

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 202 OF 2020

Chinmay S/o. Gajanan Chavan,
Age 23 years, Occu. Student,
R/o. House No. 649, Arunoday Colony,
CIDCO, N-5, Aurangabad,
Taluka And District Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Division, Aurangabad.
Through its Member Secretary
3. Savitribai Phule Pune University,
Ganeshkhind, Pune,
Through its Registrar.
4. The Principal,
Sinhgad College of Engineering,
Vadgaon (B.K.), Pune – 411 041.

.. Respondents

(Respondents No. 3 and 4 deleted as per
order dated 29.03.2022)

...

Mr. Sushant C. Yeramwar, Advocate for Petitioner
Mr. S. G. Karlekar, A. G. P. for Respondents no. 1 and 2 – State

...

**CORAM : R. D. DHANUKA &
S. G. MEHARE, JJ.**

DATE : 29-03-2022

**ORAL JUDGMENT
(PER - R. D. DHANUKA, J.) :-**

Heard the learned counsel for the petitioner. He states that no relief against respondents no. 3 and 4 are pressed as on date and seeks liberty to delete respondents no. 3 and 4 from the cause title of the petition and also prayer clause 'C'.

2. Rule. The learned A.G.P. waives notice for respondents no. 1 and 2. Rule is made returnable forthwith. Heard finally with consent of the parties.

3. By this Writ Petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 17.12.2019 passed by the respondent No. 2 – the Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, (hereinafter, referred to as 'Scrutiny Committee'), thereby invalidating the caste claim of the petitioner. The petitioner also seeks declaration that he belongs to Thakur Scheduled Tribe and also seeks a direction against the Scrutiny Committee to issue caste validity certificate in favour of the petitioner.

4. It is case of the petitioner that the petitioner belongs to Thakur, Scheduled Tribe. On 12.09.2014, the petitioner applied for the caste certificate as 'Thakur Scheduled Tribe' to the Sub-

Divisional Officer, Aurangabad. The said application, however, was rejected by the Sub-Divisional Officer. The Sub-Divisional Officer directed the petitioner to obtain caste certificate from Washim District by order dated 03.01.2015. Against the said order dated 03.01.2015, the petitioner preferred an appeal before respondent no.2 – Committee on 04.03.2015. During the pendency of the Appeal before the Committee, the petitioner approached this Court by filing Writ Petition No.4803 of 2015 *inter alia* praying for a writ of Mandamus to direct the respondent no.2 to decide the Appeal filed by the petitioner expeditiously. This Court by order dated 27.04.2015 directed the Scrutiny Committee to decide the appeal within three months.

5. The petitioner preferred Writ Petition No.7193 of 2015 for quashing and setting aside the order dated 03.01.2015 passed by the Sub Divisional Officer, Aurangabad, rejecting the application of the petitioner for issuance of Tribe Certificate. This Court on 20.07.2015 directed the Sub Divisional Officer, Aurangabad to issue tribe certificate in favour of the petitioner. On 21.07.2015, the Sub Divisional Officer issued a tribe certificate in favour of the petitioner as 'Thakur Scheduled Tribe'. The petitioner thereafter applied for verification of his tribe claim to the respondent no. 2 – Committee and submitted all required documents. On 14.10.2019, respondent no.2 Committee referred the tribe claim of the

petitioner to the vigilance cell for conducting enquiry. After issuance of the report of the vigilance cell, respondent no.2 Scrutiny Committee issued show cause notice dated 14.10.2019 thereby asking the petitioner to submit a reply and appear before the Committee for hearing on 22.10.2019. By order dated 17.12.2019, the respondent no. 2 – Committee invalidated the tribe claim of the petitioner without considering the documents on record. Hence, petitioner filed this petition.

6. Learned counsel for the petitioner invited our attention to the documents annexed to this petition and also the impugned order passed by respondent no. 2 Scrutiny Committee invalidating the tribe claim of the petitioner. It is submitted that though the petitioner had produced the documents issued by Head Master, J.C. High School Karanja, Primary School Certificate dated 07.03.1949 in favour of grandfather of petitioner, Transfer Certificate dated 18.06.1948 issued in favour of grandfather of petitioner showing caste recorded as Thakur, the respondent No.2 totally overlooked the documents of prior to 1950.

7. It is submitted by the learned counsel that, the Scrutiny Committee has rejected tribe claim of the petitioner also on the ground that the petitioner's original place of residence was not included in the Scheduled Area. It is submitted that once area

restriction is already removed by the Parliament by Act No. 108 of 1976 the Scrutiny Committee could not reject the tribe claim on that ground. It is submitted that members of certain communities who have migrated or moved from one place to another may be within the State or outside the State are entitled to claim their social status. Members belonging to such tribal communities do not shed away or lose their social status and on such ground the Scrutiny Committee could not have rejected the tribe claim.

8. Learned counsel for the petitioner placed reliance on Judgment in case of *Jaywant Dilip Pawar Versus State of Maharashtra (Civil Appeal No. 2336 of 2011 decided 08.03.2017)*, wherein the Hon'ble Apex Court held that "the issue of area restriction is wholly irrelevant".

9. Learned counsel for the petitioner also placed reliance on Judgment of this Court in *Shubham S. Suryawanshi Versus State of Maharashtra and others (Writ Petition No. 3061 of 2020 dated 08.01.2021)*. He submits that in the aforesaid case, this Court after considering various Judgments of the Hon'ble Supreme Court and this Court in identical situation rejected all the reasons rendered by Scrutiny Committee and directed to issue caste certificate to the petitioner in that case. He also placed reliance on *Amey Mahendrasing Thakur Versus State of Maharashtra and*

others (Civil Writ Petition No. 9322 of 2018 dated 21.10.2021) and would submit that in identical situation, this Court has quashed and set aside the order passed by the Scrutiny Committee and has directed the Scrutiny Committee to issue caste validity certificate of Thakur Scheduled Tribe to the petitioner therein.

10. Learned AGP for respondents no. 1 and 2 could not dispute that the petitioner had produced the documents of his grandfather on record and more particularly the documents dated 18.06.2048 and 07.03.1949 issued by the School in favour of the grandfather of the petitioner showing his caste as Thakur. He, however, tried to justify the reasons recorded by the Scrutiny Committee in support of his submissions and he urged that no interference is warranted in the impugned order passed by Scrutiny Committee.

11. A perusal of impugned order passed by Scrutiny Committee indicates that petitioner had produced two crucial documents i.e. Primary School Certificate dated 07.03.1949 issued in favour of the grandfather of the petitioner issued by the Headmaster, J.C. High School Karanja and Transfer Certificate dated 18.06.1948 showing caste of grandfather of the petitioner as Thakur.

12. In our view, the Scrutiny Committee could not have overlooked these two documents submitted by the petitioner showing the caste of grandfather of the petitioner as Thakur, while

considering the tribe claim of the petitioner. Learned AGP could not justify this part of the order passed by the Scrutiny Committee. Perusal of the order further indicates that Scrutiny Committee has also rejected the tribe claim on the ground of area restriction contrary to the Parliament Act No. 108 of 1976.

13. So far as, migration of petitioner is concerned, in our view the findings rendered by Scrutiny Committee is contrary to the well settled principles of law laid down in case of the *Jaywant Dilip Pawar Versus State of Maharashtra and others (supra)*, *Shubham S. Suryawanshi Versus State of Maharashtra and other (supra)* and *Amey Mahendrasing Thakur Versus State of Maharashtra and others (supra)*.

14. This Court in *Shubham S. Suryawanshi Versus State of Maharashtra and other (supra)* after advertng the attention to a Judgment delivered by the Hon'ble Supreme Court in the case of *Jaywant Dilip Pawar Versus State of Maharashtra and others (supra)*, has held that petitioner was required only to establish that he belongs to community mentioned at Sr.No. 44 of Part IX of Second Schedule of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. This Court after advertng to the Judgment in a case *Sachinkumar Vasantrao Wankhede Versus State of Maharashtra (supra)*, has held that categorization of

“Thakur” as “Thakur, Scheduled Tribe” has come into effect after the Constitution was adopted and therefore obviously there was no question of having any entry of such caste (tribe) in the pre-constitutional era.

15. In our view the principles laid down by this Court in the Judgment in the case of *Amey Mahendrasing Thakur Versus State of Maharashtra and others (supra)* would apply to the facts of this case.

16. In our view, the Scrutiny Committee ought to have considered the caste certificate claim on the basis of the documents relied by petitioner issued in favour of his grandfather for the period prior to 1950 showing the caste of his grandfather as Thakur and ought to have allowed claim of the petitioner. In our view, the impugned order is contrary to the principles laid down in above decision of Honorable Supreme Court in case of *Jaywant Versus State of Maharashtra (supra)* and catena of decisions in this regard as well as Judgment of this Court in the case of *Shubham S. Suryawanshi Versus State of Maharashtra (supra)*.

17. We, accordingly, pass the following order :-

(i) Writ petition is allowed in terms of prayer clauses 'A' and 'B'.

- (ii) The Respondent No.2 Scrutiny Committee is hereby directed to issue caste validity certificate in favour of the petitioner as "Thakur" Scheduled Tribe by 11.00 a.m. tomorrow.
- (iii) Rule is made absolute in above terms.
- (iv) Writ petition accordingly stands disposed of.
- (v) Learned AGP to convey the order for information and compliance.
- (vi) Parties to act on an authenticated copy of this Judgment.

(S. G. MEHARE)
JUDGE

(R. D. DHANUKA)
JUDGE

rrd