

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

WRIT PETITION NO. 10168 OF 2023

**YASH NAVNATH KADAM THROUGH FATHER AND NATURAL
GURARDIAN NAVNATH PANDHARINATH KADAM
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

....
Advocate for Petitioner : Mr. S.M. Vibhute
AGP for Respondent Nos. 1 & 2 : Mr. S.G. Sangale
....

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

DATED : 19 AUGUST, 2023

PER COURT (PER : SHAILESH P. BRAHME, J) :

1. Heard learned counsel for both the sides finally at the admission stage.

2. The petitioner has filed present petition seeking direction to the respondent no. 2 – Scrutiny Committee to decide the caste claim. During pendency of the matter, the Scrutiny Committee invalidated the caste claim of the petitioner for ‘Thakar’ scheduled tribe, by judgment and order dated 18.08.2023. The petitioner sought permission to amend the petition for challenging the judgment and order of invalidation. It is granted. Thus, the petitioner is challenging judgment and order dated 18.08.2023. The petitioner is mainly relying

upon the old school entries of his close relatives. Considering the greater probative value of the old record, the petitioner is seeking validity certificate.

3. Learned AGP would support impugned judgment and order. According to him, the school record of Tukaram Gopalrao Kadam and Chatura Gopalrao Kadam, could not be verified from the concerned school. It was reported that their record was not available. Therefore, learned AGP has raised serious objections for the old entries. He would further submit that the enquiry reveals that the occupation was recorded to be 'Bhikshuki' which is incompatible with the tribe claim of the petitioner. He would further submits that the evidence on record would indicate caste as 'Bhat Thakur' which is not scheduled tribe. Therefore, the Scrutiny Committee was justified in rejecting the caste claim.

4. We have considered the rival submissions of the parties. The petitioner's claim is not founded on validity certificates issued to any of his relatives. Our attention is drawn to old school record of Pandharinath Gopalrao Thakar, Tukaram Gopalrao Thakar and Chatura Gopalrao Kadam. These old entries are of the immediate post

independence period. Learned counsel for the petitioner would pointed out from page no. 14 of the compilation that vigilance cell verified the the school record. In view of the vigilance report indicating existence of the school record, the finding recorded by the Scrutiny Committee that the school records of Tukaram Gopalrao Kadam and Chatura Gopalrao Kadam is untraceable, is perverse. The Scrutiny Committee overlooked the vigilance report indicating existence of the school record. Besides that the Scrutiny Committee did not consider school record of Pandharinath Gopalrao Thakar and only referred to record of Tukaram Gopal Kadam and Chatura Gopalrao Kadam, which is in our view a patent illegality.

5. Learned AGP has failed to persuade us to discard old school entries of Pandharinath, Tukaram and Chatura. The record indicates caste as 'Thakar'. The existence of the record cannot be doubted. A reliance by learned counsel for the petitioner on our order dated 02 August 2023, in the matter of Anuraj Ashok Jadhav and another Versus The State of Maharashtra and others, is well placed. In our considered view that the school entries though they are not of pre-independence period, cannot be discarded.

6. It reveals from the record that the occupation of the persons is shown to be begging. Learned AGP would submit that this is incompatible with the tribe claim of the petitioner. The occupation cannot be decisive factor for determining the caste status. If other supervening circumstances are considered, the petitioner cannot be denied the benefit of caste status.

7. Learned counsel for the petitioner has produced original papers of petitioner on record. It appears that there are three different schools from which the record of the relatives of the petitioner was sought to be verified. We have seen the report submitted by Headmaster of New High School Ganga Masla, Taluka Majalgaon, District Beed, indicating that the record is not available. Simultaneously, we have come across a letter of Headmaster of Zilla Parishad Girls School, indicating the availability of the school record. We have also noticed the correspondence of Headmaster of Zilla Parishad (Primary School). The Scrutiny Committee did not consider this aspect of the matter. The Committee could have sought explanation from the concerned person.

8. The Committee has merely relied upon the report of the Headmaster of New High School Ganga Masla, Taluka Majalgaon,

District Beed, for non availability of the record which is an incomplete exercise. The correspondence of the Headmaster showing the school record is over looked. We are of the considered view that the Committee has failed to exercise the jurisdiction vested in it. We hold that the impugned judgment and order is unsustainable.

9. The finding of the Scrutiny Committee in respect of the affinity test of the petitioner cannot be the decisive factor. The affinity test has its limitations. It is further recorded that the place of residence of the petitioner and his forefather is inconsistent with the placed of the persons belonging to 'Thakar' scheduled tribe. This aspect of the matter is obliterated in view of removal of area restriction. Hence, we pass following order :

ORDER

- i. The writ petition is allowed.
- ii. The impugned order is quashed and set aside.
- iii. The respondent no. 2/Scrutiny Committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Thakar' (Scheduled Tribe), in the prescribed format without adding anything.

iv. The learned A.G.P. and the law officer who is present in the court shall communicate this order to the Scrutiny Committee immediately.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

SPC/