

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

**WRIT PETITION NO.8668 OF 2019
WITH
CA/1237/2020 IN WP/8668/2019**

Dipak s/o Vasant Thakur,
Age : 45 years, Occu: Service
Presently residing at 52/4,
Yashwant Nagar, Near Girna Taki,
Jalgaon, Tq. & 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
3. The Divisional Joint Registrar, Co-operative
Societies (Audit), Nashik Division,
Nashik, Vishwanath Chamber, 1st Floor,
Nashik – 422001
Tq. & Dist. Nashik

... **RESPONDENTS**

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Advocate for Petitioner : Mr. Sushant C. Yeramwar
Addl. Government Pleader for respondent Nos.1 to 3 : Mr. P.S. Patil

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**WITH
WRIT PETITION NO.8538 OF 2019
WITH
CA/13624/2021 IN WP/8538/2019**

Swapnil s/o Deepak Thakur,
Age : 19 years, Occu: Student
Presently residing at 52/4,
Yashwant Nagar, Near Girna Taki,
Jalgaon, Tq. & Dist. Jalgaon

... **PETITIONER**

VERSUS

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|----|---|-----------------|
| 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 | |
| 3. | State Common Entrance Test Cell,
Maharashtra State, 8 th Floor,
New Excelsior building, A.K. Nayak Road
Fort, Mumbai – 400001 through its
Commissioner & Competent Authority | |
| 4. | Visvesvaraya National Institute
of Technology Nagpur
through its Joint Registrar (Acad.) | ... RESPONDENTS |

Advocate for Petitioner : Mr. Sushant C. Yeramwar
Addl. Government Pleader for respondent Nos.1 and 2 : Mr. P.S. Patil

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

Reserved on 05.07.2023

Pronounced on : 21.07.2023

ORDER (MANGESH S. PATIL, J.) :

By these two writ petitions under Article 226 of the Constitution of India the petitioners who are the father and son are challenging the common judgment and order passed by the respondent No.2 - Scheduled Tribe Certificate Scrutiny Committee (herein after the Scrutiny Committee) constituted under 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 and the rules framed thereunder, whereby their claim for validity certificate as belonging to 'Thakur' scheduled tribe has been turned down.

2. The learned advocate for the petitioners submits that there was pre-constitutional school record of the great grandfather of 01.01.1914 recording his caste as 'Thakur'. Even there was a school record of grandfather Vasant Rao Vyankat Solanke of 06.03.1952 mentioning his caste as 'Hindu Thakur'. Similarly there was school record of a cousin great grandfather Vinayak Rupchand Thakur of 08.06.1959 mentioning his caste as 'Thakur'. Since these were the oldest entries of the individuals who were the forefathers of the petitioners, in view of the decision in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.; (2012) 1 SCC 113** it should have been accepted having greatest probative value. He submits that there was no sufficient and cogent reason for the committee to discard such clinching material.

3. He would submit that the committee also ignored the consistent view being taken whereby area restriction was expressly abolished by a presidential order of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. The observation was clearly inconsistent with the decision of Supreme Court in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.; (1994) 1 SCC 359** and several other subsequent judgment of this Court passed relying upon that decision.

4. The learned advocate would also submit that even the Scrutiny Committee committed grave error in applying the affinity test when it has been consistently laid down in the matter of **Anand** (supra) as also in the

matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.**; 2023 SCC Online SC 326 that it is not a litmus test. He submitted that the affinity test can be applied only if there is no sufficient documentary evidence to substantiate the claim. Ignoring such consistent law the committee has also resorted to the affinity test to draw the inference.

5. Lastly, the learned advocate would submit that the reliable documentary evidence having greater probative value has been discarded and the inference has been drawn by resorting to some alleged contrary entries having lesser probative value in respect of cousin great grandfather's daughter Ashalata Vinayak Thakur of 21.06.1973, wherein, her school record mentioned her caste as 'Hindu Other Backward Thakur'.

6. Per contra, learned AGP supported the decision. He submitted that the committee has undertaken a thorough scrutiny of the claim. It has referred to and demonstrated as to how, the documents being relied upon by the petitioners were not reliable. There was no reason for the petitioners' grandfather to pay school fees if really he was from a scheduled tribe. Even the school record of Ashalata described her as other backward class which was indeed a contrary entry. It has also laboured to demonstrate as to how Thakur scheduled tribes were the inhabitants of various other places but were not traceable to Jalgaon, Dhule and Nandurbar (Khandesh) to which place the petitioners' ancestors belonged. There was abnormal rise of false claims coming from these three districts i.e. Jalgaon, Dhule and Nandurbar.

A statistics was collected to substantiate it demonstrating abnormal rise of the persons claiming to be Thakur scheduled tribe. It was therefore imperative for the committee to even resort to affinity test which it had rightly done. The petitioners have failed in that test. No error has been committed by the committee in reaching the conclusion. The observations and the conclusions are based on plausible appreciation of the material that was available to the scrutiny committee. This Court cannot undertake a fresh scrutiny and the petition be dismissed.

7. We have carefully considered the rival submissions and perused the papers. At the out set, it is necessary to note that so far as the observation and the conclusion of the scrutiny committee in respect of the area restrictions and application of the affinity test are concerned we need only to refer to the decision in the matter of **Palaghat Jila Thandan Samuday, Anand and Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (supra). With the removal of area restriction and the purpose and object behind it, attempt of the scrutiny committee to again resort to it is clearly illegal. Similarly, in spite of consistent view expressed by the Supreme Court that the affinity test has a very limited application, the endeavour of the committee to resort to it is also unsustainable in law.

8. This leaves us with the documentary evidence that was available to the scrutiny committee some of which was for and some against the claim. To begin with, admittedly petitioner Dipak's great grandfather Vyankat Rupchand Thakur's school record of 07.02.1919 shows his caste as

Thakur. The committee discards it on the ground that the record was not found in the school and therefore it is not reliable. However, in the vigilance report it was expressly mentioned by the officer that the school record of Vyankat Rupchand Thakur mentioned his caste as Thakur who was admitted in the school on 07.02.1919. It is to be noted that if the vigilance officer had made such observations in his report which was submitted in the year 2007, we cannot comprehend as to how the committee could have, without their being any additional inquiry or evidence reached a conclusion on the basis that the original record was not found in the school.

9. This apart, admittedly, even in respect of the Dipak's grandfather Vasantrao, in the school record of the year 1952 the caste was shown as 'Thakur'. Same was the case in respect of cousin great grandfather Vinayak Rupchand Thakur which entry was of 08.06.1959 mentioning the caste as 'Thakur'. If these old entries apparently of the great grandfather, grandfather and cousin great grandfather describe them to be belonging to Thakur caste, any subsequent record even if it is said to be a contrary one cannot outweigh the old one. This is precisely what has been laid down in the matter of **Anand** (supra). The old entries would carry greater probative value.

10. True it is that there can be some doubt in respect of the school record of one Vyankat Rupla Shala being relied upon by the petitioners of the year 1913 but there was no sufficient record to hold that the individual is from the genealogy being relied upon by them and therefore we find no

error committed by the committee in discarding it.

11. In respect of cousin great grandfather's daughter Ashalata Vinayak Thakur, merely because with word 'Thakur', 'Other Backward' have also appeared in the school record of 1973 and only because Dipak's grandfather Vasantrao was shown to be a student paying fees, in our considered view these circumstances were not sufficient enough to entertain a doubt about the tribe claim more so when there was sufficient documentary evidence showing the petitioners ancestor's caste as Thakur.

12. In view of the above, in our considered view the committee has grossly erred in appreciating the evidence rather the observations and conclusions are clearly against the weight of the evidence.

13. The writ petitions are allowed. The impugned order is quashed and set aside. The respondent – scrutiny committee shall issue tribe certificates to both the petitioners within two weeks.

14. Pending civil applications are disposed of.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)