

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

WRIT PETITION NO. 6939 OF 2020

Dinesh S/o Atmaram Yeshi
Age : 42 years, Occu.: Service,
R/o. Plot No. Mohadi Upnagar,
Tq. & Dist. Dhule

... Petitioner.

Versus

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

2. The Scheduled Tribe Certificate
Scrutiny Committee,
Nandurbar Division Nandurbar
Through its Member Secretary.

3. The Chief Executive Officer,
Zilla Parishad, Dhule,
Tq. & Dist. Dhule.

... Respondents.

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Mr. Sushant C. Yeramwar, Advocate for the Petitioner.
Mr. S.K. Tambe, A.G.P. for Respondent Nos.1 and 2.
Mr. N.N. Desale, Advocate for Respondent No.3.

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

DATE : 08.03.2021

ORAL 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. Feeling aggrieved by the impugned order passed by respondent No.2 / Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Division, Nandurbar (hereinafter referred to as the “committee”) thereby invalidating tribe 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. Heard Mr. S.C. Yeramwar, learned counsel for the Petitioner, Mr. S.K. Tambe, learned A.G.P. for respondent Nos. 1 and 2 / State and Mr. N.N. Desale, Advocate for Respondent No.3 / Zilla Parishad, Dhule.

4. Perused the impugned order passed by the committee dated 29.09.2015 and order dated 01.01.2020 pertaining to the petitioner’s daughter namely Maheshwari and other papers annexed with the petition.

5. Mr. Yermawar, learned counsel for the petitioner vehemently submitted that the petitioner’s tribe claim was referred to the committee for validation through the department along with documentary evidence dated 24.06.2013. The committee has conducted the vigilance. The petitioner has filed reply to the show

cause notice issued by the committee. The personal hearing was conducted before the committee on 26.11.2014 and the matter was closed for order. At the relevant time, the tribe claim of the petitioner's daughter namely Maheshwari was also pending before the committee. The committee has called upon her for personal hearing on 08.08.2018. It is observed by the committee that the tribe claim of Maheshwari's father along with her brother and real aunt are also pending before the committee.

6. Mr. Yeramwar further submitted that the committee has invalidated the tribe claim of the petitioner's daughter Maheshwari by order dated 10.08.2018. Maheshwari had preferred writ petition No.9262 of 2019. The Special Bench constituted at Principal seat, Bombay vide order dated 23.08.2019 quashed and set aside the impugned order passed by the committee and remanded the matter to the committee for fresh decision. He submitted that, the committee, by following due procedure of law validated the tribe claim of the petitioner's daughter Maheshwari Thakur and issued the tribe validity certificate. According to Mr. Yeramwar, the documents of pre-independence era right from the year 1918 were produced by the petitioner. The petitioners tribe claim for validation was pending for long time. On 07.01.2020, the petitioner filed an application under

the Right to Information Act. After receiving the documents from the committee, the petitioner came to know that his tribe claim was invalidated by the committee long back on 29.09.2015, however, on the said Rojnama, the signature of Vice-Chairman was not available. The impugned order was never served to the petitioner. Mr. Yeramwar submitted that the impugned order passed by the committee is bad in law and needs to be quashed and set aside. The petitioner is entitled to get the benefit of the tribe validity certificate issued in favour of his daughter Maheshwari.

7. Mr. Tambe, learned A.G.P. for respondent Nos. 1 and 2 / State per contra supported the order passed by the committee. He submitted that the committee has taken into consideration old documents produced by the petitioner. The committee has also considered the vigilance report and the report of the Research officer and other documents and arrived at the conclusion that the petitioner has failed to prove his tribe claim as "Thakur" Scheduled Tribe. Mr. Tambe 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. Desale, learned counsel for respondent No.3 / Zilla Parishad, Dhule supported the stand taken by respondent Nos. 1 and 2 / State.

9. On perusing the impugned order, it is noticed by us that the petitioner has produced the old documentary evidence right from the year 1918. He has placed on record the birth certificate of his cousin grandfather namely Tanya Shamrao dated 02.08.1918, wherein the caste "Thakur" has been recorded. He has further placed on record the death certificate of his grandfather Shankar Shamu dated 05.05.1918, wherein the caste "Thakur" has been recorded. Further the petitioner has produced copies of the birth certificates pertaining to his cousin grand sisters namely Mukta Shamu Thakur, Gini Shamu Thakur and Kanta Shamu Thakur dated 19.05.1929, 24.07.1934 and 24.06.1925 respectively, wherein caste "Thakur" has been recorded. The vigilance report nowhere speaks that there are interpolation in the above said entries. It is nowhere observed by the committee that above said entries are manipulated. The committee has not disputed the genealogy and the relationship shown by the petitioner with the above said persons. The committee has simply discarded the old documentary evidence by observing that no document described him

or his relative as “Thakur” Scheduled Tribe. The observations made by the committee are erroneous. The documentary evidence relied upon by the petitioner is of the pre-independence era, which has more probative value. There was no reason for the committee to discard the old documentary evidence.

10. Mr. Yeramwar has placed on record the copy of the order passed in writ petition No.9262 of 2019 pertaining to petitioner’s daughter Mahewahari. On perusing the same, it is evident that the committee has invalidated the tribe claim of the petitioner’s daughter Maheshwari. The petitioner’s daughter Maheshwari has challenged the order passed by the committee by filing writ petition No.9262 of 2019. The Division Bench of this Court at Principal seat under judgment and order dated 23.08.2019 in writ petition No.9262 of 2019 quashed and set aside the order passed by the committee and remanded the matter to the committee for decision afresh.

11. Mr. Yeramwar has placed on record the copy of the order passed by the committee in the tribe claim of the petitioner’s daughter Maheshwari Dinesh Thakur vide No.DHU/2017/EDN/CR-1096/DII(I) dated 01.01.2020. On going through the same, it is evident that the tribe claim of the petitioner’s daughter Maheshwari came to be allowed. The committee has issued the tribe validity certificate to the

petitioner's daughter Maheshwari of being "Thakur" Scheduled Tribe. On going through the order passed by the committee, it is found that the committee has relied upon the same old entries, which were produced by the petitioner in his tribe claim. On the same old entries, the committee has validated the tribe claim of the petitioner's daughter Maheshwari. There is no reason to reject the tribe claim of the petitioner when the entries relied upon by the committee were the subject matter of consideration while giving validity to the petitioner's daughter Maheshwari.

12. The petitioner is entitled to get the benefit of tribe validity certificate issued in favour of his daughter when there is no dispute about the relationship and no other impediment. The reliance can be placed 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*.

13. The committee has further discarded the tribe claim of the petitioner on the ground that the petitioner has failed to pass the affinity test. We have gone through the reasons given by the committee. In case of *Anand Vs. Committee for Scrutiny and Verification of Tribe claim and ors.* reported in *(2012)1 SCC 113*,

it is held by the Apex Court that the affinity test is not 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.

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 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.

15. In view of the above, the findings recorded by the committee are found erroneous. 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 writ petition is allowed.
- (ii) The impugned order passed by respondent No.2 / Scrutiny Committee, Nandurbar dated 29.09.2015 is hereby quashed and set aside.
- (iii) Respondent No.2 / Scrutiny Committee, Nandurbar shall issue validity certificate to the petitioner of being a member of "Thakur Scheduled Tribe" forthwith.
- (iv) Rule is made absolute accordingly.
- (v) No order as to costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S.V. GANGAPURWALA)
JUDGE