committee invalidating tribe claim of the petitioner needs to be quashed and set aside. He is entitled to get the tribe validity certificate. Thus, we conclude and proceed to pass the following order.

### **ORDER**

- (i) The impugned order passed by respondent No.1 / Scrutiny Committee, Nandurbar dated 24.02.2011 is hereby quashed and set aside.
- (ii) Respondent No.1 / 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.P. Rane

**( S.V. GANGAPURWALA )**  
**JUDGE**