

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14191 OF 2021

Shreyas Sunil Pawar

....Petitioner

Versus

The State of Maharashtra and Others

...Respondents

Advocate for Petitioner : Mr. S.M. Vibhute

AGP for Respondent Nos. 1 & 2 : Mr. S.B. Pulkundwar

Advocate for Respondent No. 3 : Mr. S.G. Karlekar

**CORAM : A.S. GADKARI AND
S. G. MEHARE, JJ.**

DATE : 08.02.2022

P.C. :

1. By the impugned order dated 02.12.2021, the caste claim of the petitioner belonging to 'Thakur' Scheduled Tribe has been invalidated.
2. Heard Mr. Vibhute, learned counsel for petitioner and Mr. Pulkundwar, learned AGP for State. Perused record produced before us.
3. The caste claim of the petitioner has been rejected by respondent No. 2. The observations made by this Court in its judgment dated 22.12.2017 in Writ Petition No. 07/2014 are squarely applicable to the case in hand. It was observed in the said judgment that, respondent No. 2 Committee, on verification of caste claim of 'Thakur' as Scheduled Tribe, has rejected the claim of the petitioner on the grounds which have been

found to be unsustainable by this Court in a series of judgments. It was also observed therein that the impugned order runs into 33 pages. Perusal of impugned order reveals that, it is nothing but a repetition of the grounds which, respondent No. 2 Committee usually tenders, while rejecting the claims referred to it, as belonging to 'Thakur', Scheduled Tribe. The observations made by the Court in the said decision in Writ Petition No. 07/2014 are squarely applicable to the case in hand. In the present case impugned order runs into 22 pages.

4. Perusal of record indicates that, the documents having evidential value and which are in existence since pre-independence era have not been properly taken into consideration by respondent No. 2 Committee. The Admission and Exit Abstract of the school record of grand father of petitioner mentioning his tribe as 'Thakur' has not been properly appreciated by the Committee. The vigilance report submitted by concerned authority in column No. 1 at serial Nos. 1 and 7 have considered the school record of grand father of the petitioner. It is stated in the remark column at serial No. 1 that, the grand father of the petitioner was studying in primary school of Zilla Parishad at Dhamani (Khadi), Taluka Karanja, District Washim. The record of the school has been become old and torn and the name Ramchandra has been written in different ink. It is stated at serial No. 7 that, Ramchandra Narayan Pawar

was studying in SMG, Zilla Parishad Prashala, Taluka Madha, District Solapur, and took admission in the said school on 26.07.1957. At both the said serial numbers the caste of the grand father of petitioner has been mentioned as 'Thakur'. It is to be noted here that, the Vigilance Committee did not find anything adverse about entry of the said caste of the grand father of the petitioner therein. What has been observed by the Vigilance Committee at serial No. 1 is i.e. name of Ramchandra is written in different ink. That's all and nothing more than it. There is no allegation that, the name of caste as 'Thakur' has been deceptively or fraudulently entered in the school record.

In this background, what has weighed by the Scrutiny Committee is that, the validity certificate issued in favour of Sunil Ramchandra Pawar i.e. father of petitioner is shrouded with suspension.

5. It is the contention of learned AGP that, the said certificate was obtained by adopting fraudulent means. The said certificate was issued by the then Committee which included the then Joint Commissioner and Vice President Shri V.S. Patil, in whose regime large scale irregularity was committed while issuing caste validity certificate. That, a show cause notice to Sunil Ramchandra Pawar i.e. father of the petitioner has been issued by the Committee and it has called for the explanation as to why his caste validity certificate should not be cancelled ? He submitted that,

therefore the tribe claim of petitioner may not be considered till the decision in case of Sunil Pawar by the Committee.

It is to be noted here that, the Division Bench of this Court in Writ Petition No. 5611/2018, came across with similar situation and in its order dated 27.07.2018, it has been held in para No. 4 therein that, “We are not impressed by the explanation and justification not to proceed against a person who has perpetrated a fraud on the public. If it is a serious allegation and which is termed as fraud, then, it should have been taken to its logical end. Mere issuance of a show cause notice in the present case would not suffice for there are other validities relied upon by the petitioner”.

In the present case one of the grounds for rejecting the caste validity of the petitioner is that, the Committee has issued show cause notice to father of petitioner for cancellation of his validity certificate.

6. The Supreme Court in the case of **Anand Verses Committee For Scrutiny And Verification Of Tribe Claims and Others**, reported in (2012) 1 Supreme Court Cases 113, in paragraph No. 22 (ii) has held as under :

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a

determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

7. The learned AGP submitted that, the issue of affinity test for grant of validity certificate is pending for consideration before the larger bench of the Supreme Court and till the larger bench of the Supreme Court decides the said issue, the present petition may not be heard and no benefit of the same be given to the petitioner.

We record this submission only for the rejection, as we are of the considered view that, the future of a student including his academic career cannot be put to stake at the whims and caprices of the State, if he is otherwise eligible to avail benefits of his tribe claim. Even if the grounds for rejection of the caste validity certificate of petitioner with respect to

affinity test are not taken into consideration, then also we are of the considered view that the documents relied upon by the petitioner of his grand father exhibiting his tribe as 'Thakur' are having its own evidential value in the eyes of law and therefore the petitioner is entitled to get benefit of the same.

8. As a result of the above deliberation, the petition is allowed.

i. The impugned Order of respondent No. 2 Committee dated 02.12.2021 is quashed and set aside.

ii. Rule is made absolute in terms of prayer clause (B).

iii. Respondent No. 2 is directed to issue caste validity certificate indicating that, the petitioner belongs to 'Thakur' as Scheduled Tribe immediately.

iv. It is needless to state that such grant of Validity Certificate would be subject to the following conditions :

a. The law laid down by the Hon'ble Apex Court in **Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others** or any other judgment if delivered in future which takes away all the benefits of a candidate including educational / service benefits that, he may have earned on the basis of a reservation in the event of quashing of his validity claim, will apply to his case.

b. We make it abundantly clear that, this order does not prevent the

scrutiny committee from proceeding against Sunil Ramchandra Pawar in accordance with law and it is further needless to clarify that, in the event Sunil's claim is invalidated, all the consequences shall apply to the petitioner as well.

c. This order has been passed keeping in view the peculiar case of urgency shown by the petitioner having regard to his NEET-UG-2021 examination.

d. Rule is accordingly made absolute.

[S.G. MEHARE, J.]

[A.S. GADKARI, J.]