

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**WRIT PETITION NO. 8841 OF 2022
WITH
CA/10058/2023 IN WP/8841/2022**

Janhavi Dnyaneshwar Thakur ... Petitioner

VERSUS

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

...
Advocate for Petitioner : Mr. Sushant C. Yeramwar
AGP for Respondents: Mr. S.B. Yawalkar
...

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

DATE : 6 SEPTEMBER 2023

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. The learned AGP waives service for the respondents. At the joint request, the matter is heard finally at the stage of admission.

3. The petitioner is challenging the order passed by the respondent - scrutiny committee invalidating her tribe certificate of

Thakur scheduled tribe. At the outset, it is to be noted that the petitioner has been relying upon the validities in the family issued to one Himmatrao Gokul Thakur and Chandrakant Gokul Khairnar who are her real paternal uncles as also the certificate of validity issued to her sister Nandini, admittedly, the respondent - scrutiny committee has undertaken reconsideration of the validities issued to all the three afore mentioned individuals and has passed an order confiscating and cancelling the certificates of validity issued to them.

4. The learned advocate for the petitioner would submit that all those three individuals have independently challenged the orders of the scrutiny committee and those petitions are pending. He submits that considering the grave urgency for the petitioner, she is ready to forgo her claim to the extent of her reliance on the validity certificates issued to the afore-mentioned individuals. He submits that the petitioner independently intends to substantiate her claim as belonging to Thakur scheduled tribe.

5. The learned advocate for the petitioner would submit that contrary to the decision in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others; (2012) 1 SCC 113**, the committee has discarded the three oldest entries which are prior to the presidential order which are favourable to the petitioner and has relied upon an isolated contrary entry of the subsequent period.

He would submit that contrary to the settled principles, the committee has also resorted to area restriction and has applied the affinity test. He submits that the burden on the claimant under section 8 of the Maharashtra Act No. XXIII of 2001 can be discharged on principles of preponderance of probabilities. No strict proof is required. The observation and the conclusion of the committee is perverse and arbitrary and may be reversed.

6. The learned AGP would submit that the validities being relied upon by the petitioner have already been revoked and the petitioner will have to stand on her legs to substantiate the claim. He would submit that the committee has assigned elaborate reasons to demonstrate as to how the family of the petitioner's had not migrated from native place of the Thakur tribal community and no error was committed by the committee in drawing the inference by resorting to area restriction. He would submit that there was a contrary entry of the petitioner's cousin great great grandfather wherein he was described as 'Hindu Brahmbhat' which is not a scheduled tribe. Even the committee has rightly discarded the school record observing that it is improbable for a tribal community to have undertaken some education in the beginning of the 20th century. He would, therefore, submit that the committee has rightly applied even the affinity test to reach the conclusion.

7. As is observed above, in view of the subsequent orders passed by the scrutiny committee confiscating and cancelling the certificates of validity issued to the petitioner's sister - Nandini and paternal uncles - Chandrakant and Himmatrao, our task is cut out to examine the legality and sustainability of the order under challenge on the basis of the evidence that was available to the scrutiny committee.

8. The impugned order refers to the following record :-

Sr. No.	Name of the School	Name of the Student	Relation with the applicant	Caste	Date of Admission
1	School evidence	Shankar Vishram Thakur	Cousin great great grandfather	Hindu Thakur	14.04.1927
2	School evidence	Yadav Bhagwan Thakur	Cousin great great grandfather	Hindu Thakur	13.05.1946
3	School evidence	Gokul Fakira Khairnar	Grandfather	Hindu Thakur	30.04.1951
4	School evidence	Dashrath Shankar Khairnar	Cousin great great grandfather	Hindu Brahmbhat	21.06.1955
5	School evidence	Damyanti Madhav Khairnar	Cousin great great grandmother	Hindu Thakur	18.06.1964
6	School evidence	Paraskumar Madhavrao Khairnar	Cousin great grandfather	Hindu Thakur	23.06.1966

As can be seen, the oldest school record of the petitioner's cousin great great grandfather - Shankar Vishram Thakur of 1927, another cousin great great grandfather - Yadav Bhagwan Thakur of 1946 and grandfather - Gokul of 1951 described them as 'Hindu Thakur'. The committee has conspicuously not made any observation as to why this old record is to be overlooked. In fact, a vigilance was conducted and even the committee observes that pursuant to such

vigilance, the school record was found to be containing description of the petitioner's ancestors as 'Hindu Thakur', except one entry of 'Hindu Brahmbhat' of 1955.

9. Following the observations of the Supreme Court in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others; (2012) 1 SCC 113**, the oldest record would carry greater probative value, more so, when at least there are three instances of school record of the ancestors which are of the period prior to the presidential order. It was imperative for the committee to have discussed and weighed these pieces of evidence. It discards it by referring to area restriction and observes that it was unlikely for a tribal community to have access to education in the year 1927. It draws an inference that since the petitioner's ancestors were able to enter the school in the year 1927, the family must have been from some upper caste rather than a tribal.

10. We are afraid such an approach of the committee is clearly perverse and arbitrary and even ignores the principles laid down in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.; (1994) 1 SCC 359**. Its approach of resorting to area restriction is clearly inconsistent with the settled principles of law as interpreted by the Supreme Court. If the documentary evidence was already there in respect of old, pre-

presidential order, the school entries whose genuineness was not even doubted, the approach of the committee to resort to the affinity test would be a blow in the face of the Supreme Court's order in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326.***

11. In the light of the above, the order of the scrutiny committee is clearly perverse, arbitrary and capricious and is liable to be quashed and set aside.

12. Hence, the following order :-

- I) The writ petition is allowed.
- II) The impugned order is quashed and set aside.
- III) 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.
- IV) Considering the fact that tomorrow is the last date for submitting certificate of validity and since the matter is being heard and decided urgently, we request the learned AGP to communicate this order to the Committee immediately, since the law officer of the Committee is present in this Court.

- V) The petitioner shall not be entitled to claim equities.
- VI) Pending civil application is rejected.
- VII) Rule is made absolute accordingly.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/