

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

WRIT PETITION NO. 6157 OF 2021

Nilkanth s/o Vasudev Thakur,
Age- 28 years, Occu. Student,
R/o A/p Hingona, Tq. Yawal,
Dist. Jalgaon. .. Petitioner

Versus

1. The State of Maharashtra,
Department of Tribal Development,
Mantralaya, Mumbai – 32.
Through its Secretary,
2. The Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar
Division, Nandurbar
Through its Member Secretary. .. Respondents

Shri Sushant C. Yeramwar, Advocate for the Petitioner.
Shri A. S. Shinde, A.G.P. for the Respondent Nos. 1 and 2.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 09 AUGUST 2023.**

FINAL ORDER (Per Shailesh P. Brahme, J.) :-

. Heard both the sides finally at the admission the stage considering the urgency expressed by the petitioner.

2. The petitioner is challenging judgment and order dated 03.03.2021 passed by the respondent No. 2/Scrutiny Committee invalidating the tribe claim for being 'Thakur' (Scheduled Tribe).

3. The petitioner is mainly relying upon the pre-constitutional entry and the old record. He has explained his defence by way of reply. He is not relying upon any validity certificate.

4. The learned Assistant Government Pleader supports the impugned judgment and order. According to him affinity test was recorded against the petitioner rightly. The scrutiny committee is justified in holding that the place of residence of the petitioner and his forefathers was incompatible with the caste claim. He would submit that the impugned judgment and order is legal and proper.

5. The learned counsel for the petitioner has shown old school record which is annexed to the petition. The school record of 1954 of Vasudeo Raghunath Thakur shows caste Hindu Thakur, which is at page No. 32 and 33. The birth extract of Dagadu Ganpat Thakur is of 1930 and school record of Raghunath Dagadu Thakur of 1931 shows caste as Hindu Thakur. These documents are pre-constitutional documents having greater probative value. In view of law laid down by the Supreme Court in the matter of **Anand Katole Vs. Committee for Scrutiny and Verification of Tribe Claim** reported in **2011(6) Mh.L.J. (SC) 919**, the petitioner has made out a case to issue a validity certificate. The scrutiny committee committed material irregularity in discarding the documentary evidence.

6. The learned A. G. P. is unable to point out any circumstance for disbelieving the old documentary evidence. The finding regarding area restriction is unsustainable in view of the judgment of the Supreme Court in the matter of **Jaywant Dilip Pawar Vs. State of Maharashtra and others in Civil Appeal No. 2336 of 2011 dated 08.03.2017.**

7. It is settled legal position that affinity test is not decisive or litmus test. For the reason stated above the petitioner deserves to get the validity certificate. The impugned judgment and order is unsustainable. Therefore, deserves to be quashed and set aside.

8. For the reasons recorded above, we pass following order.

ORDER

- 1) The writ petition is allowed.
- 2) The impugned order is quashed and set aside.
- 3) The respondent – committee shall immediately issue tribe validity certificate to the petitioner as belonging to ‘*Thakur*’ scheduled tribe in the prescribed format without adding anything.

[SHAILESH P. BRAHME, J.]

bsb/Aug. 23

[MANGESH S. PATIL, J.]