

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5380/2021

1. Shantanu Prabhakar Mungalkar,
Aged 19 years, Occu. Student, R/o Saraf Line,
Rajpura, Karanja Lad, District – Washim.
2. Darshan S/o Prakash Mungalkar,
Aged 19 years, Occu. Student, R/o Saraf Line,
Rajpura, Karanja Lad, District – Washim.

PETITIONERS

.....VERSUS.....

1. State of Maharashtra, through
Tribal Development Department,
Mantralaya Mumbai-32.
2. Scheduled Tribe Caste Scrutiny Committee,
Irwin Chowk, Amravati, through its
Research Officer and Member Secretary.
3. State Common Entrance Test Cell
through its Commissioner and Competent
Authority, 8th Floor, New Excelsior Building,
A.K. Marg, Fort, Mumbai – 01.

RESPONDENTS

Shri Tushar U. Tathod, counsel the for petitioners.
Ms Sangita S. Jachak, Assistant Government Pleader for the respondent nos.1
and 2.
Shri Nahush S. Khubalkar, counsel for the respondent no.3.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 20TH DECEMBER, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith. Heard learned
counsel for the parties in view of the urgency as made out.

2. The petitioners claim to belong to 'Raj' tribe which is recognized as a scheduled tribe as per Entry 18 of the Constitution (Scheduled Tribes) Order, 1950. Both the petitioners intend to pursue further studies. By a common order dated 07.12.2021 passed by the Scrutiny Committee, the caste claim of the petitioners for issuance of a validity certificate has been rejected. Since this has affected their further academic pursuit, we have taken up the writ petition for consideration.

3. Shri Tushar Tathod, learned counsel for the petitioners invited attention to the family tree of the petitioners' family to indicate that the common ancestor Rambhau had five issues. One son Balwantrao is the grandfather of the petitioner no.1 while Keshavrao, the other son is the grandfather of the petitioner no.2. By referring to various documents of pre-independence period it is submitted that the consistent entries therein clearly indicated that their ancestors belong to 'Raj' which was subsequently identified as scheduled tribe. More particularly, school leaving certificates of the grandfathers of petitioner nos.1 and 2 indicate their entry in the school on 05.04.1947 with entry of the caste as 'Raj'. The learned counsel also invited attention to the documents of the year 1911-12 as well as a sale-deed dated 13.03.1945 to indicate that such consistent entries therein ought to have been accepted by the Scrutiny Committee for grant of validity especially when they all pertain to the period prior to independence. He however submits that in the school

leaving certificate of the father of the petitioner no.1, entry of the caste is shown as 'Raj Gond' while insofar as the petitioner no.2 is concerned, his father's entry as made was 'Hindu Raj'. It is on this premise that the Scrutiny Committee proceeded to invalidate the tribe claim of the petitioners. He further submits that in absence of any validity certificate, the petitioners would not be able to secure admission for higher studies. Such validity certificate if issued would be required to be submitted by 22.12.2021. He therefore prays that the order passed by the Scrutiny Committee be set aside and after examining the claim of the petitioners, a direction to issue validity certificate to them be passed.

4. Considering the urgency in the matter, notice was issued on 18.12.2021 and the learned Assistant Government Pleader was requested to obtain the records of the Scrutiny Committee. The records of the proceedings pertaining to the validity are thus tendered for perusal. The learned Assistant Government Pleader submits that the Scrutiny Committee was justified in refusing to grant any validity certificate for the reason that the school entries of the father of the petitioner nos.1 and 2 indicated different caste.

5. Shri Nahush Khubalkar, learned counsel for the respondent no.3 has referred to the Information Brochure for the Centralized

Admission Process for the Academic Year 2021-22 and has submitted that for favourable consideration of an application for admission, a candidate claiming benefit of reservation has to submit the validity certificate.

6. We have heard the learned counsel for the parties and we have perused the records maintained by the Scrutiny Committee. Undisputedly, the documents at Serial Numbers 6, 7, 9, 10, 11, 13 and 24 as referred in the impugned order pertain to pre-independence era and the entry 'Raj' is consistently found in all the documents. The oldest document is of the year 1911-12 while the other documents are of the years 1936, 1940, 1942 and 1945. In our view these documents ought to have been given due importance while considering the tribe claim of the petitioners especially when the same are found to be of the period prior to recognition of 'Raj' as a Scheduled Tribe. However it is seen that by referring to a document of 1977 and 1978 the Scrutiny Committee has chosen to disregard the probative value of undisputed old documents. Except the aforesaid two entries of 1977/78 there is no contrary material on record which fact was also fairly admitted by the learned Assistant Government Pleader.

The other ground that has weighed with the Scrutiny Committee is absence of necessary knowledge with regard to affinity test. This aspect does not appeal us for the reason it is well settled that pre-

independence documents would carry more probative value than the outcome of the affinity test. Reference in this regard can be made to the decisions in *Anand Versus Committee for Scrutiny and Verification of Tribe Claims & Others* [2011(6) Mh.L.J. 919] and *Sachin Subhash Thakur Versus State of Maharashtra & Others* [2019(1) Mh.L.J. 476]. In the light of aforesaid, we are satisfied that the Scrutiny Committee was not justified in invalidating the claim of the petitioners of belonging to 'Raj' scheduled tribe.

7. In that view of the matter, the common order passed by the Scrutiny Committee on 07.12.2021 invalidating the tribe claim of the petitioners is quashed and set aside. It is declared that the petitioners belong to 'Raj' Scheduled Tribe which entry is at Serial Number 18 of the Constitution (Scheduled Tribes) Order, 1950. Consequently, the respondent no.2 would have to issue a validity certificate to both the petitioners by 21.12.2021. The learned Assistant Government to communicate this order to the respondent no.2. In the light of aforesaid, the respondent no.3 would be free to accept the admission form of the petitioners by treating them as possessing appropriate validity certificates of belonging to 'Raj' Scheduled Tribe. The petitioners are permitted to submit the original validity certificate while participating in the Spot Round Admission.

8. Rule is made absolute in aforesaid terms. No costs.

Authenticated copy of the judgment be supplied to the learned counsel for the parties as per Rules.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)

APTE