

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

WRIT PETITION NO. 6718 OF 2020

Shubham S/o Sham Salunke
Age – 22 years, Occu.: Student,
R/o. 6/5-L/4, Ramnagar,
Vitthal Chowk, N-2, CIDCO,
Aurangabad, Tq. & Dist. Auranagabad. ... Petitioner.

Versus

1. The State of Maharashtra
Department of Tribal Development
Mantralaya, Mumbai -32.
Through its Secretary.
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division, Aurangabad,
Through its Member Secretary.
3. College of Agriculture,
Run by Chhatrapati Shahu Maharaj
Shikshan Sanstha, Kanchanwadi,
Paithan Road, Aurangabad,
Tq. & Dist. Aurangabad,
Through its Principal.
4. Vasantrao Naik Marathwada Krishi
Vidyapeeth, Parbhani,
Tq. & Dist. Parbhani,
Through its Registrar. ... Respondents.

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Mr. Sushant C. Yeramwar, Advocate for the Petitioner.
Mr. P.S. Patil, Addl. Government Pleader for Respondent Nos.1 and 2.
Mr. S.B. Kakde, Advocate for Respondent No.3.
Mr. B.A. Shinde, Advocate for Respondent No.4.

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

Closed for Judgment on : 24.02.2021

Judgment Pronounced on : 02.03.2021

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

1. Rule. Rule made returnable forthwith. With the consent of learned counsel for both the sides, heard finally at admission stage.
2. By invoking the writ jurisdiction under Article 226 of the Constitution of India, the petitioner is challenging the impugned order passed by respondent No.2 / The Scheduled Tribe Certificate Scrutiny Committee, Aurangabad Division, Aurangabad (hereinafter referred to as the “committee” for the sake of convenience) dated 24.02.2020, thereby invalidating caste claim of the petitioner belonging to “Thakur” Scheduled Tribe community. The Committee has referred the case to the vigilance officer for enquiry. The vigilance officer has submitted its report to the committee. The petitioner has filed his reply to the show cause notice issued by the committee. The committee has invalidated the tribe claim of the petitioner. The petitioner has completed his B.Sc. (Agri.) Course, but did not get a degree certificate for want of certificate of validity. In that background, the petitioner is before us.

3. Heard Mr. S.C. Yeramwar, learned counsel for the petitioner, Mr. P.S. Patil, learned Addl. G.P. for respondent Nos.1 and 2. Mr. S.B.Kakde, learned counsel for respondent No.3 and Mr. B.A. Shinde, learned counsel for respondent No.4.

4. Perused the impugned order and papers annexed with the petition.

5. The tribe claim of the petitioner came to be invalidated by the committee on following three grounds:

- (i) The petitioner has failed to prove his tribe claim on the basis of documentary evidence.
- (ii) The petitioner is not entitled to get benefit of the tribe validity certificates issued to the blood relatives in his family.
- (iii) The petitioner has failed to prove the affinity test.

6. Mr. Yeramwar, learned counsel vehemently submitted that the petitioner has produced documentary evidence in support of his tribe claim right from the year 1959, thereby establishing that the family of the petitioner belongs to "Thakur" Scheduled Tribe. The committee has not considered the old record in a proper perspective and discarded the same simply relying upon alleged three contra

entries. The said three contra entries were the subject matter of the caste validity proceeding of the petitioner's uncle Mr. Appasaheb Pandit Salunke. The petitioner's father Mr. Sham Pandit Salunke and uncle Mr. Appasaheb Pandit Salunke are issued with the validity certificates. The genealogy is not disputed by the committee. As such, the committee ought to have given the benefit of caste certificates of petitioner's uncle and father in view of 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*.

Mr. Yeramwar further submitted that the committee has observed while invalidating the caste claim of the petitioner that petitioner's family is not migrated from the tribal area. The said observation is incorrect in view of "The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976". Mr. Yeramwar submitted that the committee has also committed an error in recording the finding that the petitioner has failed to prove the affinity test, by placing reliance on the decision of the Apex Court in case of *Anand Vs. Committee for Scrutiny and Verification of Tribe Claim and others* reported in *(2012) 1 SCC 113*. Mr. Yeramwar submitted that the affinity test is not a litmus test. He submitted that

the impugned order passed by the committee is bad in law and liable to be quashed and set aside.

7. Per contra, Mr. P. S. Patil, learned Addl. G.P. for respondent Nos. 1 and 2 / State, argued that the committee has taken into consideration the old documentary evidence produced by the petitioner. The committee has considered the old documentary evidence, vigilance report and the report of the Research officer and arrived at conclusion that the petitioner has failed to prove his tribe claim as “Thakur” Scheduled Tribe. He submitted that there are contra entries pertaining to the petitioner’s cousin grandfather, wherein his caste is recorded as “Maratha” in the old register dated 09.09.1959. Mr. Patil further invited our attention to the entry of the petitioner’s grandfather Mr. Pandit Laxman Thakre and sister of petitioner’s grandfather Ku. Ashabai Laxman Salunke and submitted that their caste has been recorded as “Thakar”. Mr. Patil submitted that the findings recorded by the committee are well reasoned. The decision taken 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. Mr. S.B. Kakde, Advocate for Respondent No.3. and Mr. B.A. Shinde, Advocate for Respondent No.4 supported the argument advanced by the learned Addl. G.P.

9. We have considered the arguments advanced by learned counsel for the petitioner, learned Addl. G.P. and the learned counsel appearing for respondent Nos.3 and 4.

10. On making scrutiny of the impugned order, vigilance report and other papers, it is noticed by us that the petitioner has placed on record the documentary evidence right from the year 1959. So far as the contra entries relied upon by the committee and pointed out by the learned Addl. G.P. are concerned, those contra entries were the subject matter while granting validity certificate in favour of petitioner's uncle Mr. Appsaheb Pandit Salunke. It is evident from the record that the petitioner's father Mr. Sham Pandit Salune and petitioner's uncle Mr. Appasaheb Pandit Salunke are issued with the validity certificates. Those validity certificates still hold the field. It is observed by the committee that those validity holders have suppressed the contra entries while obtaining the validity certificates from the committee. The committee has taken a decision to issue show cause notice to the validity holders regarding cancellation of their validity certificates. Be that as it may, as on today the validity certificates issued in favour of the petitioner's father and uncle still hold the field. In view of decision of this Court in case of *Apoorva* (supra), the petitioner is entitled to get the benefit of the tribe

validity certificates issued in favour of his father and uncle when there is no legal impediment and no dispute about the relationship.

Moreover, entry of “Thakar” in grandfather’s old register and entry as “Maratha” in cousin grandfather’s school record while taking the admission in the school on 09.09.1959, was the subject matter while issuing the caste validity certificate in favour of petitioner’s uncle and therefore it can not be said to be suppression of the fact from the committee. Therefore, we do not agree with the observations made by the committee in this regarded. Except these two entries all old entries in the documents are consistent with the tribe claim of the petitioner.

11. 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* (supra).

12. 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 overcome 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 the petitioner’s family are certainly erroneous.

13. In view of the above, the findings recorded by the committee are found erroneous. The committee has not properly considered the old documents as well as the validity certificates issued to the petitioner’s father and real uncle after conducting the vigilance enquiry. The impugned order passed 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 impugned order passed by respondent No.2 / Scrutiny Committee, Aurangabad Division, Aurangabad dated 24.02.2020 is hereby quashed and set aside.
- (ii) Respondent No.2 / Scrutiny Committee, Aurangabad shall issue validity certificate to the petitioner of being a member of “Thakur Scheduled Tribe” forthwith.
- (iii) The said validity certificate shall be subject to the decision that would be taken by the committee in the proceedings re-opened of the validity holders relied by the petitioner.
- (iv) Rule is made absolute accordingly.
- (v) The writ petition is disposed of. No order as to costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

S.P. Rane