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

WRIT PETITION NO.13508 OF 2018

Vyankatesh s/o Kashinath Thakur,
Age – 19 years, Occ. Student,
R/o A/p Waghadi, Tq. Shirpur,
Dist. Dhule

..PETITIONER

VERSUS

1. The State of Maharashtra,
Department of Tribal Development,
Mantralaya, Mumbai – 32
Through its Member Secretary
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division,
Nandurbar,
Through its Member Secretary
3. The Commissioner & Competent Authority,
State Common Entrance Test Cell,
Maharashtra State, Mumbai,
8th Floor, New Axelsior Building,
A.K. Marg, Fort, Mumbai-400001.
For Admission to Professional Degree
Courses in Agricultural Universities of
Maharashtra for academic year 2018-19
4. Mahatma Phule Krishi Vidyapeeth,
Rahuri, Dist. Ahmednagar,
Manmad Road,
Through its Registrar
5. College of Agriculture,
Muktainagar, Dist. Jalgaon,
Tq. & Dist. Jalgaon,
Through its Principal

..RESPONDENTS

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Mr. Sagar S. Phatale, Advocate holding for Mr.S.C. Yeramwar,
Advocate for petitioner;
Mr. A.R. Kale, A.G.P. for respondents no.1 & 2;
Mr. S.G. Karlekar, Advocate for respondent no.3;
Mr. A.S. Shelke, Advocate for respondents no.4 & 5

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

DATE : 1st April, 2022

ORAL JUDGMENT (Per S.G. Mehare, J.)

1. Rule. Learned A.G.P. waives service for respondents no.1 and
2. Learned Counsel Mr. Karlekar for respondent no.3 and learned Counsel Mr.Shelke for respondents no.4 and 5 waives service.
2. Rule is made returnable forthwith and heard finally.
3. Petitioner, by way of this writ petition under Article 226 of the Constitution of India, has impugned the decision/order of the Respondent no.2 Committee, dated 21.8.2018 invalidating his Tribe claim belonging to “Thakur”.
4. Petitioner was studying in the college of respondents no.4 and

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5. While pursuing his B.Sc. (Agriculture). Respondents no.4 and 5 referred his tribe claim to respondent no.2 on 18.5.2018. The Committee had called vigilance report. The petitioner submitted detailed reply to the vigilance report. However, in view of directions of this Court in Writ Petition No.9497 of 2018, respondent no.2 Committee invalidated the tribe claim of the petitioner vide impugned order dated 21.8.2018.

6. Learned Counsel for the petitioner would argue that the petitioner has proved that he belongs to the "Thakur" - Scheduled Tribe. The documents submitted by the petitioner before the Committee were genuine and no allegations of forgery were made against him. The area restriction has been lifted in 1976 and the law on the area restriction has been settled by the catena of judgments. The issue as regards affinity test has also been settled by various judgments of this Court and the Honourable Apex Court. He would further argue that respondent no.2 has unnecessarily gone into and given the weightage to the documents which were not from his paternal side and the persons who were not in his relation.

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7. It is submitted that there was no contra evidence. Since the tribe validity was denied, the petitioner has suffered in his further education. It is also submitted that two of his relatives have been granted the validity certificate by this Court by the judgment and order passed in Writ Petition No.6394 of 2019, dated 4.12.2021 and order passed in Writ Petition No.6389 of 2019, dated 2.2.2022 (to which one of us, S.G. Mehare, J. was a member). He also relied upon the case of Amey Mahendrasing Thakur vs. State of Maharashtra & ors., Civil Writ Petition No.9322 of 2018, decided at the Principal Seat at Bombay, dated 21.10.2021, (to which one of us, R.D. Dhanuka, J. was a member). He also added that once the validity is accepted or granted by the Court of Law, that would be the best evidence to claim the tribe validity by the blood relative. On the basis of the above submissions, he claimed that the petition may be allowed and respondent no.2 be directed to issue tribe validity certificate to the petitioner.

8. Per contra, the learned A.G.P. Shri Kale for the State would argue that the issue of affinity test and area restriction is pending before the Honourable Apex Court and recently the view taken by the

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Honourable Apex Court in Anand Vs. Committee (2012) 1 SCC 113, as regards affinity test and the issue regarding area restriction has been referred to the Larger Bench. He also pointed out that the Scrutiny Committee has considered the entire aspect on facts and the settled law till this date. The record collected by the vigilance cell was contrary to what the petitioner has claimed. The affinity test though not a litmus test, but it is a necessary test.

9. This Court, based on the judgment in Writ Petition No.6394 of 2019, has granted the validity to the relative of the petitioner in Writ Petition No.6386 of 2019. The view taken in the case of Anand (supra) has been consistently followed by this Court in various cases observing that affinity test is not a litmus test. The issue as regards affinity test has been discussed by the Bombay High Court at Principal Seat in Amey's case (supra). In the said case, various judicial pronouncements have been considered and lastly it is held that the affinity test is not a litmus test.

10. Insofar as the objection that few contra entries of the relatives from the maternal side is concerned, the Division Bench of this Court at Principal Seat in Amey's case (supra) has considered the definition

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of “relative” as contained in Rule 2 (h) of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificates Rules, 2012, and held that “maternal relative” appears to have been excluded in view of the specific reference to blood relatives from the paternal side. The definition clearly indicates that the blood relatives shall be from the paternal side. Be that as it may, the caste validity of the relatives from the paternal side has been granted by this Court as per the orders passed in the Writ Petitions mentioned above. Once the Court validates the caste/tribe certificate from the paternal side, the Scrutiny Committee has no reason to take a contrary view, unless such judgment is set aside.

11. The petitioner had relied upon four pre-independence school entries in the name of his grandfather, cousin uncle and two grand aunts in which their caste is mentioned as “Hindu Thakur”. It is experienced that in school record the caste column is written as “धर्म, जात व पोट जात”. Hence, normally the religion is written first and then the caste is written. Admittedly, “Hindu” is not a caste. The old entries have more evidentiary value. Old entries that supports the

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claim, cannot be brushed aside.

12. In that view of the matter, we are of the view that the petitioner is entitled for the tribe validity certificate as prayed for.

Hence, we pass the following order:-

- I) The impugned order dated 21.08.2018 passed by respondent no.2 committee is quashed and set aside.
- II) In view of urgency, as the petitioner has to apply for B.Sc. Agriculture course which is likely to start from 10th April, 2022, we allow the writ petition in terms of Prayer Clause (B) and direct Respondent No.2-Caste Scrutiny Committee to issue caste validity certificate in favour of the petitioner as "Thakur" - Scheduled Tribe (Reserved Category) on or before 7th April, 2022.
- III) Rule is made absolute in the aforesaid terms.
- IV) Parties to act upon authenticated copy of this order.

(S. G. MEHARE, J.)

(R.D. DHANUKA, J.)

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