

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

WRIT PETITION NO. 2153 OF 2013

Nana S/o Gorakhnath Nikam .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Madhur A. Golegaonkar, Advocate h/f Shri A. S.
Golegaonkar, Advocate for the Petitioner.
Shri A. R. Kale, A.G.P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.
DATE : 12TH MARCH, 2021.**

FINAL ORDER :

. The tribe claim of the petitioner as belonging to 'Thakur' (Scheduled Tribe) is invalidated.

2. Mr. Golegaonkar, the learned advocate for the petitioner submits that, eight members in the family of the petitioner are issued with the validity certificates of Thakur (S.T.) Not a single contra entry appears on record. The oldest document of the year 1347 Fasli of the petitioner's ancestor records tribe as Thakur in the revenue record. The school record of the petitioner's grandfather demonstrates the tribe as Thakur. The same is of the year 1966. Even the school record of the petitioner also demonstrates tribe as Thakur.

3. According to the learned counsel when the close paternal

relatives are issued with the validity certificate, the same is a relevant fact. The learned counsel relies on the judgment of the Division Bench of this Court in the case of Apporva Vs. State reported in *2010 (6) Mh. L. J. 401*. The learned counsel further submits that, affinity test is not litmus test. The learned counsel relies on the judgment of the Apex Court in the case of Anand Vs. State reported in *(2012) 1 SCC 113*. The learned counsel further submits that, the Committee has not disputed relationship of the petitioner with the validity holders. In absence of any contra evidence on record, the Committee has rejected the tribe claim on the ground of area restriction. The area restriction has been lifted and the same would not be relevant.

4. Mr. Kale, the learned Assistant Government Pleader for the respondents submits that, the genealogy tendered by the petitioner and genealogy tendered by Rajendra Nikam and Vijay Nikam i. e. validity holders does not match. The learned A. G. P. further submits that, the petitioner could not prove the affinity test. According to the learned A. G. P. the petitioner also does not belong to the area where Thakur (S.T.) resides. The Thakur is also found in upper caste.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. Upon perusal of the judgment of the scrutiny committee it does not appear that the committee has disputed the relationship of the petitioner with the validity holders relied by the petitioner.

The validity holders are paternal relatives of the petitioner. Upon perusing the documents placed on record and the vigilance report conducted by the Committee, there does not appear to be single contra entry. The school entries since the year 1954 in the school record of the petitioner's ancestors i. e. grandfather, father record tribe as Thakur. Even ignoring revenue record, the entries in the school record of tribe demonstrate same to be recorded as Thakur since the year 1954 consistently.

7. The Division Bench of this Court in a case of Apporva Vs. State (supra) has observed that the validity granted to the paternal relatives is relevant fact. It has been also observed by the Apex Court in the case of Anand Vs. State (supra) that, affinity test is not litmus test. Considering the validity granted to the paternal relatives of the petitioner, so also documentary evidence on record does not depict a single contra entry of caste, the impugned judgment and order is quashed and set aside. The Committee shall issue validity certificate to the petitioner of 'Thakur' (Scheduled Tribe).

8. In the light of the above, the writ petition is disposed of. No costs.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]