

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4459 OF 2021

Kashinath Raghunath Bagul
Age 52 years,
r/o Shri Ganesh Row House No.25,
Mauli Nagar, Vasant Nagar 908,
Pathardi Phata, Nashik – 422 011.
District Nashik.

....Petitioner

V/S

1. State of Maharashtra
through its Secretary,
Tribal Development Department
Mantralaya, Mumbai – 400 032.
2. Scheduled Tribe Certificate
Scrutiny Committee, Nashik
through its Member Secretary,
having its office at Adivasi Vikas
Bhaan, Old Agra Road, Nashik,
District Nashik.
3. Commissioner of Police
Nashik City, having its office
at Gamgapur Road, Nashik – 2
District Nashik.

....Respondents

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Mr. R.K. Mendadkar a/w Ms. Komal Gaikwad, Ms. Priyanka Shah and
Ms. Sarita Mendadkar for the Petitioner.
Mr. B.V. Samant, AGP for Respondent Nos.1 to 3-State.

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**CORAM: DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.
DATE : 10 JULY 2023.**

JUDGMENT (*Per - Sandeep V. Marne, J.*):

. Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned Counsel for the Petitioner and the learned AGP for the Respondents-State.

2 By this Petition, Petitioner has challenged judgment and order dated April 1, 2021 passed by the Scheduled Tribe Certificate Scrutiny Committee, Nashik thereby invalidating Petitioner's claim in respect of Thakur Tribe.

3 Briefly stated, facts of the case are that – Petitioner claims to belong to Thakur Tribe, which is recognized as Scheduled Tribe in the State of Maharashtra. It is averred that Petitioner was issued caste certificate by the Competent Authority in an old format and on the basis of that certificate, he joined the services under Commissioner of Police, Nashik City on the post of Constable on June 1, 1991 against vacancy reserved for Scheduled Tribe category. Petitioner was called upon to obtain a fresh caste certificate in Form 'C' appended to the Maharashtra Scheduled

Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003. Accordingly, he obtained fresh caste certificate on July 15, 2011 certifying that he belongs to Thakur Tribe which is recognized as Scheduled Tribe.

4 The certificate of the Petitioner was referred by the employer for verification of the Scheduled Tribe Certificate Certificate Scrutiny Committee, Nashik. The Committee directed the Vigilance Cell to conduct an enquiry. Accordingly, the Vigilance Cell submitted enquiry report dated September 17, 2014 to the Scrutiny Committee. Copy of the report of the Vigilance Cell was supplied to the Petitioner, who submitted his reply on December 31, 2018. During pendency of the proceedings before the Scrutiny Committee, the employer issued show cause notice to Petitioner on December 14, 2018 for failure to submit validity certificate. Petitioner therefore approached this Court by filing Writ Petition No.12813 of 2018 which came to be disposed of on November 2, 2018 directing the Committee to decide the Tribe claim by February 28, 2019. After hearing Petitioner, the Committee closed the proceedings for passing final order on September 22, 2020. The Committee thereafter passed judgment and order dated April 1, 2021 invalidating the Tribe claim of the Petitioner. He has therefore filed the present Petition challenging decision of the Scrutiny Committee.

5 We have heard Mr. Mendadkar, the learned Counsel appearing for the Petitioner. He would submit that there is not even single contra entry in the documents examined by the Scrutiny Committee. That the Vigilance Cell report was in favour of Petitioner which confirmed genuineness, correctness and authenticity of school records especially in relation to Petitioner's father and real uncle. That the Scrutiny Committee has rejected the Tribe claim only on the ground of failure in cultural affinity and ethnic linkage test. He would rely upon the judgments of the Apex Court in *Anand vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.* (2012) 1 SCC 113 and *Maharashtra Adivasi Thakur Jana Swarakshan Samiti vs. State of Maharashtra*, 2023 SCC OnLine SC 326. Mr. Mendadkar would also place reliance on the order passed by coordinate Bench of this Court (which one of us, Sandeep V. Marne, J. was a party) in *Sujita Eknath Pawar vs. State of Maharashtra* in Writ Petition No.5086 of 2015 decided on April 28, 2023.

6 We have also heard Mr. Samant, the learned AGP appearing for the Respondent-State Government, who would oppose the Petition and support the order passed by the Scrutiny Committee. He would submit that Petitioner has not demonstrated that any of his relatives had taken benefit of reservation meant for Scheduled Tribe community in the past. That every person who has entries of Thakur caste cannot belong to

Thakur Tribe. That therefore it was necessary for Petitioner to prove cultural affinity and ethnic linkage to Thakur Tribe, which he failed to establish. That therefore the Committee has rightly rejected Petitioner's Tribe claim.

7 After hearing the learned counsels for the parties and after perusal of the records of the case, it is seen that Petitioner relied upon following school records/documents of his relatives in support of his tribe claim before the Committee:

Sr. No.	Name of the Student	Caste/ Sub-caste	Date of admission to School	Relationship with the applicant
1	Kashinath Raghunath Baghul	Hindu Thakur	07.06.1977	Applicant
2	Gulab Raghunath Baghul	Hindu Thakur	12.06.1979	Brother
3	Jagnnath Lotan Baghul	Hindu Thakur	11.06.1980	Cousin Brother
4	Lotan Shankar Bagul	Thakur	03.11.1934	Uncle
5	Raghunath Shankar Thakur	Hindu Thakur	25.06.1946	Father
6	Rajendra Raghunath Baghul	Hindu Thakur	-	Brother
7	Vishwas Lotan Thakur	Hindu Thakur	16.06.1984	Cousin Brother

8 It appears that the Vigilance Cell conducted enquiry in respect of School records of Raghunath Shankar Thakur (father) and Lotan Shankar Thakur (uncle) and found the entries in the School records to be genuine. The Vigilance Cell had also confirmed Petitioner's relation with Raghunath Shankar Thakur and Lotan Shankar Thakur.

9 Thus so far as the documentary evidence is concerned, there are two pre-Constitutional entries in respect of Petitioner's father Raghunath Shankar Thakur (June 25, 1946) and Petitioner's uncle Lotan Shankar Bagul (November 3, 1934). There is not a single contra entry in respect of the School records of any other relatives of Petitioner. The Vigilance Cell has not reported even a single contra entry.

10 The Scrutiny Committee has however arrived at a conclusion that Petitioner could not establish cultural affinity and ethnic linkage with Thakur Scheduled Tribe. On this ground, Petitioner's Tribe claim has been invalidated.

11 In *Anand vs. Committee for Scrutiny and Verification of Tribe Claims* (supra) it is held that affinity is not the only criteria for deciding the caste claim. However, it appears that in its earlier decision in *Vijaykumar vs. State of Maharashtra*, (2010) 14 SCC 489) the Apex Court had held that if a candidate fails in the affinity test at any stage, caste validity certificate cannot be granted. Therefore, the issue was referred to larger Bench of the Apex Court in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra). By its judgment and order dated March 28, 2023 larger Bench has recorded following conclusions:

“38. Thus, to conclude, we hold that:

(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the

Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(b) For the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim; and

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case.”

12 Thus it is now a well settled law that affinity test cannot be conclusive and all material on record having probative value is required to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim. Affinity test is not a litmus test to decide the caste claim and it is not an essential part of the process of determination and correctness of the caste or tribe claim in every case.

13 In the present case Petitioner’s Tribe claim is rejected only on the ground of his failure to prove cultural affinity and ethnic linkage. Otherwise, Petitioner relied upon two pre-Constitutional entries of his father and uncle, which have been found to be genuine. Therefore, the conclusion reached by the Scrutiny Committee is unsustainable and deserves to be set aside.

14 Accordingly, the Writ Petition succeeds. The impugned judgment and order of the Scrutiny Committee is set aside. The Committee shall issue validity certificate in favour of Petitioner of Thakur Scheduled Tribe within four weeks. Respondent No.3-employer shall grant consequential benefits to Petitioner arising out of the issuance of the validity certificate.

15 The Writ Petition is accordingly allowed. There shall be no order as to costs. Rule is made absolute in above terms.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.

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