

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

WRIT PETITION NO. 10056 OF 2019

Avinash s/o Nilkanth Jadhav,
Age 21 years, Occ. Student,
R/o. A/p Chinchala, Tq. Umari,
District Nanded

.. 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. Shri Guru Gobind Singhji
Institute of Engineering &
Technology, Vishnupuri,
Nanded-431603, through its
Registrar
4. Swami Ramanand Teerth Marathwada
University, Nanded, through
its Registrar

..RESPONDENTS

Shri Sushant C. Yeramwar, Advocate for the petitioner.
Shri P.S. Patil, Addl. G.P for respondent Nos.1 & 2.
Shri S.V. Adwant, Advocate for respondent No.3.

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

DATE : 03rd December, 2021.

JUDGMENT: PER R. N. LADDHA, J.

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

2. The tribe claim of the petitioner came to be invalidated by the respondents Scrutiny Committee vide impugned Order dated 30 July 2019. The petitioner claims to be belonging to 'Thakur - Scheduled Tribe Category', which entry is at serial No.44 of the Constitution (Scheduled Tribes) Order, 1950. The respondents Scrutiny Committee has rejected the petitioner's claim for insufficient documentary evidence, failure in affinity test and area restrictions.

3. Aggrieved by the order of rejection of his tribe claim, the petitioner preferred this petition.

4. Mr. Yeramwar, learned counsel for the petitioner submits that the petitioner was admitted to the respondent No. 3 College from Scheduled Tribe category for B.Tech (Chemical Engineering). He has

so far successfully completed the 3rd year of the four years degree course. However, as his tribe claim is invalidated, respondent Nos.3 and 4 may take coercive action against him. The learned counsel submits that the petitioner has produced on record the old land revenue record of his forefathers and the school record of his blood relatives, however, the same have been overlooked.

5. The judgment of the Supreme Court in the case of ***Anand Vs. Committee for Scrutiny and Verification of Tribe Claims, reported in, AIR 2012 SC 314*** is relied upon to submit that the affinity test is not the litmus test for establishing the link of the petitioner with a scheduled tribe.

6. According to the learned counsel for the petitioner 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. The learned counsel for the petitioner further submits that the Castes Scrutiny Committee is duty bound to take the entry in Constitution (Scheduled Tribes) Order, 1950, at serial No.44 as it is and it was not open to the Scrutiny Committee to make any addition or subtraction in the Presidential

Order. To buttress the aforesaid submission, he placed reliance upon the ruling of the Honourable Supreme Court in the case of ***Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr, reported in, (1994 (1) SCC 359.***

7. On the other hand, learned Additional Government Pleader appearing for respondent Nos.1 and 2 submitted that the vigilance report giving all the details regarding social, cultural, anthropological traits, characteristic and traditions have been considered properly by the respondent Committee. He further submits that there are many contra entries exist.

8. The learned A.G.P. submits that mere mentioning of 'Thakur' 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., the petitioner could not establish any affinity and ethnic linkage towards the Thakur Scheduled Tribe Community. He submits that though area restriction has been removed, it is still open for the Committee to investigate. He further submits that the petitioner and his ancestors are not from the

scheduled five districts. In his view, the Committee has rightly considered the said aspect.

9. We have considered the contentions canvassed by the learned Counsel for the parties and also perused the impugned Order of the respondent Committee.

10. The petitioner, as indicated above, claims to belong to Thakur Scheduled Tribe community. One of the grounds for rejection of his tribe claim is that the origin of the petitioner and his ancestors are not found from the scheduled five districts and therefore, he could not be said to be belonging to the Thakur Scheduled Tribe.

11. 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 9 August 2019***, after taking survey of the previous pronouncement reiterated that after Parliament has enacted the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, it would not be permitted to rely on area restrictions placed by the Order of 1950.

12. 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.”*

13. 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.

14. Reverting to the facts of the petition, the material on record indicates that the petitioner had submitted several documents in support of his 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 his own documents, the petitioner had produced the copy of school admission extracts of his brother namely Saurabh and real paternal uncle namely Shivaji Mohan Jadhav, wherein their caste is recorded as Thakur. The petitioner had also produced the school admission extracts of his cousins namely Mangesh and Bhaktapralhad, wherein caste is recorded as 'Thakur'.

15. The petitioner had also produced land revenue record i.e. Khasra Patrak and Khasra Pahani Patrak of the year 1953-54 wherein name of brother of grandfather of petitioner is mentioned as Baba Kondiba Thakur. The petitioner has also submitted documents Khasra Pahani Patrak of 1343 Fasli i.e. for the year 1933 in the name of his great grandfather's brother namely Kondiba Irba Thakur. According to the learned counsel for the petitioner as per the practice prevailing at the relevant time the caste 'Thakur' was mentioned in place of their surname 'Jadhav'. According to the learned Counsel for the petitioner all these documents did not have a Caste Column and as such the

documents could not be considered has misdirected itself in law. It is no doubt true that there is no caste/tribe column in these documents. The very fact, however, that the persons are identified by the word 'Thakur' which is a notified scheduled tribe would by itself be a strong factor in favour of the petitioner. All these aspects are highlighted in the case of *Shri Prasad s/o Sakharam Pawar Vs. The State of Maharashtra and Others in Writ Petition No.4514 of 2002* decided on 18 November 2003.

16. The vigilance has verified the said document and did not find any interpolation or manipulation in the said record. The pre-constitutional documents have got more probative value. The affinity test is not the litmus test for establishing the link of the petitioner with a Scheduled Tribe as observed by the Apex Court in the case of *Anand (supra)*.

17. 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.

18. 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.

19. In light of the above, the impugned order is quashed and set aside. The respondent-Committee shall issue Validity Certificate to the petitioner as 'Thakur' Scheduled Tribe immediately.

20. Rule is accordingly made absolute in above terms. There shall be no order as to costs.

R. N. LADDHA, J.

S. V. GANGAPURWALA, J.