

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

WRIT PETITION NO. 8911 OF 2022

Harshada d/o Santosh Thakur,
Age 19 years, Occ. Student,
R/o. Plot No. 15, Gulab Bhau Nagar,
Mohadi Upnagar, Dhule, Tq. &
Dist. Dhule

... **Petitioner**

VERSUS

1) The State of Maharashtra,
Department of Tribal Development
Mantralaya, Mumbai – 32

2) The Scheduled Tribe Certificate
Scrutiny Committee, Dhule Division,
Dhule, Tq. & Dist. Dhule,
Through its Member Secretary

... **Respondents**

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Advocate for the Petitioner : Mr. Yermamwar Sushant C.
A.G.P for the Respondent Nos. 1 and 2 : Mr. P S. Patil

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WRIT PETITION NO. 11111 OF 2022

Parag s/o Dilip Wankhede,
Age 19 years, Occ. Student,
R/o. Khamkheda, Post. Tekwade,
Tq. Shirpur, Dist. Dhule

... **Petitioner**

VERSUS

1) The State of Maharashtra,
Department of Tribal Development
Mantralaya, Mumbai – 32

2) The Scheduled Tribe Certificate
Scrutiny Committee, Dhule Division,
Dhule, Tq. & Dist. Dhule,
Through its Member Secretary

... **Respondents**

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Advocate for the Petitioner : Mr. Yermamwar Sushant C.
A.G.P for the Respondent Nos. 1 and 2 : Mr. P.S. Patil

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CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.
DATE : 21.07.2023

PER COURT :

Though these are two separate matters and there is no blood relation between the petitioners inter se and even if the documentary evidence being relied upon by each of them to substantiate their claim as belonging to 'Thakur' scheduled tribe is separate, except the documents which we propose to assess separately the reasoning resorted to by the committee in discarding the claims being exactly same, we propose to decide both these claims simultaneously by this common order.

2. Since the petitioners are aspiring to undertake further education through MHT-CET-2022, the matters are taken up urgently for final disposal at admission stage.

3. By way of these petitions under Article 226 of the Constitution of India read with Section 7(2) of 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 (hereinafter the Act), the petitioners are challenging the order of the respondent No. 2-Scrutiny Committee rendered in a proceedings under Section 6 of the Act thereby confiscating and cancelling their tribe certificates as 'Thakur' scheduled tribe by resorting to the provisions of Section 7(1) of the Act.

4. The petitioners are the first persons from their respective family who are seeking validation of their claims which have been discarded by the scrutiny committee by holding that the documentary evidence in the form of entries in the birth and death register and school record of their ancestors being relied upon by them was not believable. The families did not belong to the place where from the Thakur scheduled tribe originated. Even they

could not get through the affinity test.

5. The learned advocate for the petitioners vehemently submits that the committee has not assessed the documentary evidence in the proper perspective. It has drawn inference by resorting to conjectures and surmises. It has not quoted sound reasons to discard the documentary evidence which is a pre-constitutional record. Entries of 'Thakur' caste could not have been discarded merely by becoming cynicle. The observations and the conclusions of the committee while discarding the old documentary evidence are clearly perverse and arbitrary.

6. The learned advocate would further submit that in spite of removal of area restriction in the light of the decisions in the matter of ***Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors; (2012) 1 SCC 113*** and ***Jaywant Dilip Pawar Vs. State of Maharashtra & Ors in Civil Appeal No. 2336/2011*** still the committee has invoked that aspect to invalidate the petitioners' claims.

7. The learned advocate would lastly submit that even the conduct of the committee in resorting to affinity test is not proper, when there were enough documents which were of pre-constitutional era having greatest probative value. The committee could not have resorted to affinity test which is no longer considered to be decisive as laid down in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Simiti Vs. State of Maharashtra and Ors; 2023 SCC Online SC 326***.

8. Per contra, the learned A.G.P would submit that the committee has taken a plausible view of the documents produced on record. Though the documents are old those cannot be taken as favourable entries inasmuch as they merely refer to the caste in the birth and death record and the school record as 'Thakur' or 'Hindu Thakur' or 'Hindu Thakur Magaslela' which is not synonymous with 'Thakur' scheduled tribe. By very nature it being a tribe, unless there was evidence about the family having shifted from the

native place of the tribe, the committee cannot be faulted with if it has resorted to ascertain if there was some evidence regarding the family having migrated to the present place. He would, therefore, submit that even the committee had to resort to affinity test since the documents were not convincing and reliable.

9. We have carefully considered the rival submissions and perused the record.

10. At the outset, it is necessary to note in the light of the decision in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Simiti (supra)* the primary evidence to establish a caste or tribe claim would be documents. If the committee finds the documents to be not reliable then only it has to refer the matter for vigilance enquiry. It appears that the committee resorted to the vigilance enquiry and collected the record of petitioners' blood relations in the proper format which can be reproduced herein below.

1) Blood relations of petitioner- Harshada d/o Santosh Thakur :

Sr No	Type of document	Name of the document holder	Relation with the petitioner	Caste	Date of registration
1)	Birth record	Atmaram s/o Shivram Sampat Thakur	Grand father	Thakur	28.07.1931
2)	Death record	Sampat Vanji Thakur	Great great grand father	Thakur	03.11.1936
3)	School record	Atmaram Shivram Thakur	Grand father	Hindu Thakur	01.01.1940
4)	School record	Pralhad Shivram Thakur	Cousin Grand father	Hindu Thakur	01.07.1948
5)	School record	Dilip Pralhad Mahale	Cousin uncle	Hindu Thakur Magaslela	21.06.1969
6)	School record	Ravindra Atmaram Thakur	Uncle	Hindu Thakur	01.06.1974
7)	School record	Santosh Atmaram Thakur	Father	Hindu Thakur	22.06.1981

8)	School record	Harshada Santosh Thakur	Petitioner	Hindu Thakur	15.06.2009
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2) Blood relations of petitioner - Parag Dilip Wankhede :

Sr No	Type of document	Name of the document holder	Relation with the petitioner	Caste	Date of registration
1)	School record	Vedu Aana Thakur	Great great Grand father	Thakur	13.07.1882
2)	School record	Pandit Vedu Thakur	Great Grand father	Thakur	02.06.1922
3)	School record	Govind Pandit Wankhede	Grand father	Thakur	26.06.1943
4)	School record	Vasant Pandit Wankhede	Cousin Grand father	Hindu Thakur	10.06.1957
5)	School record	Dilip Govindrao Wankhede	Father	Hindu Thakur	03.07.1975
6)	School record	Parag Dilip Wankhede	Petitioner	Hindu Thakur	15.06.2010

If such was the record collected during the vigilance which report the petitioners had duly responded to, it was expected of the committee to have undertaken some scrutiny regarding such old record. It was nobodies case that the record was manipulated or there were some reasons to entertain a doubt and become skeptical about it. The committee has refused to rely upon this old record by resorting to the concept of area restriction. Suffice for the purpose to observe that the committee had no sound reasons to disbelieve this pre-constitutional record, and not one, but many. Besides, in spite of removal of area restrictions by the presidential order the Scheduled Castes and Scheduled Tribes Orders (amendment) Act, 1976 and in spite of the decision of the Supreme Court in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samikti and Anr. Vs. State of Kerala and Anr (1994) 1 SCC 359**, resorting to such theory of migration is indeed a gross error

committed by the scrutiny committee that too for discarding the documentary evidence, more so when there was no other reason to discard such old record.

11. Once we do not find any reason to discard such old record which carries greatest probative value as laid down in the matter of **Anand** (supra), and once we reach such a conclusion and find the old record to be believable, the approach of the committee in resorting to affinity test would also run counter to the decision in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Simiti*** (supra).

12. Merely because in the caste column the word 'Thakur' has appeared, the committee could not have entertained a doubt if what was meant was not 'Thakur' scheduled tribe even if it is assumed that there could be Thakurs in upper caste as well. At least there is no reason and evidence to demonstrate that the petitioners' family whose consistent record in the caste column of the birth and death register and the school record is 'Thakur' belong to some upper caste. If this be so, we find no reason why the committee could have discarded their claims. The impugned orders are clearly perverse, arbitrary and capricious.

13. The Writ Petition is allowed. The impugned orders are quashed and set aside. The committee shall issue tribe validity certificates to the petitioners as 'Thakur' scheduled tribe immediately.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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