



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

WRIT PETITION NO. 7751 OF 2008

KU. MANISHA MOHAN THAKUR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. Sushant C. Yeramwar, Advocate for the Petitioner
Mr. N. D. Batule, AGP for Respondent/State
Mr. Ajay G. Talhar, DSGI for Respondent No.3

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**CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL JADHAV, JJ.**

DATE : 17th DECEMBER, 2025

PER COURT :

1. This petition is directed against the order dated 06/10/2006 passed by respondent No.2 Committee by which the petitioner's tribe claim as belonging to Thakur scheduled tribe is rejected.
2. Heard learned advocate for petitioner, learned AGP for respondents/State and learned DSGI for respondent No.3 Management. Perused the record.
3. The Committee has ignored pre-constitutional entry of Hindu Thakur caste in school leaving certificate of petitioner's grandfather Daga Thakur which is of the year 1929. The Committee has further observed that Thakur caste falls in the higher castes also. Then on the point of not clearing affinity test and area

restriction the claim of petitioner is rejected by the Committee.

4. Admittedly, in school leaving certificate of petitioner's grandfather the entry of Hindu Thakur is mentioned in the year 1929. The Committee without assigning plausible reasons has erroneously discarded the document ignoring the settled law that pre-constitutional documents have greater probative value. The Committee has further erred in observing that persons belonging to the Thakur scheduled tribe were backward and had not taken any education. Thus, the Committee has ignored pre-constitutional entry on the basis of presumption and assumptions and has wrongly discarded the same.

5. So far as the ground of affinity test is concerned, the same has lost its force after the judgment in **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims**, reported in **(2012) 1 SCC 113**. The area restriction also cannot be the ground to reject the validity in view of decision in **Jaywant Dilip Pawar Vs. State of Maharashtra and Others**, reported in **2018(5) ALLMR 975 (SC)**.

6. Petitioner has rightly relied on the observations made by the Coordinate Bench of this Court in the order dated 11/03/2025, passed in Writ Petition No.9283/2012 in similar facts. In the said order it is observed that,

“9. Learned Additional GP did not point out any circumstance or material to doubt the pre-constitutional record. Only objection was that caste mentioned as Thakur would not be Scheduled Tribe Thakur, but also the upper caste Thakur or besides Scheduled Tribe Thakur. In this regard, a useful reference can be made to the decision of the Division Bench in the matter of **Ravindra Pralhadrao Khare Vs. State of Maharashtra and Others**, in Writ Petition No.11241/2012. The coordinate bench had occasion to deal with the issue that if only Thakur is mentioned as caste in pre-constitutional document, then what would be the consequences. We reproduce paragraph nos. 3, 4, 5 and 6 :

3. We have carefully considered the submissions. It will be necessary to make a reference to the impugned judgment and order. The Caste Scrutiny Committee has referred to the school record of the Petitioner's father which discloses that in the year 1948, his caste was recorded as "Thakur". The Scrutiny Committee has also referred to the death extract of the grand father of the Petitioner which shows that in the year 1947, his caste has been shown as "Thakur". The third important document referred to by the Scrutiny Committee is the service book of the Petitioner's father which shows that his caste was "Thakur". These three documents have been brushed aside by the Scrutiny Committee by making following observations:

As said earlier, the only caste entry as Thakur does not clarifies whether the incumbent belongs to Thakur, Scheduled Tribe or Thakur, non-tribal group. Hence, though the document is oldest, the same cannot be treated as conclusive in nature while determining the tribe claim of the applicant.

4. We fail to understand as to how the Caste Scrutiny Committee expects the documents of the years 1947-1948 to mention as to whether the caste "Thakur" belongs to the category of Scheduled Tribe or the category of non-tribal. In the years 1947-1948, such entries could not have been made. Another finding recorded by the Tribunal is that the Petitioner could not establish his affinity to the caste and to the area. On this aspect, it will be necessary to make a reference to what is held by the Apex Court in the case of Anand (supra) in Paragraph 22. The Paragraph 22 of the said decision reads thus:

“18. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing

with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

(Underlines added)

5. The Apex Court has held that the affinity test may be used to corroborate the documentary evidence but should not be the sole criteria to reject the caste claim.

6. In the present case, three material documents which we have referred to earlier have been brushed aside by the Scrutiny Committee by recording reasons which are not at all justified and thus, the claim is rejected primarily on the basis of the affinity test. In view of the law laid down by the Apex Court in the case of Anand (supra), only on the basis of the affinity test, the caste claim of the Petitioner could not have been rejected."

10. ...

13. Learned Additional GP has also taken through the observations of the Committee in respect of place of residence of the Petitioner and his forefathers to buttress that the findings on area restrictions are legal and proper, in view of removal of area restrictions in 1976 and judgment of the Supreme Court in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr**, (1994) 1 SCC 359. The place of residence of the Petitioner or his forefathers would be insignificant. The submission in this regard of learned Additional GP cannot be accepted.

14. It would be useful to refer to observations of Supreme Court in paragraph no.21 of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra) which is as follows :

"21. In the impugned judgment in Civil Appeal No. 2502 of 2022 (Shilpa Vishnu Thakur's case2), the Full Bench of the Bombay High Court has noted that people having the surname "Thakur" belong to both forward castes and various backward castes. Therefore, the Full Bench may be right in saying that in every case, only on the basis of the surname Thakur, it cannot be concluded by the Scrutiny Committee that the applicant belongs to Scheduled Tribe Thakur notified in the Entry 44 of the Maharashtra list. However, we must note that in the case of a person having the surname Thakur, there may be evidence in the form of entry of the name of the caste as a Tribe or Scheduled Tribe in the land records, school or college records or any official records concerning the applicant or his ancestors. Only on the ground that the persons having the surname Thakur may belong to a forward caste as well, it is not necessary that in every case, the Scrutiny Committee should send the case to Vigilance Cell. It all depends on the nature of the documents produced before the Caste Scrutiny Committee and the probative value of the documents. Therefore, whenever a caste claim regarding Thakur Scheduled Tribe is considered, the Caste Scrutiny Committee in every case should not mechanically refer the case to the Vigilance Cell for conducting an enquiry including affinity test. The reference to the Vigilance Cell can be made only if the Scrutiny Committee is not satisfied with the material produced by the applicant."

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18. Our attention is adverted to various categories of the Scheduled Tribe with synonymity which are recorded by the Committee on page no.52 of the paper-book in five categories. We are concerned with serial no.1 as it refers to Thakur which is found at serial no.44 of constitutional order. Serial Nos.2 and 3 are Thakar and therefore they are irrelevant. Serial Nos. 4 and 5 refers to Thakur of upper caste or some other caste. We do not find that in the present case, there is possibility of any fraud on part of Petitioner or his forefathers by representing themselves to be

Scheduled Tribe Thakur. In the wake of pre-constitutional record, they have to be treated as Scheduled Tribe Thakur. In the absence of any material, they cannot be treated as upper caste Thakur."

The above observations are squarely applicable to the facts of the present case.

7. In the result, the writ petition is allowed. Impugned order dated 06/10/2006 passed by respondent No.2 Committee is quashed and set aside. The Committee is directed to forthwith issue validity certificate to the petitioner as belonging to the Thakur scheduled tribe. The petitioner would be entitled to all service benefits, if she is eligible for the same as per rules.

(VAISHALI PATIL JADHAV, J.)

(NITIN B. SURYAWANSHI, J.)