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

WRIT PETITION NO.6084 OF 2023

Suresh s/o Supadu Salunke,
Age: 59 years, Occ: Service,
R/o. M/P. Muktainagar, Tq. Muktainagar,
Dist. Jalgaon,
At present Police Quarter,
New Mumbai

....PETITIONER

VERSUS

1. State of Maharashtra,
through Secretary,
Home Department,
Mantralaya, Mumbai-32
2. Sub Divisional Officer,
Bhusawal, Dist. Jalgaon
3. Scheduled Tribe Certificate
Scrutiny Committee, Dhule,
Through its Member Secretary
4. Superintend of Police,
Mumbai, Dist. Mumbai

....RESPONDENTS

....
Mr D. B. Shinde, Advocate for petitioner
Ms P. J. Bharad, A.G.P. for respondents/State

CORAM : MANGESH S. PATIL

AND

PRAFULLA S. KHUBALKAR, JJ.

**RESERVED ON : 02nd January, 2025
PRONOUNCED ON : 09th April, 2025**

JUDGMENT (PER : PRAFULLA S. KHUBALKAR, J.)

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the parties. Learned A.G.P. waives service for all the respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner is taking exception to the judgment and order dated 24/04/2023, passed by respondent No.3/Scheduled Tribe Certificate Scrutiny Committee, Dhule (for short 'the committee'), in a proceeding under Section 7 of 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, 2000 (for short 'the 2000 Act'). By this judgment and order the committee has refused to validate and instead, ordered confiscation and cancellation of the petitioner's 'Thakur' Scheduled Tribe certificate, alongwith initiation of action under Sections 10 and 11 of the 2000 Act.

3. On being appointed as Police Constable from the Scheduled Tribe category on 01/03/1988, the tribe claim of the

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petitioner, was forwarded by respondent No.4/Superintendent of Police, Mumbai to the scrutiny committee by letter dated 12/08/2013 and the same is finally decided by the order dated 24/04/2023. In the meantime, on 30/09/2022, the petitioner is superannuated and on account of invalidation of tribe claim, his pension and retiral benefits are withheld.

4. By the impugned order, the committee has inferred that the petitioner has failed to establish his tribe claim on the basis of documentary evidence as well as on account of failure to prove affinity with 'Thakur' scheduled tribe. The committee has opined that in view of the area restriction, the pre-independence era documents, relied upon by the petitioner, cannot be considered.

5. Although the petitioner has based his tribe claim on the pre-independence era of document of his father, the committee has essentially based its decision on the documents of relatives of husband of petitioner's sister by observing that the documents are contrary to the petitioner's tribe claim. The committee has drawn inference that the petitioner has failed to disclose those documents and consequently concluded that those documents are determinative. The committee has opined that the document relied upon by the petitioner, being a

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school leaving certificate of his father, although of pre-independence era, cannot be relied upon, in view of residence of petitioner's forefathers being not from the scheduled area.

6. Advocate D. B. Shinde, learned counsel for the petitioner vehemently submitted that the committee has adopted an erroneous and perverse approach in discarding the most important document of school leaving certificate of petitioner's father Supadu Namdeo Thakur showing his date of birth as 10/08/1930 and date of his admission in school as 07/10/1936. He would submit that this document mentioning caste as 'Thakur' has got high probative value and the petitioner's caste claim ought to have been validated on the basis of this vital document. He would also submit that the committee has committed grave error in relying upon the documents alleged to be belonging to the relatives of the husband of petitioner's sister, particularly when the petitioner has categorically denied any blood relations with those persons. He would rely on the judgment of the Hon'ble Supreme Court in the matter of **Jaywant Dilip Pawar vs. State of Maharashtra and others, [2018 (5) ALL MR 975]**, to urge that in view of removal of area restrictions, the most vital document could not be ignored only on account of residence petitioner's

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forefathers being not from the scheduled area. He would further submit that in view of the law laid down in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others, 2012 (1) SCC 113**, affinity test could not be considered to be a litmus test and would demonstrate the perverse approach of the committee.

7. Per contra, Advocate Ms P. J. Bharad, learned A.G.P. for the respondents/State strongly opposed the petition. She would submit that there were documents of relatives of petitioner showing caste as 'Bhat', 'Brahmabhat', etc. who were relatives of the husband of petitioner's sister. She would invite our attention to the observations of the committee based on statement given by the sister of the petitioner, namely, Mrs Darshana Supadu Thakur, wherein she stated that there were no inter-caste marriages in their family. She, therefore, would submit that the committee has rightly appreciated the documents showing the contrary entry and as such, there was no infirmity with the findings of the committee. She also supported the reasoning of the committee on the points of area restriction and affinity test and justified the impugned order.

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8. We have considered the rival submissions and perused the papers including the original record in the matter of petitioner which is made available by respondent No.3/scrutiny committee.

9. We are conscious that, this being a writ petition instituted under Article 226 of the Constitution of India, the jurisdiction of this Court is mainly required to be exercised to examine whether the impugned judgment and order suffer from arbitrariness, irrationality, or perversity. If the decision of the Caste Scrutiny Committee is founded upon a plausible and reasonable appreciation of the material on record, this Court would refrain from interfering. However, where the reasoning is manifestly perverse, arbitrary, or demonstrates non-application of mind, it becomes incumbent upon this Court to intervene to prevent miscarriage of justice.

10. It is trite law that under Section 8 of 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, 2000, the burden of proof squarely rests on the claimant to substantiate his tribal status. This burden is required to be discharged on the touchstone of the standard of *preponderance of*

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probabilities, rather than proof beyond reasonable doubt. In the present case, it becomes imperative to scrutinize the approach adopted by the Caste Scrutiny Committee in its assessment of the petitioner's claim. The Committee has adjudicated the claim based on an evaluation of the documentary evidence furnished by the petitioner, in conjunction with the application of the affinity test. As regards the documentary evidence, the petitioner has relied upon the pre-independence era document i.e. School Leaving certificate in Form No.6 of his father Supadu Namdeo Thakur, which mentioned the date of birth as 10/08/1930 and date of admission in the school as 07/10/1936. This document specifically recorded the religion and caste as 'Hindu Thakur'. This was a document of highest probative value and was very crucial in deciding the petitioner's tribe claim. The committee has referred to this document in paragraph No.6(A) of its decision, however, has discarded the document by simply mentioning that the necessary information about this document was not available. It is pertinent to note that the petitioner had filed copy of this document before the scrutiny committee, which also mentioned the register number of the student as 438 and Book No.11 and thus in view of these details, veracity of this document could have been easily ascertained by the vigilance cell. Pertinently, the vigilance cell

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enquiry did not at all refer to this document, leave apart any adverse finding about veracity of this document.

11. The vigilance cell enquiry, instead of referring to the document of petitioner's father, referred to certain other documents (nine in number), mentioning the caste as 'Bhat, 'Brahmabhat', which were allegedly belonging to the relatives of husband of petitioner's sister. The committee has referred to the statement of petitioner's sister Mrs Darshana Supadu Thakur, dated 06/04/2023 in which she has stated 'in their family the brothers and sisters have not performed any inter-caste marriages'. Pertinent to note, the committee has straightway accepted this statement of petitioner's sister and referring to those documents, has concluded that the petitioner has failed to establish his claim on the basis of documentary evidence. It is crucial to note, in response to the vigilance cell report the petitioner has categorically denied that these persons were his blood relatives. Despite specific denial by the petitioner about any relationship with these persons, the committee has relied upon on these documents to conclusively infer that in view of these contrary documents the petitioner has failed to substantiate his claim on the strength of the documentary evidence. Pertinently, the statement of the petitioner's

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sister, purportedly recorded during the vigilance cell enquiry, has been accorded the status of a solemn and conclusive statement for the purpose of drawing final inferences. It is surprising to see that the Committee has based its entire reasoning substantially on this statement, to such an extent that the pre-constitution documentary evidence—namely, the School Leaving Certificate of the year 1936 pertaining to the petitioner's father—has been completely brushed aside. On consideration of reasoning of the committee, we find that the committee has completely misdirected itself in basing its conclusion on the documents alleged to be of relatives of husband of petitioner's sister. This approach of the committee does not demonstrate any judicious application of mind .

12. As regards the reliance placed by the committee on one isolated sentence in the statement of petitioner's sister Darshana that "*there are no inter-caste marriages in our family*", a further question arises as to whether this statement can be said to have evidentiary value so much so that the entire caste claim can be decided on the basis of this single statement. The statement recorded during vigilance enquiry being not tested to any cross -examination is not in the nature of conclusive evidence. This apart, it has to be noted that even the

findings recorded by the vigilance cell and opinions expressed by the Vigilance Cell Enquiry Officer cannot be considered to be of binding nature to such an extent that the complete decision of the committee could be based on the single statement recorded during vigilance cell enquiry. As regards the binding effect of the opinion expressed by the Vigilance Cell Enquiry Officer, following observations from the judgment of Division Bench of this court, in the matter of **Sk. Hamid Sk. Hanif Vs. Divisional Caste Scrutiny Committee No.1, Amravati and others, 2017 (4) Mh.L.J. 104** , needs to be conveniently referred.

Relevant extract from paragraph No.42 is reproduced below :-

42.

We may here briefly state the scheme for verification of caste certificate prescribed in 2012 Rules here for convenience :--

(A) Finding recorded and opinion expressed, if any, by the Vigilance Officer are neither binding on Scrutiny Committee nor can be used as evidence, in support of the Claim.

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(J) When obligation under Section 8 of 23 of 2001 Act springs into life and the claimant has to prove his caste, the vigilance report only remains a document on record of the proceedings not binding on anybody. Mere adverse report on his caste by the vigilance cell can not be used to deny validity without giving the claimant an opportunity to prove his case in terms of Section 8. If he does not use

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that opportunity, his caste claim can be rejected not because of adverse vigilance cell report but because of his failure to substantiate it.”

13. In the instant case, the statement of petitioner's sister Darshana recorded by the vigilance cell enquiry cannot be considered to be conclusive to decide the claim, that too, for nullifying the pre-independence era document of 1930. Pertinent to note, the petitioner's sister refers to documents of her husband's relatives and not about documents of blood relatives of the petitioner. In any case, those documents which are categorically denied by the petitioner in reply to vigilance cell, cannot be determinative for petitioner's tribe claim. The reasoning of the committee to invalidate the claim considering those documents as contrary documents is thus absolutely perverse.

14. Position of law is no more res-integra about the effect of removal of area restriction. The committee has discarded the documents of petitioner's father on account of their residence being not from scheduled area. Considering the legal position emerging from the judgment of the Hon'ble Supreme Court in the matter of **Jaywant Dilip Pawar (supra)** and **Palghat Jilla Thandan Samudhaya Samrakshana Samithi and another Vs. State of Kerala and another, [1994 (1) SCC 359]**, in view of the removal of area

restrictions, the document of school leaving certificate of petitioner's father could not have been discarded on this count.

15. Even as regards affinity test, the position of law is fairly settled by Hon'ble Supreme Court in the judgment of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others** (supra) reiterated in the recent authoritative pronouncement in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others**, [AIR 2023 Supreme Court 1657], holding that affinity test is not conclusive either way and it is not a litmus test. In the instant matter in view of the document of pre- independence era relied upon by the petitioner, the committee has misdirected itself in focusing on affinity test.

16. In the light of the foregoing factual and legal considerations, we are of the firm view that the impugned order is unsustainable in law and deserves to be quashed and set aside. Consequently, the petitioner's claim for recognition of tribal status merits validation. Hence, we pass following order :-

- (a) The writ petition is allowed.
- (b) The impugned order dated 24/04/2023, passed by respondent No.3/scrutiny committee, is quashed and set aside.

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(c) Respondent No.3/scrutiny committee is directed to issue validity certificate to the petitioner of belonging to 'Thakur' Scheduled Tribe in the prescribed format.

17. Rule is made absolute in above terms. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.)

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