

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

WRIT PETITION NO.6981 OF 2023

Khushal s/o Manoj Thakur
Age : 20 years, Occu: Education
R/o. Mukati, Tq. Shindkeda,
Dist. Dhule

... **PETITIONER**

VERSUS

The Schedule Tribe Certificate
Scrutiny Committee, Dhule
through its Member Secretary

... **RESPONDENT**

...

Advocate for Petitioner : Mr. Umesh B. Gite
AGP for respondent : Mr. S.G. Sangle

...

**CORAM : MANGESH S. PATIL AND
SHAILESH P BRAHME, JJ.**

Reserved on 21.07.2023

Pronounced on : 24.07.2023

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By way of this petition, the petitioner is impugning the order of the respondent - Scrutiny Committee passed in a proceeding under Section 7 of the 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 Certificate Act, 2000 (the Act) thereby confiscating and cancelling his certificate as belonging to “Thakur” scheduled tribe.

3. The learned advocate for the petitioner would take us through the papers and would submit that he had produced enough documentary evidence before the scrutiny committee to substantiate his claim. There was an oldest school leaving certificate of his great grandfather Rupsing Sada Thakur who was admitted to the school on 07.03.1918 denoting his caste as “Thakur”. Then there was a similar school leaving certificate of his cousin grandfather Padmasing Rupsingh Thakur who had taken admission in school on 10.06.1939. The school leaving certificate of grandfather Ramesh Rupsing Thakur of 25.08.1956 was also describing him as “Thakur”. Father’s paternal aunt Sindhubai Rupsingh Thakur who was admitted in school on 04.08.1950 with an entry in the caste column as “Thakur”. He would submit that in spite of such oldest documents indicating petitioner’s forefathers having been treated as Thakur, the committee has committed gross error in refusing to ascribe due weightage to such entries. He would submit that such a stand of the committee is wholly inconsistent with the decision of the Supreme Court in the matters of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.; (2012) 1 SCC 113, Veena Ashok Godse @ Veena Hemant Sonawane Vs. State (Civil Appeal No.19968/2017)**.

4. Learned advocate would then submit that ignoring such old entries, entries of the subsequent period in respect of the persons who were

not directly related to the petitioner by blood but having record of entry in the school record as belonging to Bramha Bhat, Hindu Bhat have been referred to draw an adverse inference. Such an approach of the committee is clearly perverse and arbitrary. There was no valid reason quoted in the impugned order to discard the oldest entries. Even if at times some entries were recorded as Hindu Thakur, Hindu not being a caste the committee ought to have ignored such entries muchless could not have drawn an inference that the petitioner was not belonging to Thakur scheduled tribe.

5. The learned advocate would then submit that ignoring the decision in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.; (1994) 1 SCC 359** and in spite of removal of area restriction, attempt has been made by the committee to apply the test of migration.

6. Lastly, the learned advocate would submit that there were not enough contrary entries. The affinity test which has only limited scope has been heavily relied upon to discard the petitioner's rightful claim.

7. The learned AGP Mr. Sangle would strongly support the impugned order. He would submit that by virtue of Section 8 of the Act burden was on the petitioner to substantiate his claim by leading cogent and convincing evidence. He had failed to discharge the burden. Merely because there were entries in the name of "Thakur" no inference could have been drawn that what was meant was Thakur scheduled tribe. The petitioner ought to have led evidence to show that his forefathers were tribals. It was,

therefore, imperative to apply the principle of migration from the original place to which the Thakur scheduled tribe belonged. The committee has minutely scrutinized and has given details that there was no evidence about petitioner's forefathers having migrated from the original place of Thakur scheduled tribe. He would then submit that even the affinity test has its own place and is not to be ignored. The petitioner even failed to clear it.

8. We have carefully considered the rival submissions and perused the papers.

9. One need not overemphasize the trite legal position that the old entries of Thakur particularly which are entered into before the presidential order had come into being would carry greatest evidentiary value. There is no dispute rather even the committee does not deny existence of the school record of the petitioner's forefathers mentioned herein above of the year 1918 and 1950 showing their caste as Thakur. When it is a column provided in the school register to enter the caste of the pupil the committee ought to have proceeded by accepting these oldest entries in the name of the petitioner's great grandfather, grandfather and the paternal aunt of his father as Thakur. Conspicuously, the committee in the impugned order has not objectively appreciated such oldest entries. It has not mentioned why those entries cannot be relied upon to draw, may be some, inference in favour of the petitioner. As against this, it has readily referred to and has attempted to dispel the petitioner's stand by making a vague observation that in the school record of some individuals stated to be distantly related to

the petitioner's forefathers of the year 1951 onward and in case of some even prior thereto the entries in the caste column of the school record read as Bra. Bhat or Bra. Bha or Bra Bhat Thakur or Hindu Bhat and in some relations even entries were found as Hindu Thakur. If the committee had found these subsequent entries to be receivable in evidence for drawing some inference it was imperative for it to have again given some reason to discard the older entries which were apparently favourable to the petitioner as mentioned herein above.

10. The committee seems to have undertaken the research while referring to some publications in the Government Gazette, Government Circulars and has applied the principles of area restriction as well as affinity test. Even when, efficacy of both these tests have been stated to have either no or very little relevance, more so when there is documentary evidence in support of the claim, as laid down in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti** (supra) and **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.**; 2023 SCC Online SC 326 respectively.

11. Pertinently, the committee was alive to the fact that the issue regarding viability of affinity test was pending before the larger bench of the Supreme Court in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (supra). Now that the Supreme Court has decided the reference, we are bound by the decision and would conclude that the attempt by the scrutiny committee to apply affinity test even without

seriously discarding the oldest entries of 1918 and 1950 in respect of the great grandfather, grandfather and paternal aunt of father of the petitioner, but readily accepting few subsequent entries mentioning Hindu Thakur of some of the blood relations and referring to some subsequent entries of Bramha Bhat in respect of some individuals with whom there is absolutely no evidence regarding any blood relation with the petitioner, the decision is clearly perverse, arbitrary and capricious.

12. The writ petition is allowed. The impugned order is quashed and set aside.

13. The Committee shall issue validity certificate to the petitioner as “Thakur” scheduled tribe immediately.

14. Rule is made absolute accordingly.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)