

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7584 OF 2022

Shrutika d/o Bapu Pawar,
Age – 19 years, Occ. Student,
R/o A/p Shrigonda Factory,
Tq. Shrigonda, Dist. Ahemadnagar ... Petitioner

Versus

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 400 032.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Pune Division,
5th Floor, C-Wing, Kapil Towers,
Near RTO Office, Pune. ... Respondents

Mr. Sushant C. Yeramwar for the Petitioner.

Mr. A. P. Vanarse, AGP for the State.

**CORAM : S. V. Gangapurwala &
R. N. Laddha, J.J.**

DATE : 18th October 2022

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

Heard the learned counsel for the parties.

2. Rule. The Rule is made returnable forthwith with the consent of and at the request of the learned counsel for the parties.

3. The petitioner questions the Respondent-Scrutiny Committee's decision and order invalidating her tribe certificate

belonging to Thakar-Scheduled Tribe. Further, she sought direction to the Scrutiny Committee to issue a certificate of validity in her favour.

4. The petitioner claims to belong to Thakar-Scheduled Tribe. The petitioner was therefore, granted a tribe certificate by the Competent Authority on 3rd October 2018, certifying that she belonged to Thakar-Scheduled Tribe. Being a student, the petitioner was required to submit a tribe certificate for prosecuting higher studies. The tribe certificate of the petitioner was referred for verification to the Respondent-Scrutiny Committee. Before the Respondent-Scrutiny Committee, the petitioner produced several documents, which consisted of pre-constitutional period documents, the certificates of validity issued to her blood relatives and the copies of several orders passed in writ petitions whereby the Respondent-Scrutiny Committee was directed to give validity certificates to the blood relatives of the petitioner from her paternal side.

5. The Respondent-Scrutiny Committee referred the documents for verification to the vigilance cell. In turn, the vigilance cell made the investigation and submitted its report. A copy of the report of the vigilance cell was supplied to her. An opportunity for a hearing was also granted. The Respondent-

Scrutiny Committee, after evaluating the documents by an order dated 16th January 2021, rejected the petitioner's tribe claim. The Respondent-Scrutiny Committee has also recorded that the petitioner failed the affinity test. It is also stated that some contra entries were found during the enquiry.

6. Mr S. C. Yeramwar, learned counsel for the petitioner, submitted that the decision of the Respondent-Scrutiny Committee invalidating the tribe claim of the petitioner's cousin uncle namely Arun Sopan Pawar was already quashed and set aside by this Court and confirmed by the Hon'ble Supreme Court of India. According to him, now the Respondent-Scrutiny Committee cannot disregard the same on flimsy ground, stating that some record was not available before the Scrutiny Committee while deciding her tribe claim. The Respondent-Scrutiny Committee has not considered the oldest documentary evidence. It is submitted that the Respondent-Scrutiny Committee ought to have considered the documentary evidence and should have placed greater reliance on pre-independence documents. He further submitted that the affinity test is not the litmus test for establishing the petitioner's claim with a Scheduled Tribe.

7. According to the learned counsel, it is mandatory to issue a tribe certificate to the petitioner if the validity is already given to his

blood relatives. It has been submitted that the tribe validity certificates produced on records of blood relatives have been overlooked.

8. The learned counsel relied on (i) *Arun Sopan Pawar v/s. The State of Maharashtra & Ors., Writ Petition No. 2122 of 1989 dated 30th October 1996* and (ii) *Anand Ravindra Pawar v/s. State of Maharashtra & Ors., Writ Petition No. 7852 of 2019, dated 17th July 2019*, in support of his contentions.

9. The learned counsel points out that all the petitioners in the above-cited petitions are blood relatives of the present petitioner and, under orders of this Court, they have been granted tribe validity certificate.

10. Mr A. P. Vanarse, learned Additional Government Pleader, contested the contentions of the learned counsel for the petitioner. He submitted that in several documents, the blood relatives of the petitioner had been shown as belonging to Maratha and not the Thakar-Scheduled Tribe. In the investigation, as the contra entries are found, the decisions of the Respondent-Scrutiny Committee to invalidate the petitioner's tribe claim cannot be faulted. According to him, some relatives of the petitioner have been declared to be Thakar-Scheduled Tribe is not conclusive as regards the petitioner's claim that she belongs to the Thakar-Scheduled Tribe.

11. The rival contentions now fall for our determination.

12. In *Apoorva d/o Vinay Nichale v/s. Divisional Caste Scrutiny Committee & Ors., 2010 (6) Mh.L.J. 401*, the Division Bench of this Court has held that if the committee has validated the tribe of the candidate as belonging to the Scheduled Tribe, then the other blood relatives cannot be denied the validation of tribe certificates unless, of course, a case of fraud, misrepresentation or separation of facts is made out.

13. In the present petition, the petitioner's blood relatives were granted validity certificate by the Scrutiny Committee. The existence of a paternal relationship claim is a compelling consideration. The basic premise is that paternal relatives take the same caste as their common ancestors based on consanguinity. No Court can conclude that a paternal relationship belongs to one community and that another relationship can be considered to belong to another. The tribe of the petitioner cannot be different from the tribe of her other blood relatives. The above ruling in *Apoorva (supra)* is also authority for the proposition that if the committee has validated the tribe claim of the candidate as belonging to the Scheduled Tribe, then the other blood relatives cannot be denied the validation of the tribe certificate unless it was

obtained without producing vital evidence or was issued on a wrong premise or mistake.

14. In such circumstances, the petitioner is entitled to the same benefit as her blood relatives. It is not disputed that under the orders of the Court, the blood relatives of the petitioner have been granted the tribe validity certificates. Also, there is no dispute that the judgments relied upon by the learned counsel for the petitioner have attained finality. Moreover, the affinity test is not the litmus test for establishing the links of the petitioner with the Scheduled Tribe, as enunciated by the Hon'ble Supreme Court in the case of *Anand Katole (supra)*.

15. Apart from this, in the present matter, it does appear that the Respondent-Scrutiny Committee has not appreciated the documents of the pre-constitutional era in their proper perspective. The material on record indicates that the petitioner had submitted several documents in support of her tribe claim before the Respondent-Scrutiny Committee, indicating that the tribe and social status of her blood relatives are that of the Thakar-Scheduled Tribe. The documents relied upon by the petitioner are from much before 1950. The Respondent-Scrutiny Committee should have given due weightage to such pre-constitutional period documents.

16. In *Anand Katole v/s. Committee for Scrutiny and Verification of Tribe Claims & Ors., 2012 (1) SCC 113*, the Hon'ble Supreme Court also emphasised that while dealing with the documentary evidence, 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.

17. The material on record indicates that the petitioner had submitted several documents in support of her tribe claim before the Respondent-Scrutiny Committee, indicating the tribe and social status of her blood relatives to be that of Thakar-Scheduled Tribe. The documents relied upon by the petitioner were long before 1950. However, the Respondent-Scrutiny Committee has not appreciated the documents of the pre-constitutional era in their proper perspective.

18. Therefore, based on the aforesaid, we find it difficult to approve the impugned order of the Respondent-Scrutiny Committee. We also find it difficult to endorse the reasoning of the Respondent-Scrutiny Committee, having found that each of the findings and conclusions is unsustainable in law, perverse, and

vitiated by complete disregard to the judicial pronouncement, we have no hesitation in allowing the writ petition.

19. In view of the matter, we hereby set aside the impugned order of the Respondent-Scrutiny Committee. We also direct that the Respondent-Scrutiny Committee shall issue a validity certificate in the name of the petitioner of the Thakar-Scheduled Tribe immediately.

20. Rule is accordingly made absolute in the above terms. There shall be no order as to costs.

(R. N. LADDHA, J.)

(S. V. GANGAPURWALA, J.)

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