



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

WRIT PETITION NO.11417 OF 2010

SMT. TILOTTAMA D/O RAMESH THAKUR

Age-28 years, Occ. Student,
R/o Wani Apartment, Bhadgaon Road,
Pachora, Tq. Pachora, Dist. Jalgaon.

..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 Division, Nandurbar,
Through its Member Secretary.
 3. The Sub Divisional Officer,
Jalgaon Division, Jalgaon.
 4. Khandesh College Education Society's
College of Education,
NAAC Accredited B++ & C.T.E.
M.J. College Campus,
JALGAON-425 002
Through its Principal.
 5. North Maharashtra University,
Jalgaon-425001.
Through its Registrar & Chief
Examination Controller.
- ..Respondents

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Mr. M. A. Golegaonkar h/f Mr. A. S. Golegaonkar, Advocate for the
Petitioner.

Mr. S. K. Shirse, AGP for Respondent Nos.1 and 3.

Mr. S. S. Tope, Advocate for Respondent No.2.

Mr. B. R. Warma, Advocate for Respondent No.4 (Through V.C.).

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

JUDGMENT RESERVED ON :- 21st MARCH 2024.

JUDGMENT PRONOUNCED ON :- 28th MARCH 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India impugning order dated 22.06.2010 passed by respondent no.2-Scheduled Tribe Certificate Scrutiny Committee, Nandurbar rejecting the tribe claim of the petitioner for 'Thakur', Scheduled Tribe.

3. The petitioner contends that she belongs to the 'Thakur', Scheduled Tribe. The Competent Authority has issued caste certificate dated 01.03.1999 that she belongs to 'Thakur', Scheduled Tribe. The petitioner was admitted to B.Ed. Course against the seat reserved for Scheduled Tribe with respondent no.4-College. Accordingly, her caste certificate was referred to the Committee at Nashik for verification, which was later on transferred to respondent no.2-Committee. The proposal of the petitioner was accompanied by the voluminous evidence including school record of herself and the paternal relatives. She had also submitted the caste validity certificates of her real paternal uncle and real cousin sister. The Committee vide impugned order dated 22.06.2010 invalidated the petitioner's tribe claim on erroneous ground.

4. Mr. Golegaonkar, learned Advocate appearing for the petitioner vehemently submits that the Committee has discarded the petitioner's claim mainly referring to the affinity test. The Pre-

Constitutional documents in respect of blood relatives are ignored. Even the validity of blood relations are ignored without assigning justifiable reasons. He would, therefore, submit that the decision of the Committee be quashed and set aside and direction be given for issuance of caste validity certificate to the petitioner.

5. Mr. Shirse, learned A.G.P. appearing for the respondents supports the impugned order. He would invite attention of this Court to the observations of the Committee to contend that each claim has to be decided on its own count. Merely because the petitioner's husband and cousin have been conferred validity, the petitioner does not get right to receive the same. The Committee has doubted the correctness of the validity issued in favour of the paternal relatives of the petitioner. He would, therefore, urge that the writ petition sans merit and liable to be dismissed.

6. We have considered the submissions advanced on behalf of the learned Advocate for the respective parties. The petitioner has placed on record the genealogy depicting his relationship with the validity holders. The petitioner has relied upon the school admission extract of Suryasing Natthu Thakur, who was admitted in the school on 07.06.1930 and his caste is recorded as 'Thakur'. The petitioner has also relied upon the school leaving certificate of Suryasing Natthu Thakur depicting his caste as 'Thakur'. An affidavit of Ramesh Suresh Thakur is filed to support the contention that his father Suryasing is also referred as Suresh. The school leaving certificate of one Jagannath Suresh Thakur dated 03.08.1960 depicting his caste as 'Thakur' is also placed into service. The petitioner has further relied upon the validity granted in favour of the Jagannath Suresh Thakur and

Suvarna Jagannath Thakur. An affidavit of Jagannath Suresh Thakur containing genealogy is also placed on record, which supports the contentions of the petitioner regarding her relationship with the validity holders. The Jagannath Suresh Thakur is real uncle of the petitioner, whereas Suvarna is her cousin.

7. The survey of the aforesaid documentary evidence would show that the petitioner is relying upon the documents of Pre-Constitutional era in respect of her grandfather Suryasing Natthu Thakur. There is nothing on record to discard the said document of the year 1930. The real uncle of the petitioner Jagannath Suresh Thakur is granted validity by order of Additional Commissioner, Nashik on 28.09.1993. His daughter Suvarna is granted validity by Nashik Committee on 16.10.2003. Both these validity certificates are intact till this date. The Committee referred to the Pre-Constitutional documents, however, declined to rely the same observing that the entry as 'Thakur' is not sufficient to hold that it relates to the 'Thakur', Scheduled Tribe.

8. So far as the validity granted in favour of the petitioner's uncle and cousin is concerned, the Committee observed that those have been granted on the basis of the decision of this Court in the matters of the persons who were not direct blood relatives of the validity holders. Hence, such validity cannot become a precedent for the petitioner. The Committee has also observed that the petitioner could not prove affinity with the 'Thakur', Scheduled Tribe.

9. In our opinion, the Committee has misdirected itself while appreciating the evidence tendered by the petitioner. So far

as the Pre-Constitutional documents relied upon by the petitioner is concerned, there is no dispute about relations of the petitioner with Suryasing Natthu Thakur whose school admission extract and school leaving documents records his caste as 'Thakur'. The Committee has merely observed that the entry does not establish the caste as 'Thakur', Scheduled Tribe. At this juncture, we may refer to the judgment of the Division Bench of this Court in case of ***Madhuri Nitin Jadhav Vs. State of Maharashtra and Ors.***¹, wherein it is observed thus:

"14. From the above, it is clear that no authority can after 20 September, 1976, inquire and/or ask for an evidence that the "Thakur" Scheduled Tribe falls within the restricted or outside area in the State of Maharashtra. There is no reason to insist for the inquiry and/or information and/or evidence from the Claimant/Applicant to bring on record the documents and/or material of the particular area/region within the State.

15. It is also clear that all people of Thakur community/tribes belong to State of Bombay were part of first Presidential Order since 6 September, 1950 upto 28 October, 1956. The Bombay State at that time was inclusive of some part of Gujarat and/or Madhya Pradesh. From 2 September, 1976, till this date, most of the areas are part of Maharashtra, after the States' reconstitution/bifurcation. The district-region-wise reservation was made after modified order, 1956. Therefore, claimants/persons belong to Thakur/tribes/community just cannot be denied their status for want of documents only of restricted districts as per modified order, 1956. The documents/materials of Bombay State and documents and material of whole State of Maharashtra after 1977 are also important to claim the Thakur tribes benefits. It is also relevant to note that the change and/or recognition from Thakur tribes for the State of Bombay was restricted for the respective districts after modified order, 1956. The said restriction was continued about 20 years as recorded above, but once the Region/district restrictions are removed, the insistence of the documents only from the restricted area by overlooking first Presidential Order, just cannot be permitted. By the Act of 1976, the Thakur tribe, if recognized for whole State of Maharashtra,

¹ 2014 (3) Mh.L.J. 900.

the documents from the restricted area/districts cannot be the only source for deciding the Thakur/scheduled tribes claims/benefits. The endeavour must be to check and verify the supporting documents of the Thakur tribes of any part of Maharashtra/Bombay State and as per the first Presidential Order.

16. There is no question of further inquiry by any Authority to challenge and/or test the benefits required to be given to the "Thakur" ST Community, if they reside and/or hail from any part of the State of Maharashtra. The status of "Thakur" ST community in whole State of Maharashtra is equal for all and so also the benefits and reservation.

17. As migrants belong to Scheduled Tribes/resident of the year 1950 in the area, that excludes and/or constitutes the State of Maharashtra and would be entitled to benefits of reservation as ST in the State of Maharashtra. Their legal representation/prayers cannot be denied the same status and benefits. The status/privilege conferred by the Constitution first time in the year 1950, not only because of the birth of father or forefather, but because of socio-economic conditions of the tribe/caste."

10. The aforesaid observations of this Court makes it abundantly clear that the Pre-Constitutional documents cannot be discarded on the basis of area restriction or giving reasons that the forefathers of the claimants have not migrated from the area of original residence of the 'Thakur', Scheduled Tribe. Pertinently, there is no contra material on record to indicate that the petitioner belongs to the 'Thakur' community different than 'Thakur' Tribe. Therefore, it is difficult to countenance with the contrary observations of the Committee.

11. Apart from the Pre-Constitutional documents, the petitioner has placed reliance upon the validity granted in favour of the real uncle and cousin sister. The Division Bench of this Court in case of ***Apoorva d/o Vinay Nichale Vs. Divisional Caste***

Certificate Scrutiny Committee No.1 and others², has observed in paragraph no.7 as under:

“7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.”

12. Applying the aforesaid observations of the Division Bench to the fact of this case, it is evident that the real uncle and cousin sister of the petitioner is already conferred with the caste validity certificates. The reasoning recorded by the Committee does not depict that the validity certificates relied upon by the petitioner are product of fraud or misrepresentation. Both the validity certificates relied upon by the petitioner are intact and undisturbed till this date. In that view of the matter, we do not find that any deeper enquiry as regards to the petitioner's claim is required. Now it is settled that when the claim of the petitioner is based on documentary evidence, particularly caste validity of the paternal relatives and Pre-Constitutional documents having greater probative value, the claim of the petitioner can be accepted in spite of failure in affinity test. Therefore, the observations of the Committee while declining to grant validity to the petitioner cannot be countenanced. We have no hesitation to hold that the petitioner has established her caste claim as belonging to 'Thakur', Scheduled Tribe. Consequently, we proceed to pass the following order:

ORDER

a. Writ Petition is allowed.

b. The impugned order dated 22.06.2010 passed by respondent no.2-Scheduled Tribe Certificate Scrutiny Committee, Nandurbar is hereby quashed and set aside.

c. The respondent no.2-Committee is directed to issue validity certificate in favour of the petitioner as belonging to 'Thakur', Scheduled Tribe.

d. Writ Petition is disposed of.

e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE