



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14627 OF 2019

Shri Sachin S/o Bhimrao Vishve
Age - 34 years, Occ : Service,
R/o At Post Kachaner,
Tq. & District. Aurangabad.

... PETITIONER

...VERSUS...

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Plot No.10,
Sector-E-1, Opposite Cidco Bus Stand,
Near Sent Lowrance School,
Town Center, CIDCO, Aurangabad
Ahamednagar.
3. Executive Engineer,
Maharashtra State Electricity
Distribution Pvt. Ltd. Company,
Division, Yewatmal
4. Deputy Executive Engineer,
Maharashtra State Electricity
Distribution Pvt. Ltd., Company,
Sub-Division, Dist. Yewatmal.

... RESPONDENTS

WITH

WRIT PETITION NO. 11936 OF 2023

Prasad S/o Bhimrao Vishwe
Age - 30 years, Occ : Student,
R/o CIDCO, N-6, Sambhaji Colony,
F-27/9/10, Aurangabad,
Tq. & Dist. Aurangabad.

... PETITIONER

...VERSUS...

1. The State of Maharashtra,
Department of Tribal Development,
Mantralaya, Mumbai – 32
Through its Secretary.
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division, Aurangabad,
Tq. & Dist. Aurangabad
Through its Member Secretary

... RESPONDENTS

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- Mr. S.P. Salgar, Advocate for Petitioner in WP No.14627/2019
 - Mr. Y.C. Yeramwar, Advocate for Petitioner in WP No.11936/2023
 - Mr. A.R. Kale, AGP for State
 - Mr. A. R. Salve, Advocate for Respondent Nos. 3 and 4 in WP No.14627/2019.
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CORAM : **NITIN B. SURYAWANSHI AND
VAISHALI PATIL – JADHAV, JJ.**

RESERVED ON : **NOVEMBER 27, 2025**

PRONOUNCED ON : **DECEMBER 04, 2025**

JUDGMENT [Per Vaishali Patil – Jadhav, J.] :

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

2. These petitions are directed against the common order dated 14.11.2019 passed by Respondent No. 2 - Scrutiny Committee, invalidating the Tribe Claims of the petitioners of “Thakur, Scheduled Tribes”. The Committee invalidated the tribe claims of the petitioners on the ground of area restrictions and affinity test.

3. Petitioners have relied on various documents namely school admission register, school leaving certificates, death extracts, caste certificate, service book entry, which all mention caste as “Thakur”. The oldest entry is of 1922 in school leaving certificate of great grand-father of the petitioners.

4. Heard learned advocates for the petitioners and learned AGP for State. Perused the original record made available by learned AGP.

5. Learned Advocates for the petitioners would submit that in view of the pre-constitutional record, Committee ought to have accepted the Tribe Claims of the petitioners. 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, occupation-Bhikshuki” is perverse. It is further submitted that in view of the settled legal position, the findings of the Committee regarding area restriction and affinity test are unsustainable.

6. Per-contra, learned AGP 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. Petitioners' grand father's cousin sister Lilabai Vishve's statement recorded by Vigilance Cell does

not match with the traits of “Thakur” Caste and thus the petitioner failed in the affinity test. In support of his contention, learned AGP relied on judgment in the case of ***Dinesh Ramesh Thakur Vs. The State of Maharashtra, in Writ Petition No.9627/2011*** decided on 28.03.2012 and in the case of ***Shri Murlidhar Ramkrishna Gathe Vs. State of Maharashtra in Writ Petition No.2748/2000*** decided on 18.01.2007.

The judgments cited by AGP of the year 2007 and 2012, are of no help for the reason that thereafter the law regarding caste validity has undergone a sea change.

7. The Committee rejected the tribe claims of the petitioners mainly on the ground that the entry “Thakur” by itself does not establish that the petitioners belong to the “Thakur, Scheduled Tribes”. 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 petitioners' great grand father was admitted to school in the year 1922 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 1922 and has relied on the entry of the year 1960 and 1971 in school record of grand father's sister and father of the petitioners as “Hindu, occupation Bhikshuki”. The entry actually reflects the religion and occupation not the caste. The Committee also relied on the entries of school record of the year 1978, 1975 and 1991, which are “Hindu” or “Hindu Thakur”. The same reflects non-application of mind. The pre-constitutional record has greater probative value is a 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 petitioners and has further erred in relying on recent entries.

9. The Committee has rejected the petitioners' claim on the ground of area restriction that the petitioners and their 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. Another ground on which the Committee has rejected the petitioners' claim is that the petitioners' have 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 petitions deserve to be allowed. Hence, the following order :-

ORDER :-

(i) Writ Petitions are allowed.

- (ii) The impugned order dated 14.11.2019 passed by Respondent No.2 - Committee is hereby quashed and set aside qua the petitioners.
- (iii) The Respondent - Committee is directed to forthwith issue validity certificates in favour of the petitioners as belonging to 'Thakur, Scheduled Tribe'.
- (iv) The petitioners are entitled for consequential service benefits admissible to them.
- (v) Rule is made absolute in the above terms.
- (vi) No order as to costs.

[VAISHALI PATIL – JADHAV, J.]

[NITIN B. SURYAWANSHI, J.]