

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3906/2021

- 1] Abhishek Ajay Donge,
Aged 25 years, Occ. Student.
- 2] Ajaykumar Mahadeo Donge,
Aged 52 years, Occ.Service.
- 3] Digambar Mahadeorao Donge,
Aged 57 years, Occ. Service.

All residing at Pande Lane, Jogali
 File Shegaon, Tal.Shegaon,
 District Buldhana. .

..... **PETITIONERS**

..V E R S U S..

- 1] State of Maharashtra
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-400 032.
- 2] Scheduled Tribe Certificate Scrutiny Committee,
Amravati Division, Amravati, through its Member Secretary,
Having its Office at Sana Building,
Chaprasipura, Amravati.
District Amravati.
- 3] Sipna College of Engineering and Technology,
Amravati, District Amravati.
Through its Principal.
- 4] District Malaria Officer,
Akola, District Akola.
- 5] Assistant Director of Health Services (Malaria),
Akola, Tal.Akola District-Akola.

..... **RESPONDENTS**

 Shri R.K.Mendadkar, Advocate with Shri Gopal Mishra, Advocate for
 petitioners.
 Ms. H.N.Jaipurkar, Assistant Government Pleader for respondent nos.1,2,4 & 5.
 None for respondent no.3 though served.

CORAM : A.S.CHANDURKAR and G.A.SANAP, JJ.
DATE : 18th FEBRUARY, 2022.

ORAL JUDGMENT (Per A.S.Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

The challenge raised in this writ petition is to the order passed by the Scheduled Tribe Certificate Scrutiny Committee, Amravati dated 24.12.2020 invalidating the claim of the petitioners of belonging to 'Thakur' Scheduled Tribe.

2. Shri R.K.Mendadkar, learned counsel for the petitioners submits that this Court in *Subodh Digambar Donge vs. State of Maharashtra & ors. 2020(1) BCR 210* had considered a challenge to the order of invalidation passed by the Scrutiny Committee in respect of the son of petitioner no.3. After considering the entire record, this Court came to a conclusion that the son of the petitioner no.3 had proved that he belonged to 'Thakur' Scheduled Tribe. It is submitted that the judgment in *Subodh Digambar Donge* (supra) continues to operate even today . Inviting attention to the observations in Writ Petition No.7569 of 2008 (*Pratibha Gorakhnath Nikumbh vs. The State of Maharashtra and anr.*) decided on 12.04.2013 at the Principal Seat, it is submitted that this Court having adjudicated the tribe claim of a blood relative of the petitioners, such adjudication was binding on the Scrutiny Committee and a different view could not have been taken. It is thus prayed that the Scrutiny Committee having failed to consider the aforesaid law, the impugned order is liable to be set aside.

3. Ms. H.N.Jaipurkar, learned Assistant Government Pleader for respondent nos. 1, 2, 4 and 5 initially sought time to file affidavit in reply. She however supported the impugned order by submitting that the reasons assigned by the Scrutiny Committee were in view of the conclusion recorded by applying the affinity test. It was thus submitted that no interference was called for. She however did not dispute the fact that the family tree, which is at page no.89 of the writ petition indicating the relationship of the petitioners with Subodh was prepared by the Vigilance Cell.

4. We have heard the learned counsel for the parties and we have perused the material on record. At the outset, it may be observed that as per the family tree prepared by the Vigilance Cell, the petitioner no.3 is the father of Subodh who was directed to be issued validity certificate by this Court in *Subodh Digambar Donge* (supra). The petitioner no.1 is the son of petitioner no.2 and the petitioner no.2 is the real brother of petitioner no.3. The relationship thus being established, there is no reason to deny the petitioner no.3 the benefit of adjudication of the tribe claim by this Court in respect of his own son. For the same reason, his brother-the petitioner no.2 and his nephew-petitioner no.1 would also be entitled to such benefit. In paragraph 3 of the decision in *Pratibha Gorakhnath Nikumbh* (supra), it has been observed as under :

“3. If High Court on considering the order passed by the Caste Scrutiny Committee has itself arrived at a conclusion about the caste of a petitioner and has ordered the Committee to issue validity certificate accordingly, then that order holds the field and

binds the Scrutiny Committee in the matter of blood relative.....”

In addition, the ratio of the decision in *Apoorva d/o Vijay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1* and ors. *2010 (6) Mh.L.J. 401* also applies to the facts of the present case.

5. Hence for reasons recorded in the judgments in the case of *Subodh Digambar Donge* (supra) and *Pratibha Gorakhnath Nikumbh* (supra), the order passed by the Scrutiny Committee dated 24.12.2020 is quashed and set aside.

It is declared that the petitioners have proved that they belong to ‘Thakur’ Scheduled Tribe which is Entry No.44 of the Second Schedule, Part IX of the Amending Act No.108 of 1976. The Scrutiny Committee shall within a period of six weeks from today issue validity certificate to the petitioners accordingly. Consequent upon this adjudication, the respondent no.3-College shall release mark sheet of the petitioner no.1. Similarly, the respondent nos. 4 and 5 shall pay retiral benefit of the petitioners nos. 2 and 3 in accordance with law.

Rule is made absolute in aforesaid terms. No costs.

(G.A.SANAP, J.)

(A.S.CHANDURKAR, J.)

Andurkar..