

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2997 OF 2016

Pooja Balasaheb Shinde
Age 22 Years, R/o, Indraprashta
Flat No. 501, A-Wing, 5th Floor,
Sector No. 10, Near Beer Hospital,
Shivaji Chowk, Khanda Colony,
Taluka Panvel, Dist. Raigad

... Petitioner

Vs.

1. State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-400 032.

2. Scheduled Tribe Certificate
Scrutiny committee, Pune Division,
Pune through its Member Secretary
having its office at 28, Queen's Garden,
Pune-411 001.

3. Maharashtra University of Health
Sciences Nasik, through its Registrar
having its office at Govt. Dental College,
Bldg, CST, Mumbai-1.

4. Dean, Government Dental College
and Hospital, CST, Mumbai

..Respondents

Mr. R.K. Mendadkar with Mr. C. K. Bhangoji, Advocate for the
Petitioner.

Ms. Kavita Solunke, AGP for the Respondents No. 1, 2 and 4.
Mr. Rajshekhar Govilkar, Advocate for Respondent No.3.

CORAM	:	R.D. DHANUKA & ABHAY AHUJA, JJ.
DATE	:	5TH OCTOBER 2021

ORAL JUDGMENT:-(PER ABHAY AHUJA, J)

1. Rule. Rule made returnable forthwith. Ms. Solunke, the learned AGP waives service for Respondents No.1, 2 and 4. Mr. Govilkar waives service for Respondent No.3.

2. By consent of counsel for the parties, Writ Petition was heard finally on 30th September 2021. Today it has been listed for orders.

3. By this petition filed under Article 226 of the Constitution of India, petitioner who is claiming to belong to Thakar, Scheduled tribe, is aggrieved that his tribe claim has been invalidated by the respondent no. 2-Committee for the second time vide impugned order dated 21st December 2015. Petitioner had initially filed writ petition no. 2562 of 2014 challenging the earlier order dated 30th January 2014, when this Court had remanded the matter back to the Committee on 12th March 2014 with further directions to reconsider the case in accordance with the law laid down in the case of **Madhuri Nitin Jadhav and Ors Vs. State of Maharashtra and Ors. (2014(4) BCR 753)**. However, petitioner is aggrieved that even on remand, the respondent no.2-Committee has passed the almost same order, impugned in this petition.

4. Learned counsel for petitioner, Mr. Mendadkar, submits that the second respondent-Committee has invalidated petitioner's tribe claim on principally the following three grounds:- (i) the documents submitted by Enquiry Officer, in relation to blood relatives of petitioner shows caste as Thakar, Maratha and Marathi before 1950, (ii) the caste validity certificates issued to cousin uncles and cousin brothers of petitioner are based on legal position existing then, which does not apply to changed circumstances, and (iii) that petitioner had failed the affinity test and she did not come from restricted area.

5. Learned counsel submits that there are several pre-constitutional documents including one of the year 1923, which has been furnished as documentary evidence, in support of petitioner's tribe claim. He submits that the Maratha entries are not older than the Thakar entry of 1923, that Marathi is not a caste. He vehemently submits that the second respondent-Committee has itself validated tribe claims of her two cousins from paternal side on almost the same documentary evidence, which is evident from enquiry report dated 17th May 2019 of Nilesh Wamanrao Shinde which is annexed to the interim application. It is submitted that Nilesh was granted validity

certificate by the respondent no.2 - Committee on 15th June 2020. He submits that another cousin viz. Ramchandra Wamanrao Shinde has also been granted caste validity certificate on 12th June 2020. Learned counsel submits that in view of settled law once caste claim of a relative has been validated then the caste claim of the applicant ought to be allowed without insisting on any other proof. Learned counsel submits that on the same set of facts and evidence, the Committee could not have taken a different view.

6. With respect to the issue of failed affinity test, learned counsel submits that affinity test is not a litmus test and it may be used to corroborate the documentary evidence, but cannot be a sole criteria to reject a claim.

7. Mr. Mendadkar, learned counsel for petitioner, has laboriously taken us through the impugned order. He submits that the findings of the Committee suggest a complete non application of mind despite clear directions by this Court in the earlier round of litigation due to a stubborn mind set to reject petitioner's claim, come what may. He refers to paragraph 15 (at page 17 of the petition) with respect to the rejection of evidence in respect of the cousin uncles and cousin brothers to submit that

those certificates of validity have been issued after the Supreme Court decision in the case of **Chairman and Managing Director, Food Corporation of India Vs. Jagdish Balram Bahira and Ors. (2017) 8 SCC 670**, i.e. after 18th December 2001 and therefore, to say that the circumstances and the legal position has changed reflects a complete non application of mind apart from being general and vague.

8. Learned counsel for petitioner has relied upon and taken us through the following decisions in support of his contentions:-

- i. Madhuri Nitin Jadhav and Ors. Vs. State of Maharashtra and Ors. 2014 (4) Bom. C. R. 753
- ii. Raju Ramsingh Vasave Vs. Mahesh Deorao Bhivapurkar and Ors. (2008) 9 SCC 54
- iii. Anita Atmaram Gaikwad Vs. State of Maharashtra and Ors. In Civil Appeal No. 3881/13 arising out of SLP (C) 23081 of 2010
- iv. Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and Ors. 2010 (6) Mh. L. J.
- v. Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors. (2012) 1 SCC 113
- vi. Vaibhav Dharma Pawar & Ors. Vs. State of Maharashtra in Writ Petition No. 8618 of 2019
- vii. Subodh Digambar Donge Vs. State of Maharashtra and Ors. 2020 (1) Bom. C. R. 210.
- viii. Shubham S. Suryawanshi Vs. State of Maharashtra and Ors. 2021 (3) Bom C. R. 671.

9. Learned counsel submits that the Committee has completely ignored the order passed in the case of petitioner in the earlier round of litigation and therefore, interference of this Court is required.

10. Mr. Mendadkar has also submitted copy of vigilance cell report as well as copy of certificate of validity of Shri Nilesh Wamanrao Shinde as belonging to Thakar (44), Schedule Tribe along with and affidavit of Shri Nilesh Wamanrao Shinde, submitting the genealogical tree, the certificate of validity of Ramchandra Wamanrao Shinde.

11. Learned counsel for the petitioner, submits that in the light of the aforesaid submissions and the principles laid down in the aforesaid decisions, this petition may be allowed in terms of prayer clauses (a) and (b).

12. Mr. Mendadkar has, during the course of his arguments submitted across the bar, two coloured charts containing the genealogical tree with the common ancestor as “Udbaba” having two branches: one of Babaji and the other of Abaji. The tree which emanates from the Babaji branch is in the first chart and the tree

that emanates from Udbaba branch is in the second chart. Since all the relatives named in the various sub branches are emanating from the two main branches of the common ancestor Udbaba, it can be said that they are in the common blood line and therefore, “relative” as defined under Rule 2(h) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Categories (Regulation of Issuance and Verification of) Caste Certificate Rule, 2012 (the “Caste Certificate Rules”).

13. What we observe from the two charts handed over to us and as explained very meticulously by Mr. Mendadkar that the relatives highlighted in yellow in both the charts are the ones who are holders of Thakar caste validity certificate. From this exposition it appears to us that petitioner viz. Pooja is a relative of Nilesh, Ramchandra/Amol, Anil, Bhausahab from the Babaji side of the tree and a relative of Dnyaneshwar, Ramesh, Rahul, Rupesh, Nandakumar from the Aabaji branch of the common ancestor Udbaba, which are holders of caste validity certificates. If we were to apply the principles set out by this Court in the case of **Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and Ors. 2010 (6) Mh. L. J.** as well as

Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors. (2012) 1 SCC 113, relied upon by the learned counsel for the petitioner, it would emerge that petitioner being a blood relative of these caste validity certificate holders, would also be entitled to the caste validity certificate as Thakar-Scheduled Tribe.

14. With respect to the failed affinity test, we agree with by the learned counsel for the petitioner that the said test is not a litmus test and cannot be used as a sole criteria to reject the tribe claim, especially in face of the caste validity certificates issued in favour of the relatives.

15. As far as the issue of area restriction is concerned, firstly area restriction was lifted in 1976. Further, in view of the Supreme Court decision holding in the case of **Jayawant Dilip Pawar vs State of Maharashtra in Civil Appeal No. 2336 of 2011 dated 8th March 2017** that once the petitioner has established that she belongs to the community mentioned at sr no. 44 of part IX of Second Schedule of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1976, the scrutiny committee cannot resort to the ground of area restriction to reject the

petitioner's claim. In our view the Scrutiny Committee could not have rejected the caste claim on this ground.

16. When we called upon the learned AGP to address the Court in response to the submissions made by Mr. Mendadkar, the learned AGP, on instructions, submitted that if the aforementioned documents tendered by learned counsel for the petitioner across the bar including the charts containing the names of caste validity certificate holders are allowed to be verified by the respondents, the newly appointed caste scrutiny committee would also be inclined to consider and grant the caste validity certificate in favour of petitioner in line with the principles laid down in the decisions referred to above. She submits that these being matters of fact it could be best left to the scrutiny committee to decide the issue rather than burdening this court with that exercise.

17. Having heard learned counsel for petitioner and also being conscious that this is the second round of the litigation but in view of the fair submission made by the learned AGP, we feel that if the documents in respect of the relatives indicated in the chart tendered across the bar are to be verified by the respondents,

there would be no reason as to why the certificate of caste validity would not be granted to petitioner.

18. With the above observations we quash and set aside the impugned order dated 21st December 2015 and remand the matter to the Schedule Tribe Certificate Scrutiny Committee at Pune to verify the caste validity certificates of the relatives highlighted in yellow in the genealogical tree in the two charts tendered across the bar (marked “X” and “Y” for identification) and to grant caste validity certificate to petitioner within a period of two weeks from today.

19. Rule is made absolute in the above terms. Writ petition is disposed with no order as to costs.

20. Parties to act upon an authenticated copy of this order.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)

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