

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

WRIT PETITION NO. 9625 OF 2019

Amarnath s/o. Madanlal Thakur,
Since deceased, Through his Legal heir -
Rajani w/o Amarnath Thakur,
Age 56 Years, Occu : Household,
R/o Plot No. 7, Gat No. 111,
Nimkhedi Shivar, Near Hotel Radhika,
Jalgaon.

...Petitioner.

-Versus-

1. The Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar,
Office at Sakri Road, Near R.T.O. Office,
Nandurbar, District Nandurbar,
Through its Member Secretary.
2. The Divisional Controller,
M.S.R.T.C., Jalgaon Division, Jalgaon.

...Respondents.

Mr. S.C. Yermwar, Advocate for petitioner.
Mr. S.P. Tiwari, A.G.P. for respondent No. 1/State.
Mr. Manoj Shinde, Advocate h/f. Mr. M.K. Goyanka, Advocate for
respondent No. 2.

**WITH
WRIT PETITION NO. 9611 OF 2019
WITH
CIVIL APPLICATION NO. 7644 OF 2021**

Raghvendra s/o. Madanlal Thakur,
Age 52 Years, Occu : Service,
R/o 501, Bhairav Darshan,
Opp. Bhargav Hospital,
Boriwali (W), Babhai Naka,
Mumbai

...Petitioner.

-Versus-

1. The Scheduled Tribe Certificate Scrutiny Committee, Nandurbar, Office at Sakri Road, Near R.T.O. Office, Nandurbar, District Nandurbar, Through its Member Secretary.
2. The Director General of Police, Shahid Bhagatsing Marg, Near Reagal Cinema, Mumbai.

...Respondents.

Mr. S.C. Yermwar, Advocate for petitioner.
Mr. S.P. Tiwari, A.G.P for respondent Nos. 1 & 2.

**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.**
DATE : 30/08/2021

JUDGMENT : PER R.N. LADDHA, J.

Rule. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for parties.

2) These petitions are directed against the decision and order dated 23 July, 2019 of the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar (for short “the respondent Committee”), respondent No. 1 in these petitions, invalidating the Caste Certificate dated 21 July, 1979 issued to Amarnath, original petitioner (since deceased) in writ petition no. 9625 of 2019 and the Caste Certificate

dated 27 June 1979, issued to Raghavendra, petitioner in writ petition no. 9611 of 2019, by the Executive Magistrate, Jalgaon, certifying that they belonged to the 'Thakur, Scheduled Tribe', notified in terms of the Constitution, (Scheduled Tribe) Order, 1950. Petitioners Amarnath & Raghavendra were real brothers.

3) Shorn of unnecessary details, the background facts, which led to these petitions, can be summarized as under:

In writ petition no. 9625 of 2019 the original petitioner Amarnath (deceased) was appointed as Art A Electrician by the M.S.R.T.C., respondent no. 2 herein, against a post reserved for Scheduled Tribe whereas the petitioner Raghvendra, in writ petition no. 9611 of 2019 was appointed as Police Sub-Inspector through the competitive examination conducted by the Maharashtra Public Service Commission, against the post reserved for scheduled tribe. Their tribe claims were referred to the Caste Scrutiny Committee, respondent No. 1 for confirmation of their status as Scheduled Tribe. Both of them had made an application to the respondent Committee under Rule 11 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 and had submitted several documents including the documents of pre-constitutional period and the validity certificate issued to their relatives. The Caste Scrutiny

Committee referred the documents for verification to Vigilance Cell, who, in turn, made investigation and submitted its report. A copy of the report of the Vigilance Cell was supplied to them. An opportunity of hearing was also granted. The respondent Committee, after evaluating the documents, by common order dated 23 July 2019 rejected their tribe claim.

4) Aggrieved by the order of rejection of their tribe claim, they preferred these writ petitions. After the demise of Amarnath, Smt. Rajni, being widow and legal heir of Amarnath is now pursuing writ petition no. 9625 of 2019.

5) We have heard Mr. S.C. Yeramwar, learned Counsel for the petitioners, Mr. S.P. Tiwari, learned Additional Government Pleader for respondent no. 1 and Mr. Manoj Shinde holding for Mr. M.N. Goyanka, learned Counsel for the respondent no. 2 in writ petition no. 9625 of 2019.

6) The learned Counsel for the petitioners submits that several documents were relied upon and though all of them are genuine, the affinity test has been resorted to. It is submitted that the respondent Committee ought to have considered the documentary evidence and should have placed greater reliance on pre-Independence

documents. Learned Counsel for the petitioners further submits that affinity test is not the litmus test for establishing the link of the petitioners with a scheduled tribe. In support of his broad proposition, reliance was placed on the Judgment of the Hon'ble Supreme Court in the case of ***Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others, AIR 2012 S.C., 314.***

7) According to the learned Counsel for the petitioners, it is mandatory to issue caste validity certificate to the claimant if the validity is already issued to their blood relatives. To lend support to this submission reliance is placed on the Judgment of the Hon'ble Supreme Court in the case of ***Apoorva d/o. Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee and Others, 2010 (6) Mh.L.J. 401.*** It has been submitted that the Caste Validity Certificates produced on record of blood relatives have been overlooked.

8) The Judgment of the Hon'ble Supreme Court in the case of ***Jaywant Dilip Pawar Vs. State of Maharashtra and Others, 2017 Mh.L.J. Online (S.C.) 16*** is relied upon to point out how 'area restrictions' after 1976 amendment lost its relevance.

9) Learned Counsel for the petitioners submits that the Caste Scrutiny Committee is duty bound to read the entry in Constitution,

(Scheduled Tribes) Order 1950 at Sr. No. 44 as it is and it was not open to the Caste Scrutiny Committee to make any addition or subtraction in the Presidential Order. To buttress the aforesaid submission, he placed reliance upon the rulings of the Hon'ble Supreme Court in the case of *Palghat Jilla Thandan Samudaya Samrakshna Samiti Vs. State of Kerala, (1994) 1 S.C.C. 359*.

10) It is submitted that the respondent Committee obtained so called contrary evidence of the person who was not a blood relation of the petitioners. The respondent Committee has observed that the signature of the Tahsildar on the receipt of cash book and his signature on the certificate is different. In his view, the same is erroneous as the receipts are issued by the office of the Tahsildar and the certificates are issued by the Executive Magistrate.

11) On the other hand, the learned Additional Government Pleader appearing for respondent no. 1 has submitted that the vigilance report giving all the details regarding social, cultural and anthropological traits and characteristics and traditions, have been considered properly by the respondent Committee. He further submits that mere mentioning of 'Thakur' against the caste column in any public document cannot be a sole ground to hold that person belongs

to Thakur, Scheduled Tribe as 'Thakurs' are found in both forward and backward communities. In such circumstances, affinity test is crucial. According to the learned A.G.P, deceased Amarnath could not establish any affinity and ethnic linkage towards the Thakur Scheduled Tribe Community. He submits that though area restrictions has been removed, it is still open for the Caste Scrutiny Committee to investigate. He further submits that the petitioners and their ancestors are not from the Scheduled 5 districts. According to learned A.G.P, the difference in the signature on the receipts of cash book and the certificates raises suspicion about genuineness of the certificates. In his view, the Committee has rightly considered the said aspect. He submits that the Caste Scrutiny Committee has relied upon various Judgments of the Supreme Court and this Court in the impugned order has rightly invalidated tribe claim of the petitioners. According to him, the impugned order passed by the respondent Committee is reasoned one and findings are based upon evidence produced before the Committee.

12) Mr. Manoj Shinde holding for Mr. M.K. Goyanka, learned Counsel for respondent No. 2, in writ petition no. 9625 of 2019 submitted that more or less he had similar submissions to make as advanced by the learned A.G.P and there was nothing more to be added.

13) We have considered the contentions canvassed by the learned Counsel for the parties and perused the impugned Order of the respondent Committee. Also gone through the original record and proceedings produced by the learned A.G.P.

14) The petitioners in these petitions, as indicated above, claim to belong to Thakur Scheduled Tribe Community. One of the grounds for rejection of their tribe claim is that the origin of the petitioners and their ancestors are not from the Scheduled 5 districts, and therefore, they could not be said to be belonging to the Thakur Scheduled Tribe.

15) In this context, learned counsel for the petitioners has rightly placed reliance on the Judgment of the Hon'ble Supreme Court in the case of **Jaywant Dilip Pawar** (*supra*), wherein it was enunciated that decision of the Scrutiny Committee negating the claim of the appellant on the ground that relatives of the appellant were not residents of the area mentioned in the Presidential Order, 1956 and not being able to give any details of customs and traditions of the 'Thakur' Scheduled Tribe Community was not justified. Appellant has only to establish that he belongs to the community mentioned at Sr. No. 44 of Part IX of Second Schedule to the Scheduled Tribe Order

(Amendment) Act, 1976. As per the said Act, the area restrictions of Scheduled Tribe in the State of Maharashtra for the Thakur Community was deleted and all members of Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar communities are treated to be Scheduled Tribe.

16) A Division Bench of this Court in the case of ***Mayuri Sunil Thakur Vs. State of Maharashtra and others, Writ Petition No. 8738 of 2019, dated 9th August 2019***, wherein, after taking a survey of the previous pronouncements reiterated that after Parliament has enacted the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, it would not be 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. It was also observed therein that the participation of the tribals in the main stream activities was the prime object and aim in moving this Amendment Act.

17) Similarly, a Division Bench of this Court in the case of ***Nikhil s/o Anil Thakur Vs. State of Maharashtra and others, 2021 (5)***

Mh.L.J. 104 has further made clear that with the removal of area restrictions the place of residence lost its significance. We may usefully refer to paragraph No. 19 of the aforesaid judgment, which reads thus:

*“19. Area restriction has been removed pursuant to the Presidential Order of Scheduled Tribes (Amendment) Act, 1976 throughout the State and the community included in scheduled tribe category is entitled. In this regard the decisions in the cases of **Palghat Zilla Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala (1994) 1 S.C.C. 359** by the Supreme Court as well as the case of **Pandurang Raghunath Chavan Vs. State of Maharashtra, 1998 (2) Mh.L.J. 806** by this Court are relevant.”*

18) In view of the aforesaid legal position, it is clear that upon removal of the area restrictions by the amending Act of 1976, it would not be permissible to rely on the area restrictions placed by the Order of 1950. They are removed in order to enable 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.

19) Reverting to the facts of these petitions, the material on record indicates that the petitioners had submitted several documents in support of their Tribe Claim before the respondent Committee,

indicating the tribe and social status of his father and blood relatives to be that of 'Thakur' community. Apart from their own documents, the petitioners had produced the School Leaving Certificates, extracts of the General School Register, Caste Certificates and extracts of Birth Register of their father, wherein birth date of their father was recorded as 1921 and under the column of religion and caste it was mentioned as "Hindu – Thakur". In the Caste Certificate of their father Madanlal issued by the Executive Magistrate, Jalgaon, it is mentioned that he belongs to "Hindu Thakur" community which is recognized as Scheduled Tribe. The petitioners had also produced a copy of the first page of the Service Book of their father wherein, caste was recorded as 'Thakur'. The petitioners had also produced extract of General School Register, School Leaving Certificate and a copy of the first page of Service Book of their paternal uncle Kanhaiyalal. In all these documents, the date of birth of Kanhaiyalal is shown as 5 January 1918 and caste therein was recorded as 'Hindu Thakur'. The petitioners had also produced caste certificate of their paternal uncle Kanhaiyalal dated 27.12.1977, wherein his caste was recorded as 'Thakur Scheduled Tribe'. The entries in the General School Register as well as School Leaving Certificates of father and paternal uncle of the petitioners are of the Pre-constitutional period. The respondent

Committee has not considered these documents by contending that they do not disclose the caste as 'Thakur Scheduled Tribe'. The said approach of the respondent Committee is erroneous.

20) In this context, a profitable reference can also be made to the Judgment of the Division Bench of this Court in the case of ***Motilal s/o. Namdev Pawar Vs. Scheduled Tribe Certificate Scrutiny Committee, Nashik and Others, Writ Petition No. 7 of 2014, dated 22 December 2017***, wherein it was observed that the 'Thakur' came to be recognized as a Scheduled Tribe only for the first time in 1950 and therefore, there could have been no entry as Thakur scheduled tribe.

21) There is another important aspect of the matter which according to us, has not been properly considered by the respondent Committee. The Committee has not appreciated the documents of pre-constitutional era in their proper perspective.

22) In the case of ***Anand Katole Vs. Scheduled Tribe Caste Scrutiny Committee, 2012 (1) SCC 113***, on which reliance was placed on behalf of the petitioner, illuminates the path. It was enunciated that while dealing with the 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 as a caste, as

compared to post independence documents.

23) In the present case also, it is seen that the pre-constitutional documents of petitioners father and their paternal real uncle show their caste to be 'Thakur'. The pre-constitutional documents have more probative value. Not a single contrary entry appears. The Committee has also not raised any suspicion about the documents on record. The respondent Committee has not appreciated these documents of pre-constitutional era in their proper perspective. In view of these documents, which are much prior to 1950, we find that due weightage ought to have been given by the respondent Committee. All these aspects are also highlighted in the case of *Avinash s/o. Prakash Somwanshi Vs. Scheduled Tribe Caste Certificate Scrutiny Committee, Writ Petition No. 4570 of 2019, dated 4 July 2019.*

24) It is a matter of record that Pushpa Madanlal Thakur, real sister of the petitioners; Sumangal Kanhaiyalal Thakur, cousin of the petitioners; Vandana Dinanath Thakur, niece of the petitioners and Shrirang Amarnath Thakur, son of deceased petitioner Amarnath and nephew of Raghvendra have been issued with the Validity Certificate of 'Thakur Scheduled Tribe'. The respondent Committee has not

disputed the relationship of the petitioners with the validity holders relied by them. All these Validity Certificates were discarded simply by assigning the reason that the Scrutiny Committee therein, had not properly examined their proposals.

25) In this context, though the legal position is well neigh settled and does not need the support of precedent, yet to retain emphasis, a profitable reference can be made to the Judgment of the Division Bench of this Court in the case of ***Mayuri d/o. Jagannatha Pandhare Vs. The State of Maharashtra and Ors., W.P. No. 8088 of 2020, dated 18 December 2020***, wherein after taking survey of the previous pronouncement in the case of ***Apoorva (supra)*** on which reliance was placed by the learned counsel for the petitioners, reiterated the legal position in the following words :

*“19) On perusing the original file of Angad Laxman Pandhare, it is evident that his tribe claim has been turned down by the Committee vide order dated 29.12.1995 and same has been reached finality. Thus, it is clear that there are 9 valid tribe validity certificates in the family of petitioner referred above including his father. The Division Bench of this Court in the 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*** observed that where a*

Committee has given a finding about the validity of the caste of a candidate, another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the Committee dealing with the subsequent caste claim to reject it. There is, however, no doubt that if a Committee is of the view that the earlier certificate is obtained by fraud, it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order.”

26) In view of this, we are of the considered opinion that the documentary evidence produced by the petitioners was not examined and appreciated in its proper perspective and the respondent Committee laid much emphasis on the affinity test, which the Committee ought not to have done. The affinity test is not the litmus test for establishing the link of the petitioners with a Scheduled Tribe as enunciated by the Hon'ble Supreme Court in the case of **Anand** (*Supra*).

27) There is yet another aspect which is relevant and needs our consideration. According to the respondent Committee one Latkan Shamrao Awalsingh, whose caste is recorded as 'Bhat', is a blood relation of the petitioners. According to the committee, said Latkan

was brother of grandfather of husband of niece of the petitioners. We fail to understand how he was a blood relation of the petitioners. The said observation of the Committee is fallacious.

28) Having found that each of the findings and conclusions is unsustainable in law, perverse and vitiated by complete disregard to the judicial pronouncements, we have no hesitation in allowing these writ petitions. The writ petitions succeed. We quash and set aside the impugned order of the respondent Scrutiny Committee. We direct that the Scrutiny Committee, respondent no. 1 shall issue Validity Certificate in the name of Amarnath Madanlal Thakur, deceased petitioner and petitioner Raghvendra Madanlal Thakur of 'Thakur Scheduled Tribe' immediately. Needless to state that, on production of the Validity Certificate the petitioner Smt. Rajni (in W.P. no 9625 of 2019) would be entitled for all the consequential benefits which her husband would have been entitled to in accordance with law. Rule is accordingly made absolute in above terms. There shall be no order as to costs. All pending interlocutory applications, if any, stand disposed of in terms of this judgment.

R.N. LADDHA, J.

S.V. GANGAPURWALA, J.