

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

RAJESH VASANT CHITTEWAN
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Date: 2021.11.23 10:45:38 +0530

WRIT PETITION NO.5731 OF 2021

Amol s/o Rupchand Pawar ... Petitioner
Versus
The State of Maharashtra
And Others ... Respondents

**ALONG WITH
WRIT PETITION NO.5732 OF 2021**

Rakesh s/o Rupchand Pawar ... Petitioner
Versus
The State of Maharashtra
And Others ... Respondents

**ALONG WITH
WRIT PETITION NO.5733 OF 2021**

Rushikesh s/o Rupchand Pawar ... Petitioner
Versus
The State of Maharashtra
And Others ... Respondents

Mr. S.C. Yeramwar for the Petitioners.
Ms. M.S. Bane, AGP for the State in Writ Petition No.5731 of 2021.
Ms. A.A. Purav, AGP for the State in Writ Petition No.5732 of 2021.
Ms. R.M. Shinde, AGP for the State in Writ Petition No.5733 of 2021.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 18 NOVEMBER, 2021

P. C. :

. Heard Mr. S.C. Yeramwar appearing for the respective Petitioners in these petitions.

2 The Petitioners before this court are challenging the order passed by the Respondent-Scheduled Tribe Scrutiny Committee dated 12 August 2021. The Petitioners, namely, Amol Pawar (W.P No.5731 of 2021) and Rakesh Pawar (W.P No.5732 of 2021), after completing their academic courses and by submitting themselves to the process of selection, entered in the services of the Police Department in the State of Maharashtra and are presently working as Police Constable in the Office of Dy. Commissioner of Police Headquarter-1, Thane and in the office of Commissioner of Police, Mira Bhayander Vasai Virar, respectively. Whereas, Rishikesh Pawar (Writ Petition No.5733 of 2021) entered in Military Service. The Petitioners have submitted their claims belonging to Scheduled Tribe category, i.e. Thakur, through respective college, namely, M.S.G. Arts, Commerce and Science College, Malegaon, Nasik. The claims were received by the scrutiny committee, on 13 October 2006, 30 November 2005 and 20 November 2005, respectively. The Petitioners in support of their claims, submitted various documents in the form of revenue certificate as well as school leaving certificate. List of the certificates along with the relations with the Petitioners, found place in paragraph-4 of the impugned order of Respondent-scrutiny committee. There are as many as twenty two documents placed before the committee. The documents were ranging from the

period of year 1937 to year 1996. The Petitioners have placed on record, family trees indicating relations. It is not in dispute that in the list submitted before the committee of the relatives, referred to paragraph-4 of the impugned order, majority relatives are cousin brothers and sisters of the Petitioners, grandfather etc. The scrutiny committee while considering the claims of the Petitioners referred to these documents and vigilance cell reports. It also refers to the factual aspects of offering opportunity of personal hearings to the Petitioners, i.e. hearings to the Petitioners as well as their father Rupchand Pawar. The Petitioners were also represented through learned Counsel. The perusal of the order further show that the Counsel for the Petitioners made a detailed submissions before the committee, not only oral submissions, but written submissions were also placed before the committee. It further reveals from the perusal of the order impugned in the petition that due to coram in the committee, the Petitioners were heard by way of an online procedure on 24 June 2021. Prior to this online hearing, the Petitioners were heard by way of physical hearing on 18 February 2021. Learned Counsel appearing for the Petitioners by inviting our attention to the order impugned in the petitions, vehemently, submitted that the committee merely makes reference to the documents placed before it and without making any observation and without assessing the documents in the form of their genuineness and weightage, only mechanically observed that though documents make reference to Thakur and Hindu-Thakur, thus, further observed that documentary material cannot be the only criteria to consider the claims of the

Petitioners. Then the committee proceeded further and recorded its finding. The committee then made reference to validity certificate issued in favour of one of the relatives of the Petitioners, namely, Dhiraj Avinash Pawar, who happens to be cousin brother of the Petitioners. Interestingly enough, the validity certificate to Dhiraj Pawar was granted way back in the year 2005 and the committee by making mere reference to the judgements of this Court and the Apex Court, though it thought to reconsider the validity certificate issued in favour of Dhiraj Pawar and then took decision to issue notice to Diraj Pawar. Learned Counsel appearing for the Petitioner submits that the committee without recording any contra observation about the genuineness of the validity certificate issued in favour of Dhiraj Pawar or record any observation as to the validity certificate issued to Dhiraj Pawar, was either by suppression of fact or by misleading the committee, only by adopting a hyper technical approach, issued notice to Dhiraj Pawar and this factum of issuing notice to Dhiraj Pawar is treated as negative factor for considering the claims of the Petitioners. Mr. Yearamwar, learned Counsel appearing for the Petitioners submits that the approach of the committee for doing so, is clearly unsustainable and untenable. Then by inviting our attention to the observation of the committee at paragraph-12 of the impugned order, learned Counsel appearing for the Petitioners submitted that the committee only on superficial observation that persons take benefit of an identical nomenclature, obtained the validity certificate and on this observation, the committee reduced to critically assess the documents submitted by the Petitioners in

support of their claims. Learned Counsel for the Petitioners submits that the committee was duty bound to consider the entire material submitted by the Petitioners while deciding the claims of the Petitioners. The approach of the committee to select a particular material to decide the claims of the Petitioners and not considering the set of materials on superficial or hyper technical ground, causes a serious prejudice to the Petitioners and ultimately resulted in an erroneous and untenable decision.

3 Learned Counsel for the Petitioners also heavily relied on the off-quoted judgment in the matter of **Anand Katole Vs. Committee for Scrutiny and Verification of Tribe Claim**¹ in support of his submission. Learned AGPs opposed the petitions on going through the material placed on record and on going through the order passed by the Respondent-scrutiny committee impugned in the petitions.

4 We found the considerable merits in the submissions of learned Counsel appearing for the Petitioners that the scrutiny committee just refused to consider the documents placed on record on some superficial grounds. The scrutiny committee ought to have considered the entire material in deciding the claims of the Petitioners. The scrutiny committee's approach in deciding the claims only on particular material, is certainly neither expected of nor desirable. The order passed by the scrutiny committee, thus, suffers from all basic defects. Learned Counsel appearing for the Petitioners made out a case for remand of the matter to the

1 2011(6) Mh.L.J. (SC) 919

committee.

5 Accordingly, the Writ Petitions are partly allowed. The order impugned in the petitions is quashed and set aside. Respondent No.2-The Scheduled Tribe Certificate Scrutiny Committee, Nashik Division, Nasik, is directed to decide the caste claims of the Petitioners afresh. Learned Counsel for the Petitioners submits that the Petitioners would appear before the Scrutiny Committee-Respondent no.2 on 10 December 2021 along with all necessary materials. In case the committee is desirous of calling for additional documents or materials, the committee may direct the Petitioners by way of written communication and provide reasonable opportunity to the Petitioners to submit those additional documents. Considering the fact that the Petitioners will have to appear before the committee on a fresh ground for decision of the claims, the committee is directed to decide the claims of the Petitioners, as expeditiously as possible and in any event within twelve weeks from today. Needless to state that till the committee decides the claims of the Petitioners, the Respondents authorities not to take any coercive action against the Petitioners.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)