

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

WRIT PETITION NO.10365 OF 2019

YOGITA D/O. NANDKISHOR CHAVAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner: Mr. Yeramwar Sushant C.
AGP for Respondents No. 1&2: Mr. P. S. Patil
Advocate for Respondent No. 3: Mr. S. G. Karlekar
Advocate for Respondent No. 4:
Mr P. R. Katneshwarkar

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**CORAM: S. V. GANGAPURWALA &
S. G. DIGE, JJ.**

DATE: 07th DECEMBER, 2021

PER COURT:

1. The Petitioner had applied for validity certificate as belonging to Thakur, Scheduled tribe. Her claim is invalidated. The same is assailed in the present Writ Petition.

2. The learned Counsel submits that the first paternal cousin sister of the Petitioner namely Sheetal D/o. Sanjay Chavan had also applied for the validity certificate. Her claim was invalidated. She filed Writ Petition No. 7754 of 2020. This Court under the Judgment and Order

dated 16.12.2020 allowed the said Writ Petition thereby setting aside the Judgment of the Scrutiny Committee and directed the Committee to issue validity certificate to her. The learned Counsel relies on the Judgment of the Division Bench of this Court in case of **Apoorva D/o. Vinay Nichale Vs. Divsional Caste Certificate Scrutiny Committee No. 1 and others** reported in 2010 (6) Mh.L.J. 401.

3. We have also heard the learned A.G.P.

4. The relationship between the Petitioner and Sheetal D/o. Sanjay Chavan that of first paternal cousin sister is not disputed. This Court while allowing the Writ Petition filed by Ms. Sheetal D/o. Sanjay Chavan had passed a detailed Judgment and thereby directed the Committee to issue validity certificate to the Petitioner and observed as under-

"15. On making scrutiny of the impugned order and the original file/proceeding before the committee, it is found that the petitioner's father has given genealogy. The petitioner has produced her caste certificate coupled with affidavit, wherein her caste has been shown as "Thakur". She has placed on

record her school record and college record, wherein her caste is recorded as "Thakur". She has also placed on record the extract of school record / extract of admission register / school leaving certificate pertaining to her grandfather, father, uncle cousin sister and cousin brother. She has produced in all 33 documents in number in support of her tribe claim. The old record pertaining to petitioner's grandfather namely Bapurao Namdev Chavan (Thakur) is of dated 10.06.1954, wherein his caste is recorded as "Thakur". Smt. Laxmi Ramkrushna happens to be grandmother of the petitioner and her school record dated 12.10.1958 speaks that her caste is recorded as "Thakur". The same is the case of petitioner's father, uncle, real brother, cousin brother and sisters. We do not find any contra entry in the record.

16. We have also perused the vigilance report. There is no documentary evidence collected by the vigilance officer to disbelieve the documentary evidence placed on record by the petitioner in support of his tribe claim. The committee has placed much reliance on the statements of two villagers namely Bhagwan Anjubhau Bhutekar, Age - 75 years and Sahebrao Murlidhar Bhutekar, Age - 66 years both resident of Hiwardi, Tq. & Dist. Jalna. According to the observations of the committee, the statements of the above said two villagers speak that the family profession of the petitioner's ancestors was settling marriages, singing songs in the marriage, and they were getting money and clothes for that work. They fall in the category of "Non-tribal Bhat Thakur". We do not agree with the observation made by the committee referred above. When there is reliable documentary evidence right from the petitioner's grandfather of 1954, no more reliance can be placed on oral statements of the above said two villagers. It is evident from the record that right from the

petitioner's grandfather, grandmother since the year 1954 and 1957 respectively, in their family, the caste is recorded as "Thakur". No contra entries or contra evidence is brought on record by the vigilance officer to disbelieve the above said documentary evidence. We do not see any justifiable reason to discard the documentary evidence of they year 1954, which speaks that petitioner's grandfather's caste is shown as "Thakur". The said record is more than 30 years old and it has probative value and it needs to be believed unless contrary entries are shown by the vigilance officer. The committee has completely overlooked this legal aspect and invalidated the caste claim of the petitioner.

19. On careful scrutiny of the genealogy coupled with the documentary evidence produced by the petitioner right from the year 1954, makes out a clear picture that the caste of the family of the petitioner is recorded as "Thakur" since the year 1954. In the above background, no more weightage can be given to the affinity test.

20. It is true that the tribe claim of the petitioner's cousin sister, namely Yogita Nandkishor Chavan has been invalidated by the committee and that decision is challenged before this Court by filing Writ Petition No. 10365 of 2019, and now the matter is subjudice. It is not a hurdle in the way of petitioner to get the validity certificate of "Thakur" Scheduled Tribe.

21. Having regard to the above reasons and discussion, it is clear that the findings recorded by the committee are erroneous. The committee has not properly considered the documents, which are more than 30 years old and arrived at incorrect conclusion. There are no contra entries to throw away the tribe claim of the petitioner. The vigilance report also nowhere speaks about contra evidence. The impugned order rendered 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 reason, we conclude and proceed to pass the following order.

ORDER

- (i) The order / decision rendered by respondent No. 3 / Scheduled Tribe Scrutiny Committee, Aurangabad dated 09.11.2020 is hereby quashed and set aside.
- (ii) Respondent No. 3 / Scheduled Tribe Certificate Scrutiny Committee, Aurangabad shall issue validity certificate to the petitioner of being a member of "Thakur Scheduled Tribe" forthwith
- (iii) Rule is made absolute accordingly.
- (iv) The writ petition is disposed of. No order as to costs."

5. For the reasons recorded in the Judgment of the Division Bench of this Court in case of first paternal cousin sister of the Petitioner namely Sheetal D/o. Sanjay Chavan in Writ Petition No. 7754 of 2020 dated 16.12.2020, we follow the same course.

6. The order / decision rendered by respondent No. 2 / The Scheduled Tribe Certificate Scrutiny Committee, Aurangabad dated 16.08.2019 is hereby quashed and set aside.

7. Respondent No. 2 / The Scheduled Tribe Certificate Scrutiny Committee, Aurangabad shall issue validity certificate to the petitioner of being a member of "Thakur", Scheduled Tribe forthwith.

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

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]

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