

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

WRIT PETITION NO. 9035 OF 2010

Mukesh s/o Bhaidas Thakur
Age-28 years, Occu. : Student,
R/o Dhanur, Tq. & Dist. Dhule. .. 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,
through its Member Secretary.
3. The Sub Divisional Officer,
Dhule Division, Dist. Dhule.
4. The Principal,
Nagaon Education Society's
Gangamai College of Education,
Nagaon, Tq. & Dist. Dhule.
5. The Registrar & Chief Examination
Controller, North Maharashtra
University, Jalgaon – 425 001. .. Respondents

Shri A. S. Golegaonkar, Advocate for the Petitioner.
Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 to 3.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 12 SEPTEMBER 2023.**

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

. Heard learned counsel for the respective sides finally at the admission stage.

2. The petitioner is challenging the judgment and order dated 18.06.2010 invalidating the tribe certificate of the petitioner as belonging to 'Thakur' (Scheduled Tribe) and confiscating the same.

3. The petitioner is relying upon old entries including the preconstitutional entries to support his claim.

4. The learned Assistant Government Pleader supports the impugned judgment and order. According to him the scrutiny committee is justified in holding that the affinity test is necessary for considering traits and characteristics of the tribe especially in the case of Thakur (Scheduled Tribe). The scrutiny committee is justified in holding that the petitioner is under obligation to make out a case of migration or to make out a compatible claim of place of residence. The learned A. G. P. submits that though few entries do support the petitioners, the caste Thakur is not a scheduled tribe Thakur. It is an attempt to grab the social status illegally. He would submit that the Scrutiny Committee has taken appropriate view and there is no need to interfere in the same.

5. We have heard both the sides. The petitioner is not relying upon validity certificate issued to any of his family members. However, to appreciate the school entries, it is necessary to look

into the genealogy which is at page No. 54. The petitioner is relying upon the school entries of his father Bhaidas, uncle Devidas and grandfather Shivram. The relationship is not disputed by the respondents.

6. The petitioner has placed on record the school entries of himself, his brother which are of recent origin. However, following school entries are old enough having greater probative value.

Sr. No.	Name	Document	Caste	Date
1	Shivram Shamrao Thakur	Entry register/LC	Thakur	29.07.1938
2.	Bhaidas Shivram Devare	Admission Register/LC	Thakur	18.06.1963
3.	Devidas Shivram Devare	Admission Register/LC	Thakur	10.09.1965

7. The school record produced by the petitioner before the scrutiny committee was referred to the vigilance enquiry. The report is produced on record which is on page No. 74. The vigilance officer expressly recorded remarks in favour of the petitioner in respect of above referred school record. After the school visit the above school record was available and secured and is found to be without any tampering. In view of the express remarks which can be seen from the page No. 75 of the report, we have no hesitation to uphold the genuineness of the record.

8. Pertinently, the school record of the grandfather of the petitioner is of pre-constitutional period. The above record is having greater probative value in view of the pronouncement of

the Supreme Court in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others** reported in ***(2012) 1 SCC 113***.

9. It can be seen from the record that the documentary evidence produced by the petitioner is verified by the scrutiny committee. The remarks appearing in the vigilance report are not doubted by the scrutiny committee. Under these circumstances we find that the above record is supporting the caste claim of the petitioner. The petitioner has made out a case for issuing validity certificate. The rejection of the caste claim of the petitioner by the Committee is illegal and unsustainable.

10. The learned A. G. P. would submit that the affinity test is recorded against the petitioner. In the latest decision of the Supreme Court in the matter of **Maharashtra Adivasi Thakur Jamat Swarakshak Samiti Vs. State of Maharashtra and others** reported in ***2023 (2) Mh. L. J. 785***, the legal position is confirmed by the Supreme Court in respect of affinity test. The affinity test is not litmus test and conduct of the affinity test arises only in those cases where scrutiny committee is not satisfied by the material produced by the applicant. The scrutiny committee has not entertained any doubt regarding the school record produced by the petitioner. Under these circumstances the finding recorded by the scrutiny committee is wholly unsustainable.

11. The submission of the learned A. G. P. in respect of area restriction and original place of residence of the petitioner has

also no merit. The area restrictions are removed by the Scheduled Caste and Scheduled Tribe Order (Amendment) Order 1976. With the advent of time and modernization, the tribal people started intermingling with the civilized society and left their original abode. We find that there is no need for the petitioner to prove the original place of residence of his forefathers. We can rely upon the order **dated 26.09.2017** passed by the Division Bench of this Court at Principal seat at Bombay in the matter of **Jaywant Deelip Pawar Vs. The State of Maharashtra** in **Writ Petition No. 2152 of 2007**. The finding recorded in that regard by the scrutiny committee is erroneous.

12. After considering the papers placed before us and having assigned the above reasons we hold that the impugned judgment and order is unsustainable. We therefore pass following order.

ORDER

- i. The Writ Petition is allowed.
- ii. The impugned judgment and order dated 18.06.2010, passed by the Scrutiny Committee, is quashed and set aside.
- iii. The respondent No. 2/Scrutiny Committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Thakur' scheduled tribe.
- iv. Accordingly, Writ Petition is disposed of.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]