



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 951 OF 2013

Sanjeev S/o Gulabchand Thakur
Age : 34 years, Occ : Service,
R/o 55 years, R/o Shastri Nagar,
Jalgaon, Tq. & Dist. Jalgaon.

... PETITIONER

...VERSUS...

1. The State of Maharashtra,
Through its Secretary,
Co-operation, Marketing & Textile
Department, Mantralaya,
Mumbai-32.
2. The Committee for Scheduled Tribe Certificate
Scrutiny and Verification of Tribe Claim,
Nandurbar Region, Nandurbar.
3. The Divisional Deputy Registrar,
Co-operative Societies (Audit)
Nashik Division, Nashik.

... RESPONDENTS

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- Mr. Y. C. Yeramwar, Advocate for Petitioner
 - Mrs. V. P. Dama AGP for State
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CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL – JADHAV, JJ.

RESERVED ON : DECEMBER 01, 2025

PRONOUNCED ON : DECEMBER 04, 2025

J U D G M E N T [Per Vaishali Patil – Jadhav, J.] :

. Rule. Rule made returnable forthwith. Heard finally with
the consent of learned advocates for the parties.

2. This petition is directed against the order dated 28.09.2012 passed by Respondent No. 2 - Scrutiny Committee, invalidating the Tribe Claim of the petitioner of "Thakur, Scheduled Tribe". The Committee has invalidated the claim of the petitioner by ignoring the old entries of the year 1951 and 1955, wherein the caste is mentioned as "Thakur", so also on the ground of area restriction and failure to pass the affinity test.

3. Petitioner has relied on total 30 documents to support his claim, namely school admission register, school leaving certificates, caste certificate, service book entry, which all mention caste as "Thakur". The oldest entry of school admission is of year 1951 and 1955 in school leaving certificate of real uncle and paternal aunt of the petitioner.

4. Heard learned advocate for the petitioner and learned AGP for State. Perused the original record made available by learned AGP.

5. Learned Advocate for the petitioner would submit that in view of the pre-constitutional record, Committee ought to have accepted the Tribe Claim of the petitioner. He would submit that the approach of the Committee in ignoring the pre-constitutional entry and relying on entry of the post-constitutional period as "Hindu Non-B.C.

and Thakur E.Ma" of the year 1978 and 1976 in school leaving certificate of cousin and one relative, is perverse. It is further submitted that in view of the legal position, the findings of the Committee regarding area restriction and affinity test are unsustainable.

6. Per-contra, learned A.G.P. would support the impugned order. He would submit that the documents produced on record only indicate caste as "Thakur", which is also found in upper caste. Hence, it is imperative to consider result of affinity test.

7. The Committee rejected the tribe claim of the petitioner mainly on the ground that the entry "Thakur" by itself does not establish that the petitioner belongs to the "Thakur, Scheduled Tribe". As the said caste is also found in upper caste, hence caste entry as "Thakur" can also be interpreted as upper caste "Thakur". Here it will be apposite to refer the observations made in the case of ***Baburao S/o Rajaram Shinde Vs. State of Maharashtra and others***, 2002(4) Mh.L.J. 310) :-

"32. The Scrutiny Committee has limited role to investigate whether the claimant before it belongs to "Thakur or Thakar" caste and on that basis it may take steps as are mandated by law laid down by the Supreme Court in Kum. Madhuri Patil's case, AIR 1995 SC 94. On adjudication if the Committee records a finding in the affirmative, it has to certify that the claimant belongs to the Scheduled Tribe

and it cannot venture into any further inquiry into such a claim. In the case at hand, the Committee recorded a finding that the petitioner had claimed to belong to Thakar Scheduled Tribe and the claim was subjected to verification by the Committee which recorded a finding on adjudication of this claim that the petitioner belonged to "Hindu Thakar" caste which falls in the Other Backward Classes. The petitioner has challenged this finding on the ground that once he was found to be belonging to the "Thakar caste" it was incompetent for the Committee to give any further declaration regarding his social status and to hold that the claimant belonged to "Hindu Thakar" caste-a non-tribal group. If the Committee was satisfied that the claimant did not belong to Thakar caste, it had the powers to give a declaration accordingly. It certainly did not have the powers to give a further declaration and that too contrary to the petitioner's claim that he belonged to Hindu Thakar caste. These submissions have considerable force and we agree that once the Committee recorded a finding that the claimant belongs to Thakar caste it had no jurisdiction to give any further declaration and the only course available to it in such cases was to validate the claimant's, social status as belonging to the Scheduled Tribe (entry no. 44). It is for these reasons that the impugned order is contrary to law and the Scrutiny Committee has fallen in serious error in denying the petitioner's Scheduled Tribe claim. The said order is, therefore, unsustainable and it requires to be quashed and set-aside."

In view of the above observations, once the Committee found that the petitioner belongs to “Thakur” Caste, the Committee has misdirected itself in holding that the said caste is also found in upper caste and it can be interpreted as upper caste “Thakur”, the said finding recorded by the Committee is unsustainable and is liable to be quashed and set aside.

8. The Committee has observed that the petitioner's real uncle and paternal aunt were admitted to school in the year 1951, 1955 and during that period, persons belonging to the “Thakur” community were backward and lacked educational advancement. The Committee has erroneously rejected the oldest entry of 1951, 1955 and has relied on the entry of the year 1976 and 1978 in school record of cousin and one relative of the petitioner as "Hindu Non-B.C. and Thakur E.Ma. The same reflects non-application of mind. The pre-constitutional record has greater probative value is settled position of law as per the judgment of the Apex Court in the case of *Ku. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and Others, AIR 1995 SC 94* and *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Others, (2012)1 SCC 113*.

Therefore, the Committee has erred in ignoring the pre-constitutional documents supporting the claim of the petitioner and has further erred in relying on recent entries.

9. The Committee has rejected the petitioner's claim on the ground of area restriction that the petitioner and his forefathers' were not residing in the areas, which were scheduled for "Thakur Scheduled Tribe". After issuance of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the area restrictions are lifted. In ***Jaywant Dilip Pawar Vs. State of Maharashtra and others, 2018 (5) All. M.R. 975***, it has been held that :-

"1. The short point raised by learned counsel for the appellants in these appeals is that after The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976) was published in the Gazette on 20.09.1976, the area restriction of Scheduled Tribes in the State of Maharashtra for the Thakur community has been deleted and all members of Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar community are treated to be Scheduled Tribes. The Scrutiny Committee has negated the claim of the appellants on the ground that the relatives of the appellants were not residents of the areas mentioned in the Presidential Order, 1956 and further they were not able to give any details of customs and traditions being observed by the said community.

2. In our considered opinion, that is wholly irrelevant. The appellants have only to establish that they belong to the community mentioned at Serial No.44 of Part IX of Second Schedule of Act No.108 of 1976."

10. Therefore, the findings of the Committee in respect of area restrictions cannot be sustained in view of the above judgment and the Amendment Act of 1976.

11. The another ground on which the Committee has rejected the petitioner's claim is that the petitioner has failed to prove affinity test. In view of the decisions in *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others (supra)* and *Mah. Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and others, 2023 SCC OnLine SC 326*, it is now well settled that affinity test is not conclusive either way and it is not a litmus test.

12. For the above reasons, the impugned order is unsustainable and hence it is liable to be quashed and set aside and the petition deserves to be allowed. Hence, the following order :-

ORDER :-

- (i) Writ Petition is allowed.
- (ii) The impugned order dated 28.09.2012 passed by Respondent No.2 - Committee is quashed and set aside.
- (iii) The Respondent - Committee is directed to forthwith issue validity certificate in favour of the petitioner as belonging to 'Thakur, Scheduled Tribe'.

- (iv) Rule is made absolute in the above terms.
- (v) No order as to costs.

[VAISHALI PATIL – JADHAV, J.]

[NITIN B. SURYAWANSHI, J.]