

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

1131 WRIT PETITION NO.6965 OF 2021

**DURGESH VISHWAS THAKUR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner: Mr. Sushant C. Yeramwar
AGP for Respondents No. 1&2: Mr. K. N. Lokhande
Advocate for Respondent No. 3: Mr. A. V. Hon

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**CORAM: S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATE: 26th NOVEMBER, 2021

PER COURT:

1. Heard the learned Counsel for the Petitioner and the learned A.G.P. for Respondents No. 1 and 2.

2. The tribe claim of the Petitioner belonging to Thakur, Scheduled Tribe is invalidated.

3. The learned Counsel submits that there are consistent entries in the school record of the Petitioner's grandfather, cousin grandfather of Thakur. There is only one contra entry in case of cousin cousin grandfather of the Petitioner. The

said entry is of the year-1920. However, the entry in the case of the another cousin grandfather of the petitioner recording tribe as Thakur is of they year-1915. According to the learned Counsel, there are consistent entries of Thakur, Scheduled Tribe right since the year-1915.

4. The learned Counsel submits that the affinity test is not the litmus test as held by the Hon'ble Apex Court in case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others** reported in (2012) 1 SCC 113.

5. The learned A.G.P. submits that the cousin cousin grandfather of the Petitioner namely Amrut Vithoba Thakur's school record records caste as Marathe, wherein the date of birth of his cousin cousin grandfather is shown as 12.07.2020. The learned A.G.P. submits that the Petitioner has failed in the affinity test. The Petitioner does not belonging to the place where the Thakur, Scheduled Tribe normally resides.

6. We have considered the submissions canvassed by the learned Counsel for respective parties.

7. Except one contra entry, all entries from the year-1915 of the school record of the Petitioner's grandfather, cousin grandfather, father records tribe as Thakur. The entry of the year-1915 in case of the cousin grandfather Sada Rupsing Thakur is of the year-1915. The entry in the school record of the Petitioner's grandfather Dayaram Rupsing Rathod is of the year-1921 regarding tribe as Thakur. The entry in case of cousin grandfather of the Petitioner, namely Shankar Vithoba Thakur of the year-1936 records tribe as Thakur. The another entry of Gaon Namuna No. 14 of the grandfather records tribe as Thakur. The same is also an old entry. The father's school record also records tribe as Hindu Thakur. The other entries of the year 1966 and 1968 in the school records of his cousin uncles records tribe as Thakur.

8. The Hon'ble Apex Court in case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others** reported in (2012) 1 SCC 113 held that affinity test is not the litmus test.

9. In view of the consistent entries of the tribe recorded as Thakur in the pre-constitutional documents, we pass the following order.

10. The impugned order is quashed and set aside. The Committee shall issue Validity Certificate to the Petitioner of Thakur, Scheduled Tribe.

11. Writ Petition accordingly stands disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

marathe