

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13669 OF 2024

Varad Vivek Gaikwad ... Petitioner
versus
The State of Maharashtra and Others ... Respondents

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Mr.R.K.Mendadkar with Mr.Anandsingh Bayas, Ms.Priyanka Shaw, Ms.Komal Gaikwad, Mr.Sidhant Sawai and Ms.Jaishri Mendadkar for the Petitioner.

Ms.R.A.Salunkhe, AGP for Respondent Nos. 1 and 2-State.

Ms.Dhruti Kapadia, State CET Cell Present.

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CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.

DATE :- 11TH NOVEMBER, 2024

PC:-

1. **Rule.** Rule made returnable forthwith and heard finally, with the consent of the parties.
2. The Petitioner is Varad s/o Vivek Gaikwad, who is 19 years old, pursuing education in the engineering faculty.

Since his claim of belonging to Thakar Scheduled Tribe category has been invalidated by the order dated 20th September, 2024 passed by Respondent No.2, the Competent Scrutiny Committee, the Petitioner has put forth prayer clauses (A) and (B), as under :

“A) The Hon’ble Court may please to quash and set aside the impugned order dated 20.09.2024 (EXHIBIT -O) passed by the respondent no.2 invalidating the tribe claim of the petitioner by issuing a writ of certiorari or any other appropriate writ order or direction.

B) To hold and declare that the petitioner belongs to Thakar Scheduled Tribe and the Scrutiny Committee be directed to forthwith issue caste validity certificate to the petitioner”.

3. Having considered the extensive submissions of the learned Advocates for the respective sides, we have perused the genealogy at page No. 93 of the Petition paper book, which is an annexure to the affidavit dated 12th September, 2024 filed by the father of the Petitioner before the Committee. Having perused the family tree, we noticed as under :

- (a) the traceable ancestor is Mahadu Thakar (Gaikwad).
- (b) He is said to have two sons, namely, Bhagwan and Tulshiram;

(c) Bhagwan had five sons and one daughter, namely, Dattatray, Laxman, Ramchandra, Vinayak, Vivek and daughter Vijaya.

4. Ramchandra has been granted validity certificate by the Committee. The biological brothers of Ramchandra, namely, Vinayak and Vivek, have also been granted validity certificates. Vinayak's two sons, namely, Vaibhav and Vishal, have also been granted validity certificates. Two sons of Ramchandra, namely, Deepak and Santosh, have been granted validity certificates. Two sons of Laxman, namely, Anand and Amol and daughter Ashwini, have also been granted validity certificates. All these are from the branch of Bhagwan. The genealogy tree indicates that two granddaughters of Tulshiram (brother of Bhagwan), namely, Sangitabai and Mandabai, daughters of Vishnu, have also been granted validity certificates.

5. This Court [Coram: S.V.Gangapurwala (as his Lordship then was) and Sandeep V. Marne, JJ.], have passed the order on 1st March, 2023 in Writ Petition No. 6464 of 2022 (Mandabai d/o. Vishnu Gaikwad Versus State of Maharashtra)

and in Writ Petition No. 8739 of 2022 (Sangitabai D/o. Vishnu Gaikwad Versus The State of Maharashtra and Others). While allowing these Petitions, this Court recorded in paragraph 5 as under :

*“5. The Division Bench of this Court in **Apoorva** (supra) has observed that validity certificate issued to the paternal relatives is a relevant fact. In **Anand vs. Committee for Scrutiny and Verification of Tribe Claim, (2012) 1 SCC 113** the Apex Court has held that the affinity test is not the litmus test. In the present case, pre-constitutional documents of the paternal cousins of the Petitioners are of the year 1932, which records caste of Thakar. So also in the school records of real uncles of the Petitioners pertaining to the year 1933 caste is recorded as Thakar. Birth extracts of the Petitioners’ father also records the caste as Thakar. Not a single contra entry is pointed out in respect of the Petitioners’ forefathers or paternal relatives.”*

6. The learned AGP has vehemently canvassed that though the contra entries were not brought to the notice of this Court when the cases of Mandabai and Sangitabai were allowed on 1st March, 2023, the old entries indicate that some of the paternal relatives of the Petitioner have entries of Marathi and some carry the entry of Hindu Thakar. She points out that the Committee found that though this Court has delivered a verdict in

the cases of Mandabai and Sangitabai, it is the Committee's view that this Court was misled and therefore, the Committee has decided to approach the Hon'ble Supreme Court for challenging the order dated 1st March, 2023 (page Nos. 167 and 168 of the Petition paper book). She, however, concedes that an SLP has still not been filed.

7. In **Apoorva d/o Vinay Nichale vs. Divisional Caste Scrutiny Committee and Ors.**, 2010 (6) Mh.L.J. 401, this Court has concluded that when the blood relatives have been granted validity certificates, the Claimant, who would be banking on such validity certificates issued to the blood relatives from the paternal side, cannot be held to be not belonging to the said particular category.

8. In the case in hand, the father of the present Petitioner has been granted a validity certificate by the Committee. According to the Committee, entries of some paternal relatives indicate their social status as Maratha.

9. We are unable to comprehend as to how the Petitioner's father can be Thakar Scheduled Tribe and the Petitioner would belong to the Maratha caste. Sangitabai and Mandabai are from the branch of Tulshiram. Vaibhav, Vishal, Anand, Amol, Ashwini, Deepak Santosh, Ramchandra and Vinayak, are from the branch of Bhagwan, who is the biological brother of Tulshiram. With so many validity certificates having been issued and out of which, two are issued by this Court vide order dated 1st March, 2023, we are unable to accept the contention of the learned AGP that this Court should take a different view. Since the Petitioner's father is granted a validity certificate along with several paternal blood relatives and when Mandabai and Sangitabai have been granted validity certificates by this Court, unless the decision of this Court is set aside, we cannot be persuaded to take a different view merely because there are some entries which indicate Marathi, Maratha and Hindu Thakar.

10. The learned AGP submits that show cause notices are being issued to some of the validity holders. The learned AGP

candidly submits that a Special Leave Petition assailing the order of this Court dated 1st March, 2023 in the cases of Mandabai and Sangitabai, has not been filed in the Hon'ble Supreme Court.

11. In view of the above and considering the law laid down in *Apoorva* (supra) and *Anand vs. Committee for Scrutiny and Verification of Tribe Claim, (2012) 1 SCC 113*, we do not find that we can take a different view in this matter. As such, **this Writ Petition is allowed.** The impugned order dated 20th September, 2024 passed by Respondent No.2, the Competent Scrutiny Committee, is quashed and set aside. Respondent No.2 would issue a validity certificate to the Petitioner indicating his social status as Thakar Scheduled Tribe, within 30 days from today.

12. Rule is made absolute in the above terms.

(ASHWIN D. BHOBE, J.) (RAVINDRA V. GHUGE, J.)