

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

WRIT PETITION NO.9581 OF 2024

Manasi Manoj Thakur

...Petitioner

Versus

The State Of Maharashtra & Ors.

...Respondents

WITH

WRIT PETITION NO.9583 OF 2024

Aaira Dattaprasad Atak & Anr.

...Petitioners

Versus

The State Of Maharashtra & Ors.

...Respondents

Mr. S. S. Panchpor a/w N. S. Mahadik, for the Petitioners.

Mr. V. M. Mali, AGP for the Respondent - State.

**CORAM : NITIN W. SAMBRE &
ASHWIN D. BHOBE, JJ.**

DATE : 22nd JANUARY, 2025

P. C.

1. Heard learned counsel for the parties.

2. The challenge in the Petition is to the order dated 2nd December, 2022 (hereinafter referred to as “the impugned order” for the sake of brevity) passed by Respondent No.2. The claim of the Petitioners of belonging to Thakar Scheduled Tribe based on the Caste Certificate dated 6th December, 2013 was received through Respondent No.3 by the Respondent No.2 and the committee vide impugned order rejected the claim for issuance of validity.

3. Learned counsel for the Petitioners while assailing the order impugned would urge that in support of tribe claim of belonging to Thakar Scheduled Tribe, Petitioners have submitted in all 24 documents, wherein caste is either reflected as Thakar or that of Hindu Thakar. Learned counsel would urge that the committee after evaluation of the documents, required to refer the matter to the Vigilance Cell for conducting an inquiry. According to the counsel for the Petitioners, in the case in hand, the claim of the Petitioners was referred to the Vigilance Cell for conducting an inquiry and accordingly, a report to that effect was received on 16th August, 2018. The said report according to him reflects the surname of the relatives, the deities and extract in the school records of the relatives of the Petitioners. The Vigilance Cell accordingly made a recommendation that the traditions and customs which are followed by the Petitioners do not match with the Thakar Scheduled Tribe. According to the counsel for the Petitioners, once the Petitioners have established from the documentary evidence of pre-constitutional era that he belongs to Scheduled Tribe category viz. Thakar, the committee in such an eventuality ought not to have invalidated the claim. Learned counsel for the Petitioners would invite our attention to the undisputed entry of 9th February, 1938 in regard to the Rajaram Vithoba Thakar, cousin grandfather as recorded in the village register maintained in regard to the birth record. He would also rely on the other documentary evidence of 1959 with regard to Sadashiv Vithoba Thakar, cousin grandfather.

As such, it is claimed that the pre-constitutional era documents are sufficient enough to establish that the caste of the Petitioners is Thakar Scheduled Tribe.

4. As against above, learned counsel for the Respondent committee would oppose the prayer based on the entries of 1986, 1981 in relation to Pravin Sadashiv Thakar and Vinayak Sadashiv Thakar, who are cousins uncles of the Petitioners. It is urged by learned AGP that these documents contain the entries of Hindu Thakar and that being so, the Petitioner cannot be said to be belonging to Thakar Scheduled Tribe. Further contention of learned AGP is, the Petitioners have failed to satisfy affinity test in addition to the explanation as regards the adverse entries and that being so, the committee is justified in rejecting the prayer. It is the contention of learned AGP that the order impugned reflects that the Petitioners belong to Sindhudurg district and the Thakars in the Sindhudurg district are not classified as Scheduled Tribe Thakar. As such, he would claim that the order impugned is sustainable and the Petition as such is liable to be dismissed.

5. We have considered the rival submissions.

6. The order impugned dated 2nd December, 2022 considers in all 24 documents, which were produced by the Petitioners. In almost all the documents, the entry in the first column is that of either Thakar or Hindu Thakar. This Court is required to be sensitive that in none of the orders, or under the constitution or otherwise, Hindu is not

recorded as caste but as a religion.

7. Apart from above, we are equally required to be sensitive to the fact that the effect of State reorganization Act will eliminate the claim of the Respondent committee of classifying the population from the particular area or district to be belonging to a particular category. Rather the division bench of this Court had an occasion to deal with the issue as to Thakars in Sindhudurg district. Learned counsel for the Petitioners has placed reliance on the division bench judgment of this Court in the matter of ***Amol Narayan Wakkar & Anr. Vs. State of Maharashtra and Ors.*** reported in ***2024 SCC Online Bom. 824***. The division bench of this Court while dealing with a similar issue had made following observations :-

“21. In view of this established legal position the observations made by the Scrutiny Committee attempting to distinguish "Thakar" of erstwhile Ratnagiri District from "Thakar Scheduled Tribe" are wholly erroneous and have to be discarded from consideration. It is not disputed before us that the petitioners have established that they belong to Thakar community but the Committee on erroneous assumption proceeded to hold that Thakars of erstwhile Ratnagiri District are being different than Thakar Scheduled Tribe as described in Entry 44 of Scheduled Tribe Order. We are unable to appreciate the approach of the learned Members of the Committee in rejecting nearly 200 applications solely on the basis that though the applicants belong to Thakar community they fall outside Entry 44 of Scheduled Tribe Order. In view of the decisions of the Supreme Court in 'Milind and Palghat Thandon 's cases the Committee has no competence or authority to go into the question whether petitioners belong to Thakar Nomadic Tribe as has been done in this case. Entry 44 of the Schedule to the Presidential Order notifies Thakars without any area restrictions being Scheduled

Tribe within the entire State of Maharashtra. The Scrutiny Committee was thus not justified in proceeding with the inquiry on the basis of alleged socio cultural traits and ethnical linkage to find out whether the petitioners belong to Thakar Scheduled Tribe when admittedly the petitioners belong to Thakar community. The Scrutiny Committee has also failed to see that some of the applicants were earlier issued caste certificates as belonging to Thakar Nomadic Tribe only due to the stand of the State Government which kept on changing and the notifications which were issued by the State Government from time to time contrary to the constitutional mandate. It appears that initially caste certificates were issued on the basis that the applicants belong to Scheduled Tribe and from 1985 to 2001 again they were considered as Nomadic Tribe. It appears that thereafter the applicants have been again granted caste certificates as belonging to Scheduled Tribe which was in consonance with the constitutional mandate. Therefore, the Scrutiny Committee was not right in holding that the applicants were trying to change their status. The Scheduled Tribe Order has to be read as it is and applied accordingly without any tinkering whatsoever. Therefore the tribe "Thakar" throughout the State has to be treated as Scheduled Tribe."

8. Apart from above, the aforesaid judgment was further followed by division bench of this Court in the matter of ***Snehal Dattaram Thakur alias Sandhya Pundalik Rathod Vs. State of Maharashtra & Ors. in Writ Petition No.9417 of 2023 dated 15th January, 2025.***

9. Thus, in the aforesaid background, the contention raised by the learned AGP in support of the order impugned that the Thakars belonging to Sindhudurg district cannot be said to be entitled for issuance of validity, cannot be accepted.

10. Apart from above, what has prompted this Court to consider is the oldest entry that was undisputed, that was produced by the Petitioners before the committee is of 9th February, 1938 i.e. pre-independence document. Such document is in regard to the birth entry in village record in the form of 1938 about the above Rajaram Vithal Thakar who happens to be cousin uncle of the Petitioners. The entry of 9th February, 1938 reflects the birth occurred in the family of Rajaram. The said oldest entry is not disputed by the committee and nothing adverse was noticed by Vigilance Cell during the field inquiry in the matter. Such entry will have more evidentiary and probative value and the committee cannot discard the said entry merely because the subsequent entries after 2000 reflects caste Hindu Thakar. We have already observed that Hindu is the religion and not the caste. In such an eventuality, the committee in our opinion cannot be said to be justified in discarding the claim of the Petitioner as that of belonging to Thakar Scheduled Tribe.

11. Another contention that canvassed was the validity holder Pravin Sadashiv Thakar, the blood relative of the Petitioners was served with a show-cause notice of obtaining caste validity certificate from the committee by misrepresenting material fact. Amongst other in the show-cause notice, the cause narrated is (a) that the surname of the relatives of the present Petitioners, so also, that of blood relations, namely Pravin Sadashiv Thakar are not from Thakar Scheduled Tribe; (b) Thakars from Sindhudurg district are not entitled for benefit of Thakar Scheduled Tribe category. As far as

the second issue is concerned, we have already dealt with the said issue in the backdrop of the observations made by division bench in the matter of ***Amol Narayan Wakkar (cited supra)***. As regards the surnames which are not found in the Thakur Scheduled Tribe but are reflected in the record of the Petitioners or that of Pravin Sadashiv Thakar is concerned, the Supreme Court in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra & Ors.*** reported in ***2023 SCC OnLine SC 326*** has already observed that the affinity test cannot be termed as litmus test in the matter of caste verification, once the claim of belonging to reserved category is established from the document of pre-independence era. Once we have recorded that the Petitioners have brought sufficient documentary evidence so as to infer that he belongs to Thakar Scheduled Tribe, the claim of the Petitioners cannot be rejected merely on the ground that the Petitioners have failed to satisfy the affinity test.

12. Even if the surnames which were found in the family of the Petitioners or its relations are not said to be from the category of belonging to Scheduled Tribe, that itself will not be the concluding factor in factual matrix of the present case to deny the validity in favour of the Petitioners, particularly, in view of law laid down in the aforesaid judgment. That being so, the order impugned dated 2nd December, 2022 rejecting the claim of issuance of validity is hereby quashed and set aside.

13. It is declared that the Petitioners belong to Thakar Scheduled Tribe.

14. We direct the Respondent committee to issue validity in favour of the Petitioners belonging Thakar Scheduled Tribe within a period of four weeks from today.

[ASHWIN D. BHOBE, J.]

[NITIN W. SAMBRE, J.]