

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12831 OF 2024

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Soham s/o Kiran Ahire,)
Age-19 years, Occ. Student,)
R/o At & Post- Dabhadi,)
Tq. Malegaon, Dist. Nashik.) Petitioner

VERSUS

1. The State of Maharashtra)
Department of Tribal)
Development, Mantralaya,)
Mumbai- 32)
Through its Secretary.)
2. The Scheduled Tribe)
Certificate Scrutiny Committee,)
Nashik Division, Nashik-2,)
Tq. & Dist. Nashik.)
Through its Member Secretary.)
3. COEP Technological University))
Pune, Tq. & Dist. Pune.)
Through its Principal.)
4. The Commissioner &)
Competent Authority State)
Common Entrance Test cell)
Maharashtra State) Respondents

Mr. Sushant C. Yeramwar, for Petitioner.
Mr. S.B. Kalel, AGP for Respondent Nos. 1 & 2.
Mr. Nikhil Chavan, for Respondent No.4 (CET Cell).

**CORAM : RAVINDRA V. GHUGE &
M.M. SATHAYE, JJ.**

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DATE : 22nd OCTOBER, 2024

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. **Rule.** Rule made returnable forthwith and heard finally, by the consent of the Parties.

2. The Petitioner's claim of belonging to the Thakur Schedule Tribe category, has been invalidated by an order dated 3.9.2024. He is 19 years of age and a college has been allotted to him for pursuing an engineering degree course. According to the Petitioner, when there are 14 validity holders amongst the blood relatives from the paternal sides, the Committee had no reason to invalidate the claim of the Petitioner only on the basis of stray entries which have been unnecessarily highlighted.

3. The Petitioner relies upon the Judgment delivered on 9.8.2019, in ***Writ Petition No. 8695 of 2019 (Saiprasad Subhash Ahire Vs. State of Maharashtra & Ors.)***, more particularly paragraph Nos. 8 to 19, which read as under:

“8. The Petition sets out that the 2nd Respondent called for a Vigilance Cell Report on 5th April 2018. The vigilance cell examined the documents and recorded its statements. It submitted its report on 5th April 2018 with a remark of the research officer. The Petitioner was then called before the 2nd Respondent

Committee. He filed his reply and appeared at the hearing. During the course of arguments, it was submitted that though the caste of Motiram and Damodar had been allegedly shown as Bhat there was no indication of the date on which this was endorsed but on the contrary at the time when they were admitted to primary school, their social status was shown and described as Thakur on 1st June 1906, and that this was earlier in point of time. The Petitioner also pointed out that since his father had 15 years ago been issued a caste validity certificate, it could hardly be said that he himself was not from the same tribe.

9. We believe Mr Mendadkar is correct in all his submissions. The impugned order relies extensively on the affinity test and claims this to be determinative although, as we have held, this is not the correct position in law.

10. The Petitioner claimed to have been covered by the decision of the Supreme Court in Anand vs Committee for Scrutiny and Verification of Tribe Claims and Anr. (2012) 1 SCC 113.

11. Despite all this material the 2nd Respondent Committee passed the impugned order invalidating and cancelling the caste certificate of Petitioner.

12. It is impossible to sustain this order. The 2nd Respondent Committee seems to have proceed almost entirely on the basis that the Petitioner did not fulfil the affinity test, meaning that he could not clearly and unequivocally attest to the various established customs, traits and traditions said to be common to the Thakur Scheduled Tribe. This finding completely overlooks the decision of the Supreme Court in Anand. The affinity test is not a litmus test.

13. *Apart from the decision itself there is a historical reason with the development of society why this cannot be a determinative test. As people have progressed in life, they may not necessarily adhere to or even be fully aware of the oldest historic traditions of their tribe, caste or even community. This does not necessarily mean that for that reason alone they are not members of that caste, tribe or community.*

14. *We find that the scrutiny committee materially misdirected itself on law. It make extensive reference to the decision of this Court in Chhaya Jaswantsingh Hajari v State of Maharashtra, (Writ Petition No. 4198 of 2005 decided on 1st August 2008), which said that if a candidate could not pass the affinity test, then the certificate had to be invalidated. This was followed most notably in Monika Satish Thakur v State of Maharashtra and Ors. (Writ Petition No. 10123 of 2010) what the 2nd Respondent Committee completely overlooked, although we are unable to see how it could have so done, was the much more recent decision of a Division Bench of this Court (BR Gavai J as he then was, and NJ Jamadar J) in Writ Petition No. 2363 of 2013, Prakash Shrawan Deore v Schedule Tribe Certificate Scrutiny Committee, Nashik. That was a decision against this very committee. The Division Bench held that the decision in Monika Satish Thakur was per incuriam (paragraphs 13 and 14) because it ran completely contrary not only to the Supreme Court decision in Anand but also to the decision of this Court in Apoorva Vinay Nichale v Divisional Caste Certificate Scrutiny Committee and Ors. (2010(6) MLJ 401).*

15. *In Prakash Shravan Deore, the Division Bench of this Court went so far as to impose costs of one month's salary for each of the three members of the committee, noting that this*

conduct in ignoring binding decisions of this Court was deliberate and could not be accidental.. This gives us a measure of the distress caused by this very committee to the Division Bench in view of his demonstrated and obdurate refusal to follow decisions of this Court.

16. The impugned order is also inconsistent and self- contradictory. The lineage of the Petitioner is not in doubt. His genealogy is not questioned. It follows therefore that if the Petitioner's claim to being of the Thakur Scheduled Tribe is to be invalidated, then the 2nd Respondent Committee was bound to return a finding that the pre-Independence documents of the Petitioners' paternal ancestors, all showing the Thakur entry, were incorrect, fake, or could not be believed. The 2nd Respondent Committee returns no such finding. It cannot. It simply ignores them from any meaningful consideration

17. There is yet another logical flaw in the 2nd Respondent's approach. If the certificates issued to the Petitioner are to be invalidated then the 2nd Respondent Committee ought necessarily to have called into question the caste validity certificate of the Petitioner's father, although that is now nearly 15 years old and has never been disturbed since. The 2nd Respondent Committee has not done so. There is such a thing after all as a finality to these matters.

18. The other aspect which we find objectionable in the impugned order is the 2nd Respondent's apparent insistence on a candidate being geographically static i.e. that a person who claims to be belong to a Scheduled Tribe must have his base or must be from or must hail from a particular region. We are unable to understand this. In this day and age with

increasing mobility and urbanisation persons are constantly moving from place to place in search of better opportunities. There is also a Constitutional guarantee of freedom of movement throughout the territory of India. It simply cannot be that a person must choose between his Constitutional guarantees to protection as a Scheduled Tribe and his Constitutional guarantees to be able to move freely throughout the territory of India. This is not a reason to deny any candidate either one or the other of these fundamental rights. It wholly ignored the effacement of the area restrictions by the Scheduled Castes and Scheduled Tribes Ordes (Amendment) Act, 1976, which specifically deleted the area restriction of Scheduled Tribes in Maharashtra for the Thakur community. The Supreme Court has noted this in its 8th March 2017 order in Jayant Dilip Pawar v State of Maharashtra & Ors. (Special Leave Petition No. 2336 of 2011.)

19. The entire order proceeds on the footing that the two pre- Independence documents showing 'Bhaat' against the Petitioner's paternal ancestors were obtained by illicit means, subterfuge, misrepresentation, concealment or fraud. There is nothing at all to show this. It is the purest conjecture. The order ignores and overlooks that these entries are undated; and that the earlier school documents show both as being of the Thakur social status. It seems to us that the impugned order was pre-determined."

4. This Court allowed the Petition and by quashing the order of the Committee, granted conditional validity certificate to the Petitioner Saiprasad Subhash Ahire by observing in paragraph 20 (1 to 4), which read as under:

“20. In this view of the matter, the Petition succeeds. On 9th August 2019 we pass the following order:

1. For the reasons above, the following order is passed:-

2. The writ petition succeeds. The order passed by the Scheduled Tribe Certificate Scrutiny Committee, Nashik dated 3rd August, 2019 is quashed and set aside.

3. The petitioner be granted a certificate of validity on par with his father Subhash Ahire. The certificate be issued latest by 10th August, 2019 before 3.00 p.m. Should the certificate and formal in nature be not drawn up, the petitioner shall be considered for admission in the second year Engineering Degree course in the ongoing admission process on the basis of our order which validates the claim of the petitioner. The petitioner be held to be belonging to Thakur Scheduled Tribe vide Entry No. 44 of the Scheduled Tribe Control Order, 1950. However, this is subject to the re-scrutiny and re-verification of the claim of Subhash Ahire, the father of the petitioner to whom a show cause notice has been issued by the Scrutiny Committee. Should his certificate get invalidated, the petitioner then will be visited with all consequences under the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2001. No equities can be claimed if the certificate is confiscated and cancelled.

4. All concerned to act upon an authenticated copy of this order.”

5. The Petitioner has placed before us a typed list of 14 persons and an enlarged sheet (horizontal sheet) of the family tree which is at page 113, in the Petition paper book. The said compilation of 2 pages is marked as ‘X’ for identification.

6. The fact that the Petitioner has 14 relatives on the paternal side who have received validity certificates, is not disputed. So also, the fact that the Saiprasad Subhash Ahire and Lalita D/o. Rajaram Thakur, have been granted validity certificates vide orders of this Court, both the orders of this Court are placed at page Nos. 89 and 145, respectively.

7. We have perused the genealogy tree and we find that the Petitioner is from the branch of Pundlik son of Haibat. The Petitioner is son of Kiran, grand son of Prakash and great grand son of Pundlik. Haibat is father of the Pundlik who had a biological brother namely, Gangaram. Their father was Tulshiram Mahadu Thakur. Gangaram had two sons and one daughter namely, Ramdas, Haribhau and Sonubai. Ramdas had three sons namely Rajaram, Dnyaneshwar and Ravindra. Lalita daughter of Rajaram had been granted validity certificate by this

Court, vide order dated 21.2.2019, delivered in **Writ Petition No. 8096 of 2013 (Smt. Lalita D/o. Rajaram Thakur Vs. The State of Maharashtra and Ors.)**, at the Principal seat. Excluding Lalita and Saiprasad, the remaining 12 paternal relatives have been granted validity certificates by the Committee.

8. In view of the above, the law laid down in **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 Nagpur, [2010(6) Mh.L.J.401 : 2010(6) AIR Bom.R.21]**, would be applicable to the case of the present Petitioner. So also, Saiprasad has been granted a conditional validity certificate by this Court, which we have noted.

9. In these circumstances, **this Writ Petition is partly allowed**. The impugned order dated 3.9.2024, stands quashed and set aside and the Petitioner shall be granted the Thakur schedule tribe validity certificate by the Committee, on or before 15.11.2024. Since this Court has protected the admission of the Petitioner vide order dated 9.9.2024, we direct that his admission shall not be cancelled considering the fact that we have granted a validity certificate to the Petitioner, though conditionally, and his admission therefore, would be continued.

10. Since Saiprasad was granted a conditional validity certificate by this Court, we deem it appropriate to rely upon the law laid down by this Court in ***Shweta Balaji Isankar vs. The State of Maharashtra and others***, Writ Petition No.5611/2018 (2018 SCC OnLine Bom 10363), and we observe that if any validity holder on whose validity, the Petitioner has placed reliance, suffers reopening of the case and suffers invalidation, the same consequences would befall upon the Petitioner.

11. Rule is made partly absolute in the above terms.

(M.M. SATHAYE, J.) (RAVINDRA V. GHUGE, J.)