



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

WRIT PETITION NO.9563 OF 2024

1. Pradip s/o Ramesh Shinde
2. Sandip s/o Ramesh Shide ... **PETITIONERS**

VERSUS

1. The State of Maharashtra
Development of Tribal Development
Mantralaya, Mumbai – 32
through its Secretary
2. The Scheduled Tribe Certificate
Scrutiny Committee, Kinwat
(Headquarter - Chh. Sambhajinagar)
Tq. & Dist. Chh. Sambhajinagar
through its Member Secretary ... **RESPONDENTS**

...

Advocate for petitioner : Mr. S.C. Yeramwar
Addl.G.P. for respondent/State : Mr. P.S. Patil

...

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

DATE : 18.09.2024

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioners are real brothers *inter se* and are challenging the common judgment and order of the respondent No.2 – Scrutiny Committee rendered in a proceeding under Section 7 of the Maharashtra Act No.XXIII of 2001 dated 12.08.2024 refusing to validate their ‘Thakar’ scheduled tribe certificates and instead directing those to be confiscated and cancelled.

3. The learned advocate Mr. Yeramwar for the petitioners would take us through the papers and would submit that the older favourable record has been discarded by the Committee and the claims have been rejected by referring to record of the subsequent period. He would submit that the school record of petitioners' cousin uncle Ambadas Rajaram of 1951 mentioned in the caste column that he was 'Thakar'. Even if there was certain contrary record of the subsequent period, the older record would prevail in the light of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.**; (2012) 1 SCC 113, **Veena Ashok Godse @ Veena Hemant Sonawane Vs. State of Maharashtra and Ors.**; (Civil Appeal No.19968/2017 arising out of SLP (C) No.25113/2017 dated 29.11.2017 and **Chandrashekhar s/o Balajirao Shinde Vs. The State of Maharashtra and Anr.**; (Writ Petition No.13390/2021) dated 08.08.2023. The learned advocate would further submit that the Committee has not appreciated these aspects and has taken a perverse and arbitrary decision to discard the claims, by referring to the subsequent contrary record.

4. The learned advocate would also submit that even the observation of the Committee to substantiate its inference by relying upon some statements appearing in the sale deeds executed by the petitioners' blood relatives expressly mentioning that they were not Adiwasis would estoppe the petitioners' from staking a tribe claim, is also perverse and arbitrary and unsustainable in law. In the matter of **Nikhil**

Suryakant Padalwar Vs. State of Maharashtra and Ors.; (WP No.5349/2019 order dated 03.03.2022) a similar stand of the scrutiny committee was discarded by this Court.

5. Per contra, the learned AGP would support the order under challenge. He would submit that the Committee has taken a plausible view on correct appreciation of evidence. He would submit that the petitioners had made an attempt at fraud. They had submitted the extracts of the school record of his cousin uncle Ambadas Rajaram of the Zilla Parishad School, Savana, Taluka Sengaoon, District Hingoli of serial No.182 of the school register mentioning in the caste column that he was 'Thakar'. However, during vigilance inquiry it was found that the original record contained entry in the caste column as 'Hindu'. He would, therefore, submit that even when Ambadas Rajaram's school record was not containing any entry in the caste column as 'Thakar', they managed to obtain certified copies of the school register having no such entry. He would, therefore, submit that the petitioners are not entitled to rely upon any non-existent record to substantiate their claim.

6. The learned AGP would then submit that leaving aside this unreliable school record of Ambadas Rajaram, the Committee could find out that the school record of petitioners' uncle Sanjab, aunt Rajmati and even father Mesh @ Ramesh of the period between 1969 and 1972 was describing them as 'Hindu', 'Itar Magas' (other backward), and 'Maratha'. Though 'Hindu' cannot be treated as a contrary entry being a religion and

not a caste, the oldest record of 1971 and 1972 was contrary to the petitioners' claim. Even the school record of petitioners' uncle Datta Baba (Thakur) Shinde of 1959, that of a cousin uncle of 1954 and 1964 were describing them as 'Maratha' in the caste column. The Committee also could, pursuant to the vigilance inquiry, noticed that the petitioners had attempted to manipulate the school record of Devidas Ambadas his second degree cousin, of 15.09.1972, wherein, in the caste column, the initial word 'Maratha' was scored and word 'Thakar' was written. The learned AGP would, therefore, submit that when there was a contrary record in abundance of the earlier period, reliance of the petitioners to lay claim only on the basis of subsequent favourable record would not be sustainable as the older record would prevail. He would also rely upon the decision in the matter of **Pournima Suryakant Pawar** (supra).

7. The learned AGP would further submit that the Committee being not satisfied with the documents relied upon by the petitioners' was right even in applying the affinity test in the light of observations in paragraph No.25 of the **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.; 2023 SCC Online SC 326**. The petitioners having even failed to withstand the affinity test, the decision of the Committee to refuse to validate their tribe certificates being a plausible one cannot be interfered with in exercise of writ jurisdiction under Article 226 and the petition be dismissed.

8. As can be gathered, there is no dispute about the trite legal

position that the record of the older time would have a greater probative value as compared to that of latter period, as has been laid down in the matter of **Anand Vs. Committee, Pournima Suryakant Pawar and Veena Ashok Godse** (supra).

9. In the light of above legal position, it is necessary to ascertain what was the older record before the Committee and what was the record of the latter period. The Committee in the impugned order has enlisted following contrary record:

Sr. No.	Name of School	Entry No.	Name of the Students	Relation with applicant	Caste recorded	Date of Admission
1	Zilla Parishad Primary School, Savana, Tq. Sengaoon, Dist. Hingoli	282	Sitaram Shinde	Cousin uncle	Mara.	---
2	- do -	182	Ambadas Rajaram Thakar	Cousin uncle	Hindu	27.06.1952
3	- do -	7/249	Datta Baba Shinde	Uncle	Maratha	21.11.1959
4	- do -	--	Ashok Ramchandra Shinde	Uncle	Hindu	19.07.1969
5	- do -	894	Rajamati Baba Shinde	Aunt	Other Backward	29.07.1971
6	- do -	1022	Shankar Sitaram Thakur	Cousin uncle	Maratha	02.07.1973
7	- do -	1034	Bhagwat Sitaram Thakur	Cousin uncle	Maratha	04.07.1973
8	- do -	1117	Umesh Baba Thakur	Uncle	Maratha	06.07.1974
9	- do -	1223	Ashok Babarao Shinde	Uncle	Maratha (Thakar)	11.07.1975

10. As compared to this, the favourable record being relied upon by the petitioners is as follows:

Sr. No.	Name of document	Name of document holder	Relation with applicant No.1	Caste recorded	Entry date
10	Student's admission and leaving extract	Das Ambadas Shinde	Cousin	Thakar	15.09.1972
11	-do-	Ashok Babarao Shinde	Uncle	Thakar	11.07.1975
12	-do-	Subhash Sitaram Shinde	Cousin uncle	Thakar	11.07.1980
13	-do-	Devidas Ambadas Shinde	Cousin	Thakar	15.09.1972
14	School leaving certificate	Subhash Sitaram Shinde	Cousin uncle	Thakar	10.06.1991
15	-do-	Sandip Ramesh Shinde	Applicant No.2	Thakar	26.06.2001
16	-do-	Sandip Ramesh Shinde	Applicant No.2	Thakar	22.06.2007
17	Student's admission and leaving extract	Pradip Ramesh Shinde	Applicant No.1	Thakar	26.06.2007
18	School leaving certificate	Ashwni Ramesh Shinde	Sister	Thakar	20.06.2008
19	Student's admission and leaving extract	Pradip Ramesh Shinde	Applicant No.1	Thakar	26.06.2011
20	School leaving certificate	Sandip Ramesh Shinde	Brother	Thakar	26.06.2012
21	-do-	Pradip Ramesh Shinde	Applicant No.1	Thakar	19.06.2014
22	School leaving certificate	Pradip Ramesh Shinde	Applicant no.1	Thakar	03.07.2017
23	-do-	Pradip Ramesh Shinde	Applicant no.1	Thakar	08.08.2017

11. If one compares the above chart, the oldest record of Ambadas Rajaram at serial No.182 of the school record described him as 'Hindu' and the date of admission being shown as 27.06.1952 cannot be regarded as a contrary record inasmuch as 'Hindu' is a religion and not a caste. But conversely, even it will not substantiate petitioners' claim of 'Thakar'.

12. The petitioners had produced certified extract of the school register of entry at serial No.182 of Ambadas Rajaram Thakar, copies of which are annexed at page Nos.39 and 40 purportedly describing him in the caste column as 'Thakar'. Interestingly, one of this, page No.39, mentions in column No.9 that he was admitted in the school on 27.06.1951, whereas, in the copy at page No.40 column No.9 does not mention the date of admission. Though both are purportedly copies of the same school record of the entries at same serial No.182, many of the columns at page No.39 giving particulars, are completely missing and have not been given in the copy at page no.40. Since it is a matter of school record of the same school of same individual of the same serial number, the vigilance officer on inquiry could merely discover that the original entry in the school register in the caste column was 'Hindu' and not 'Thakar'. This is what has been precisely pointed out by the Committee and we have no manner of doubt in subscribing to the observation of the Committee that the entry at serial no.182 of the Zilla Parishad, Primary School Savana, Taluka Sengaon, District Hingoli in

respect of petitioners cousin uncle Ambadas Rajaram Thakar of 27.06.1952 was 'Hindu' and not 'Thakar' and the petitioners have somehow managed to procure such apparently false certified extracts of the school register. Suffice for the purpose to observe that though this cannot be treated as contrary record since 'Hindu' is a religion and not a caste, the fact remains that the petitioners have indulged in some kind of attempt at fraud.

13. Be that as it may, this record cannot be treated as a favourable one. Consequently what remains is the contrary school record of petitioners first degree uncle Datta Baba Shinde of 1959, Aunt Rajmati Baba Shinde of 29.07.1971 and even that of his father of 15.09.1972 which are of the oldest time, describing them in the school record as 'Maratha', '*Iter Magas*' (other backward) and 'Maratha' respectively.

14. So far as another school record of petitioners' cousin Devidas Ambadas Shinde of 15.09.1972, the original entry in the caste column of 'Maratha' was found to be scored off and word 'Thakar' was written.

15. In spite of the fact that all these aforementioned aspects and details were expressly mentioned in the vigilance report, there is no specific denial in the reply filed by the petitioners to the vigilance report in respect of the school record of serial no.182 of Ambadas Rajaram Thakar and scoring of original entry 'Maratha' and writing of word 'Thakar' in the caste column of serial No.973 of the school register of Devidas Ambadas Shinde.

16. It is thus evident that the oldest record was contrary to the petitioners' claim of being 'Thakar'. All the favourable record is of a subsequent period and obviously would have a lesser probative value. Even accepting the argument of the learned advocate for the petitioners that the oldest record would prevail, being the trite legal position, no exception can be taken to the observations and conclusions of the Committee in discarding the petitioners' claim on the basis of the oldest contrary record of petitioners' father and other near blood relatives from the paternal side.

17. True it is that as far as the stand of the Committee to substantiate its conclusion by referring to some declaration made in the sale deed by the petitioners' blood relatives that they were not Adiwasis, would not be legally sustainable in the light of the decision of this Court in the matter of **Nikhil Suryakant Padalwar** (supra). Suffice for the purpose to reproduce paragraph no.9 from that order:

"9. The learned AGP submitted that in the sale deed, which is produced on record at page no.119, it is clearly seen that the grandfather of the Petitioner has relinquished his caste/scheduled tribe status. It is pertinent to note that this sale deed is required to be considered in juxtaposition with the caste validity certificates issued in favour of the above three persons. If so done, in our opinion, it cannot be given much weightage. It is further pertinent to note that the relinquishment of Caste/Tribe status made by one of the blood relatives, by no stretch of imagination could be said to be a ground to reject the validity certificate in respect of the Scheduled Tribe claim of a person, if it is supported by other documents. In this view of the matter, we are not inclined to accept the submissions based on this sale deed."

The Committee's observation to substantiate its inference relying upon the declaration made in the sale deed would not be legally sustainable.

18. Though it is trite that affinity test is not a litmus test, as has been held in the **Maharashtra Adiwasi Thakur Jamat** (supra) its efficacy cannot be outrightly rejected. It would be relevant to reproduce the observations. Paragraph No.25 of the judgment reads as under :

“25. Now, we come to the controversy regarding the affinity test. In clause (5) of Paragraph 13 of the decision in the case of Kumari Madhuri Patil Vs. Addl. Commissioner, Tribal Development (1994) 6 SCC 241, it is held that in the case of Scheduled Tribes, the Vigilance Cell will submit a report as regards peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, methods of burial of dead bodies etc. in respect of the particular caste or tribe. Such particulars ascertained by the Vigilance Cell in respect of a particular Scheduled Tribe are very relevant for the conduct of the affinity test. The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the applicant. But in a given case, even the parents may be unaware for the reason that for several years they have been staying in bigger urban areas. On the other hand, a person may not belong to the particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, Shri Shekhar Naphade, the learned senior counsel, is right when he submitted that the affinity test cannot be applied as a litmus test. We may again note here that question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with the material produced by the applicant.”

19. When the analysis of the aforementioned circumstances demonstrates that the documents relied upon by the petitioners were not sufficient to substantiate their claims, it was imperative for the Committee even to resort to the affinity test, which it has done. No exception has been taken to the observations and conclusions of the Committee precisely referring to the various replies given by the petitioners during affinity test. This apart, it would be beyond the power of judicial review to examine the conclusion of the Committee in that regard.

20. Resultantly, the Committee has taken a plausible decision based on reasonable appreciation of the evidence and by applying affinity test. We do not find any perversity or arbitrariness. The petition is liable to be dismissed.

21. The writ petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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