



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6697 OF 2022

Jagannath s/o Shankarrao Wankhede,
Age: 63 years, Occu.: Retired (Private
Company), R/o. Village Sarve,
Taluka Shindkheda, Dist. Dhule,
at present residing at Plot No.28/B,
Nandanvan Bank Colony,
Near Cistel High School,
Wadi Bhokar Road, Deopur, Dhule,
District Dhule.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar
Division, Nandurbar, through
its Member Secretary.
3. The Sub Divisional Officer,
Shirpur, Sub Division Shindkheda,
District Dhule.

.. RESPONDENTS

...
Mr. C. R. Thorat, Advocate for the petitioner.

Mr. K. N. Lokhande, AGP for the respondents – State.

...

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

**RESERVED ON : 19 JUNE 2024
PRONOUNCED ON : 25 JUNE 2024**

JUDGMENT [Per Shailesh P. Brahme, J.] :-

Rule. Rule is made returnable forthwith. Heard this matter finally with the consent of the parties, at the admission stage.

2. Petitioner is challenging the judgment and order dated 21.01.2022 passed by the respondent No.2 – Scrutiny Committee invalidating and confiscating tribe certificate of the petitioner. Petitioner claims to be belonging to Thakur Scheduled Tribe. He was issued with tribe certificate on 10.01.2019, which has been invalidated.

3. The Scrutiny Committee held that there was no material to show migration of the petitioner and his ancestors from normal geographical place of residence of the members of Thakur Scheduled Tribe. The material produced on record would only show similarity in name of Thakur. Considering the place of residence i.e. village Sarve, Taluka Shindkheda, District Dhule, there was no ethnic linkage of the petitioner and his ancestor with members of Scheduled Tribe Thakur. It has also been held that petitioner failed in the affinity test, considering the report of vigilance inquiry.

4. Learned Counsel Mr. C. R. Thorat for the petitioner submits that the findings recorded by the Scrutiny Committee are unsustainable in view of removal of area restrictions and in view of law laid down in the

matter of **Palghat Jilla Thandan Samudhaya Samrakshna Samithi Vs. State of Kerala** [994 SCC (1) 359]. He would emphasis on clinching pre-constitutional entries indicating tribe as Thakur. He would submit that the report of vigilance inquiry in fact supports his claim. The entries of the birth register and school record of paternal side relatives are not found to be manipulated or interpolated in any way. Reliance is also placed on the decision of **Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and ors.,** [2010 (6) Mh.L.J. 401].

5. Per contra, learned AGP Mr. K. N. Lokhande would support impugned judgment and order. He would submit that after considering the vigilance report, birth and school register entries, the Committee has arrived at reasonable and plausible decision. He would submit that the affinity test cannot be faulted with. The material placed on record falls short to substantiate the claim of Scheduled Tribe Thakur. He would pray that no interference is called for in the writ jurisdiction.

6. Learned AGP also placed on record original papers. It has been pointed out that there is manipulation in the birth record of the year 1932 of Pira Vedu Thakur and Thagubai Vedu Thakur. In view of the manipulations, it has been submitted that matter needs to be remitted to the Scrutiny Committee for inquiry afresh.

7. We have considered rival submissions of the parties. We have also gone through the original papers produced by learned AGP. The findings recorded by the Committee on the ground of place of residence of the petitioner and his ancestors and want of proof of migration, are not sustainable.

8. Learned Counsel for the petitioner would invite our attention to the report of the vigilance inquiry. The entries of birth register of paternal side relatives of the petitioner are indicating caste Thakur. The entries of in all six relatives of the petitioner are of pre-independence period. Those were considered by the vigilance cell and reported to be that of Thakur. We find that there is no objection of any interpolation. We have considered the genealogy indicating relationship of these persons with the petitioner. The relationship of the petitioner with those relatives has also not been disputed.

9. The pre-independence entries have more probative value and cannot be discarded. The law laid down in this regard by the Hon'ble Supreme Court in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claim and others, [2012 (1) SSC 113]** cannot be lost sight of. Surprisingly, the Scrutiny Committee did not consider the probative value of the entries. In the absence of any report of manipulation or suspicion in the entries, there was no reason to overlook them. Clinching evidence produced by the petitioner has

been discarded by the Committee.

10. Affinity test is not a litmus test and has only corroborative value, as laid down by the Hon'ble Supreme Court in the matter of **Mah. Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and Ors.** [2023 SCC OnLine SC 326]. When there is clinching material on record indicating caste Thakur, the Committee over emphasized the affinity test and committed error of jurisdiction.

11. Learned AGP has pointed out that birth register entry of Shankar Thakur is doubtful. It is further pointed out that there is manipulation in the entry of birth record of Zipi. We have considered both the entries minutely. Entry of Shankar of the year 1928 does not indicate any manipulation or interpolation. In the column of caste, there is mention of Thakur. So far as entry of Zipi is concerned, it is of 1932 and in father's column word 'Pira' appears to be interpolated scoring out some original name. Both these entries were scrutinized by the vigilance cell and nothing objectionable was noted.

12. The vigilance cell and thereafter the Scrutiny Committee had occasion to entertain doubt about these entries, but nothing objectionable was recorded. It is not permissible for learned AGP to raise doubt about the entries for the first time in the High Court. We propose to rely on judgment rendered by coordinate bench in the

matter of **Anil s/o. Shivram Bandawar Vs. District Caste Certificate Verification Committee, Gadchiroli & Anr. [2021 (5) Mh.L.J. 345].**

13. Considering the reasons stated above, we find that impugned judgment and order is unsustainable. Hence, we pass the following order :-

ORDER

- i) The Writ Petition is allowed.
- ii) Impugned judgment and order dated 21.01.2022 (Exhibit-I) passed by the Scrutiny Committee is quashed and set aside.
- iii) The petitioner shall be issued a tribe validity certificate forthwith.
- iv) Rule is made absolute in the above terms.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

scm