

Maria S.

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

WRIT PETITION NO.3432 OF 2013

Mohini D/o Pralhad Thakur,
Age:30 years, Occ: Service,
R/o, Plot No.14, Shrikrishna Colony,
Jalgaon, Tq. & Dist. Jalgaon

..Petitioner

Versus

1. Collector, Jalgaon
Dist. Jalgaon
(Copy of Respondent No.1 to
be served through office of
Govt. Pleader, Bombay High Court,
Bench at Aurangabad).

2. Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar
Region, Nandurbar.
Through its Member Secretary

..Respondents

Mr. Mahesh Deshmukh, Advocate for the Petitioner.

Mr. A. R. Kale, Additional Government Pleader for the
Respondents.

**CORAM: S. V. GANGAPURWALA
&
R. N. LADDHA, JJ.**

Reserved on : 11th October, 2021

Pronounced

on: 17th March, 2022

Judgment: (Per. R. N. Laddha, J).

This Petition is directed against the Decision and Order dated 09.10.2012 of the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar (for short, “the respondent Committee), the respondent No.2 in this petition, invalidating the Caste Certificate dated 03.10.2001 issued to the Petitioner, by the Sub-Divisional Officer, Bhusawal, District Jalgaon, certifying that she belonged to the “Thakur, Scheduled Tribe”, notified in terms of the Constitution, (Scheduled Tribe) Order, 1950.

2. It is the case of the Petitioner that she was appointed as Clerk-cum-Typist by the Collector, respondent No.1 herein, against the post reserved for Scheduled Tribe. Her Tribe claim was referred to the respondent Committee for confirmation of her status as Scheduled Tribe. She had made an application to the respondent Committee under Rule 11 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 and had submitted several documents including the documents of pre-Constitutional period and the validity certificate issued to her relatives. The respondent Committee referred the documents for verification to Vigilance Cell, who, in turn, made investigation and submitted its report. A copy of the report of the Vigilance Cell was supplied to her. An

opportunity of hearing was also granted. The respondent Committee, after evaluating the documents, by an Order dated 09.10.2012 rejected her claim.

3. Aggrieved by and dissatisfied with the said Order, the present Writ Petition has been filed.

4. Mr. Mahesh Deshmukh, the learned Counsel appearing for the petitioner submits that several documents were relied upon and though all of them are genuine, the affinity test has been resorted to. It was submitted that the respondent Committee ought to have considered the documentary evidence and should have placed greater reliance on pre-independence documents. It was submitted that the affinity test is not a decisive test for establishing the link of the petitioner with the Scheduled Tribe and in present facts, when all documents conclusively establish the caste claim as Thakur, merely because some doubts were entertained by the respondent Committee in relation to affinity and customs, those documents have been en-block disbelieved. Further, it has been submitted that the Caste Validity Certificates produced on record of the blood relatives of the petitioner have been overlooked. It was submitted that the issue of area restrictions has now been put to rest in the light of the decision of the Hon'ble Supreme Court.

5. Learned Counsel for the Petitioner submits that the Caste Scrutiny Committee is duty bound to read the entry in Constitution (Scheduled Tribes) Order, 1950 at serial No.44 as it is and it was not open to the respondent Committee to make any addition or subtraction in the Presidential Order. The respondent Committee obtained so called material evidence of the person who was not a blood relation of the petitioner.

6. Mr. A. R. Kale, learned Additional Government Pleader appeared on behalf of the respondents and contended that there was no substance in the arguments put forth on behalf of the petitioner. It was emphasised that the Vigilance Report giving all the details regarding social, cultural and anthropological traits and characteristics and traditions, have been considered properly by the respondent Committee. In his view, mere mentioning of “Thakur” against the caste column in any public document cannot be a sole ground to hold that the person belongs to “Thakur Scheduled Tribe”. He contends that “Thakurs” are available in both forward and backward communities. In such circumstances, according to the learned Additional Government Pleader, affinity test is crucial. It was submitted that the petitioner could not establish any affinity and ethnic linkage towards the Thakur Scheduled Tribe community.

7. According to the learned Additional Government Pleader, though area restrictions have been removed, it is still open for the Scrutiny Committee to investigate. It was further submitted that the petitioner and her ancestors are not from the Schedule 5 Districts. In his view, the impugned order passed by the respondent Committee is a reasoned one and findings are based upon evidence produced before the Committee.

8. We have considered the contentions canvassed by the learned counsel for the parties and perused the impugned order of the respondent Committee. We have gone through the original record and proceedings produced by the learned Additional Government Pleader.

9. The petitioner, as indicated above, claims to belong to “Thakur Scheduled Tribe” community. One of the grounds for rejection of her Tribe claim is that the origins of the petitioner and her ancestors are not from the Scheduled 5 Districts, and therefore, she could not be said to be belonging to the “Thakur Scheduled Tribe”. In the case of *Jaywant Dilip Pawar v/s. State of Maharashtra & Ors.*,¹ the Hon'ble Supreme Court in this context held that the Scrutiny Committee negating the claim of the appellant on the ground that relatives of the appellant were

¹ 2017 MhLJ Online (SC 16),

not residents of the area mentioned in the Presidential Order, 1956 and not being able to give any details of customs and traditions of the “Thakur Scheduled Tribe” community was not justified. Appellant has only to establish that he belongs to the community mentioned at serial No.44 of Part IX of Second Schedule to the Scheduled Tribe Order (Amendment) Act, 1976. As per the said Act, the area restrictions of Scheduled Tribe in the State of Maharashtra for the Thakur community was deleted and all members of Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar communities are treated to be Scheduled Tribe.

10. In the case of *Mayuri Sunil Thakur v/s. State of Maharashtra & Ors.*², a Division Bench of this Court took into consideration various judgments on the aspect of the area restrictions and reiterated that after Parliament has enacted the Schedule Caste and Scheduled Tribes Order (Amendment) Act, 1976, it would not be permissible to rely on the area restrictions placed by the Order of 1950. They are removed in order to enable the persons not residing in the 5 Districts identified as permanently inhabited by Thakurs to claim benefits and concessions as also relaxation in Government employment and

² Writ Petition No. 8738 of 2019 dated 9th August 2019

election. Similarly, a Division Bench of this Court in the case of *Nikhil s/o Anil Thakur v/s. State of Maharashtra & Ors*³ has further made clear that with the removal of area restrictions, place of residence lost its significance.

11. In view of the aforesaid legal position, it is clear that upon removal of area restrictions by the Amending Act of 1976, it would not be permissible to rely on the area restrictions placed by the Order of 1950.

12. Reverting to the facts of the case, the material on record indicates that the petitioner had submitted several documents in support of her Tribe claim before the respondent Committee indicating the Tribe and social status of her grandfather, father and blood relatives to be that of “Thakur” community. Apart from her own documents, the petitioner had produced School Leaving Certificate, an extract of the School Admission Register, Caste Certificate of her father, wherein birth date of her father was recorded as 01.06.1958 and under the column of religion and caste it was mentioned as “Hindu Thakur”. In the Caste Certificate of her father Pralhad issued by the Executive Magistrate, Yawal, it is mentioned that he belongs

³ 2021 (5) MhLJ 104

to “Hindu Thakur” community which is recognised as Scheduled Tribe.

13. The petitioner had also produced an extract of School Admission Register of her grandfather Namdeo wherein the date of birth was recorded as 10th May, 1921 and under the column of religion and caste it was mentioned as “Thakur”. The petitioner had also produced copy of the School Leaving Certificate and an extract of School Admission Register of sisters of her father wherein it is also mentioned that they belong to Hindu Thakur community. The entries in the School Admission Register of the grandfather of the petitioner are of Pre-Constitutional period. Moreover, in all the documents referred in the impugned order of the respondent Committee, the religion and caste was recorded as “Hindu Thakur”. The respondent Committee has not expressed any doubt about the contents of any documents. However, merely because these documents do not disclose the caste as Thakur Scheduled Tribe and the Thakurs are available amongst higher strata of society, those documents have not been accepted. In our view, this approach of the respondent Committee is erroneous. In the case of *Motilal s/o Namdeo Pawar v/s. Scheduled Tribe Certificate Scrutiny*

Committee, Nashik & Ors.,⁴ the Division Bench of this Court observed that “Thakur” came to be recognised as a Scheduled Tribe only for the first time in 1950 and therefore, could have been no entry as Thakur Scheduled Tribe. In the case of *Anand Katole v/s. Scheduled Tribe Caste Scrutiny Committee*,⁵ the Hon'ble Supreme Court held that greater reliance may be placed on Pre-Independence documents because they furnish a higher degree of probative value to the declaration of status as a caste as compared to Post-Independence documents. In the present case also, it is seen that the Pre-Independence documents of the petitioner's grandfather show his caste to be “Thakur”. Not a single contra entry appears in the record.

14. In view of this, we are of the considered opinion that the documentary evidence produced by the petitioner was not examined and appreciated in its proper perspective and the respondent Committee laid much emphasis on the affinity test, which the Committee ought not to have done. The affinity test is not the litmus test for establishing the link of the petitioner with the Scheduled Tribe as enunciated by the Hon'ble Supreme Court in the case of *Anand Katole (supra)*.

⁴ Writ Petition No. 7 of 2014 dated 22.12.2017

⁵ 2012 (1) SCC 113

15. Having found that each of the findings and conclusions of the respondent Committee is unsustainable in law, perverse and vitiated by complete disregard to the judicial pronouncements, we have no hesitation in allowing this Writ Petition. The Writ Petition, thus must succeed.

16. We quash and set aside the impugned order of the respondent Committee. We direct that the respondent Committee shall issue a Validity Certificate in the name of Mohini d/o Pralhad Thakur-petitioner as belonging to the “Thakur Scheduled Tribe” immediately. There shall be no order as to costs. All pending interlocutory applications, if any, stand disposed of in terms of this Judgment.

R. N. LADDHA, J

S. V. GANGAPURWALA, J