



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1000 OF 2024

Anita d/o Haribhau Bayaskar (Sau. Anita w/o Dashrath Lakhapure), aged about 56 yrs, Occ. Service, r/o at post – Vyankatesh Nagar, Risod, Tq. Risod, Dist. Washim. 444506

... PETITIONER

VERSUS

1. The Vice Chairman/member Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati.
2. The Chief Executive Officer, Zilla Parishad, Washim.
3. The Block Education Officer, Panchayat Samiti Risod, Dist. Washim.

... RESPONDENTS

Ms Preeti Rane, Advocate for the petitioner.
Mrs. S.V. Kolhe, Assistant Government Pleader for the State.

CORAM : SMT. M.S. JAWALKAR AND PRAVIN S. PATIL, JJ.
CLOSED ON : 02.09.2025.
PRONOUNCED ON : 18.09.2025.

JUDGMENT : (Per : Pravin S. Patil, J.)

Despite service of notice, none appeared on behalf of

respondent nos. 2 and 3 in the matter.

2. Heard the learned Counsel appearing for the parties.

3. **RULE.** Rule is made returnable forthwith.

4. The petitioner by way of present petition questioned the order passed by respondent no.1 Caste Scrutiny Committee ('Scrutiny Committee') dated 29.12.2023 by which the caste claim of the petitioner belonging to 'Thakur' Scheduled Tribe is invalidated.

5. In short it is the case of the petitioner that she claims to be belonging of Thakur Scheduled Tribe, which is enlisted at Sr. No.44 of the Scheduled Tribes Order. The petitioner possesses the caste certificate dated 22.06.1984 issued by the Competent Authority. It is the submission of the petitioner that by following due procedure of law, she has been appointed as an Assistant Teacher in the Zilla Parishad, Washim against the post reserved for Scheduled Tribe category.

6. After her appointment, respondent no.2 has forwarded caste claim of the petitioner to respondent no.1 Scrutiny Committee in the year 2013. Along with the proposal the petitioner has relied upon the old entries of her great grandfather namely Bhiwaji Ganesh dated 05.01.1933 and extract of Kotwal Book of cousin brother namely Gajanan along with other document demonstrating the tribe as 'Thakur' Scheduled Tribe.

7. After forwarding the caste claim of the petitioner to the Scrutiny Committee, the Committee has conducted enquiry into the caste claim of the petitioner in the year 2017. At that time, the statement of the petitioner and her sister was recorded and all the documents submitted by her were verified.

8. However no further steps were taken in the matter and kept it pending on the file of respondent no.2. In the meantime, due to not submitting the tribe claim by the petitioner, she was placed on supernumerary post in view of the policy of the Government. That time petitioner has approached to this Court vide Writ Petition No.1859 of 2020 in which this Court has granted protection to the services of the petitioner. Later on, the matter was transferred to the High Court of Bombay, Bench at Aurangabad. The said Court has directed the Scrutiny Committee to decide the tribe claim of the petitioner within a period of six months from the date of communication of the order.

9. The petitioner has submitted her explanation on 26.03.2023 pointing out that all the old entries on which the petitioner has relied upon are the correct entries, which are not disputed by the Vigilance Cell also and therefore, requested that her caste claim should be considered positively.

10. However, respondent Scrutiny Committee without considering the documentary evidence placed on record by the petitioner, invalidated the

tribe claim of the petitioner on the ground of documentary evidence, affinity and area restriction. Hence, she constrains to approach before this Court by way of present petition.

11. *Per contra*, learned Assistant Government Pleader appearing for respondent Scrutiny Committee has relied upon the caste invalidation of caste claim of petitioner's cousin niece namely Varsha Narayan Bayaskar, which is upheld by this Court, invalidation of Subhash Mitharam Bayaskar Raju Mitharam Bayaskar who are cousin brothers of the petitioner and lastly invalidation of caste claim of real sister of petitioner namely Kalpana Haribhau Bayaskar.

12. It is the submission of the respondent Scrutiny Committee that the caste claim of real sister and cousin sister has been invalidated by the caste Scrutiny Committee and one of the decision is upheld by this Court. Hence, considering this aspect of the matter, the Committee cannot be said at fault to invalidate the tribe claim of petitioner. Hence there need no interference of the Court in the matter.

13. We have heard both the learned Counsel appearing for the parties, perused the record and original record produced by the respondent Scrutiny Committee.

14. The petitioner has relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Maharashtra Adiwasi Thakur Jamat*

Swarakshan Samiti vs. State of Maharashtra and ors. 2023 SCC Online 326,

particularly paragraphs 19 and 20, which read thus :

“19. Sub rule (2) of Rule 12 clearly provides that only if the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it shall forward the application to the Vigilance Cell for conducting the school, home and other enquiry. Therefore, in every case, as a matter of routine, the Scrutiny Committee cannot mechanically forward the application to Vigilance Cell for conducting an enquiry. When sub rule (2) of Rule 12 contemplates that only if the Scrutiny Committee is not satisfied with the documents produced by the applicant that the case should be referred to Vigilance Cell, it follows that the Scrutiny Committee is required to pass an order recording brief reasons why it is not satisfied with the documents produced by the applicant. Before referring the case to the Vigilance Cell, application of mind to the material produced by the applicant is required and therefore, the application of mind must be reflected in the order sheets of the Scrutiny Committee.

20. It is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the case to Vigilance Cell. One of the tests is as laid down in the case of Kumari Madhuri Patil¹. It lays down that the documents of the preConstitution period showing the caste of the applicant and their ancestors have got the highest probative value. For example, if an applicant is able to produce authentic and genuine documents of the preConstitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations provided to the Tribes included in the ST order. In such a case, a reference to Vigilance Cell is not warranted at all. ”

15. The petitioner has also relied upon the decision of this Court in ***Writ Petition No.14111 of 2021 (Mangesh s/o Panditrao Thakur vs. State of Maharashtra and ors.) dated 12.03.2025,*** wherein this Court recorded its

finding in paragraphs 13 and 14, which read thus

“13. True it is that there is an invalidation of Jyoti Narayan Vishve's certificate and the order has attained finality right up to the Supreme Court. However, we have been consistently holding that the decision of the scrutiny committee would only bind the claimant and would not bind the blood relatives, for the simple reason that they are not parties to such adjudication and that a blood relative may be able to substantiate his claim by leading cogent and relevant evidence sufficient enough to discharge the burden cast upon him under section 8 of the Maharashtra Act No. XXIII of 2001.

14. In the light of above, assuming for the sake of arguments that the validities were obtained by the petitioners' relatives mentioned herein-above, deliberately concealing the order of invalidation of a similar claim of Jyoti Narayan Vishve, that cannot be a decisive factor in the light of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra).”

16. Reliance is placed on the decision in the case of ***Anand vs. Committee for Scrutiny and Verification of Tribe Claims and ors. 2011 (6) Mh.L.J.*** particulary at paragraphs 18 and 19 which read as under.

“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.

19. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim."

17. In the present petition, the petitioner fairly pointed out from the pleadings itself that she has already disclosed in the matter that caste claim

i.e. tribe claim of real sister and cousin brothers have already been rejected by the Scrutiny Committee. However, as per law laid down by this Court, the decision of the Scrutiny Committee bind the claimant only and same would not bind the blood relatives, for the reasons that she/he was not a party to the such adjudication. We concurred with the law laid down by this Court that merely because, the caste claim of the blood relatives has been rejected by the Scrutiny Committee, cannot be a sole ground to dismiss the present petition. As per the law laid down by this Court as well as the Hon'ble Supreme Court, every case is required to be tested on its own merits, and therefore, we are of the confirmed opinion that the merits of the present case are necessary to be looked into while deciding the tribe claim of the petitioner.

18. In the present petition, the petitioner has relied upon the old entries of her ancestors. Particularly, extract of death certificate of great grandfather namely Bhiwaji Ganesh dated 05.01.1933. Perusal of the said kotwal entry shows that the caste was recorded as 'Thakur'. School leaving certificate of real uncle namely Shriram Shivram shows date of birth is 16.11.1923 and caste is mentioned as 'Thakur'. School leaving certificate of another real uncle namely Mitharam Shivram Bayaskar shows date of birth as 01.06.4935 and date of leaving the school was as 05.05.1946, where the caste was recorded as 'Thakur. Another real uncle namely Rambhau Shivram Thakur registered entry dated 20.02.1956 shows his caste as 'Thakur'. As

such, all these documents are clearly establish the fact that the ancestors of the petitioner belonging to the Thakur Scheduled Tribe.

19. It is pertinent to note that in the present petition the Vigilance Cell has submitted joint enquiry report in the case of Kalpana Bayaskar and present petitioner Anita Bayaskar. The said report clearly shows that as per the documents furnished by the petitioner particularly of her grandfather and father of the year 1925 and 1931 shows that the caste was recorded as 'Thakur'. However, in respect of old entries on which the petitioner has relied upon, it is stated that as per communication of the concerned Officer of the Tahsil office Rajanda on 21.07.2007, the record of Kotwal book at Tahsil Office destroyed due to catch of fire. Hence, the Vigilance Cell could not verify the relevant entries of Kotwal Book. In this regard, we have perused the original record, wherein we found that the petitioner has produced certified copy of the Kotwal register entry. The said copy was obtained authentically in the year 2002, i.e. before the record was destroyed. As such, there is no reason to disbelieve the same. Further it is settled principles of law that the certified copy which the petitioner has relied upon, is having evidenciary value and cannot be discarded merely because the Vigilance Cell not verified from the office of Tahsil. Hence, we are not agreeable to the finding recorded by the Scrutiny Committee in this regard.

20. In the present petition, respondent Scrutiny Committee also relied upon the Vigilance Cell report dated 18.07.2022. As per said school

record entries of father and uncle dated 10.08.1929, 22.06.1931, 25.04.1942 were verified and Vigilance Cell specifically recorded the finding that after verification of the same, the father and uncle of the petitioner found to be belonging to tribe 'Thakur'. However, there is no consideration of this factual aspect in the entire order passed by respondent no. 1 Committee.

21. The Vigilance Cell report dated 18.07.2022 further revealed the fact that as per the remark of enquiry officer, he had visited the Zilla Parishad Higher Primary School, Rajanda and verified the record. From the school record, he found that real uncle of the petitioner namely Shriram, father Hari Shivram and uncle Meetharam Shivram, cousin Raju Meetharam, sisters of the petitioner Kalpana and Sunita found to be belonging to tribe 'Thakur' as per the record in between the year 1929 to 1978. Hence, according to us, the Vigilance Cell report was required to be considered by the Scrutiny Committee while deciding the caste claim of the petitioner. However, there is no consideration of all these findings of the Vigilance Cell in either way in the matter, particularly when respondent no.1 Committee has discretion either to accept or reject the report.

22. We have come across to many decision of the Scrutiny Committee, where we notice that the Scrutiny Committee in most of the cases accepted the Vigilance Cell report if it is against the candidate as it is and without applying its mind, rejected the caste/tribe claim of the candidates. Time and again, this Court as well as the Hon'ble Supreme Court has held

that the Scrutiny Committee has to apply its own mind while deciding the caste/tribe claim irrespective of the fact whether the report of the vigilance cell is positive or negative. And record the reason as to why they are accepting the Vigilance Cell report or rejecting the finding of the Vigilance Cell report. As a result there is flood of cases due to negative approach of the Committee members. It is expected from the Committee to decide the matter judicially as they are functioning as a quasi judicial body.

23. In the present matter, vigilance cell has communicated to the Scrutiny Committee that the record of the Tahsil office Rajanda being destroyed due to catch of fire they could not verify the documents forwarded to them. As such, it is expected from the Committee to apply its judicial mind and considered the fact that the record was destroyed in the year 2007 whereas the petitioner has produced the certified copy obtained from the same office before the year 2007. Therefore, the Committee can rely upon the certified copy as same is having the evidenciary value. But merely the record was destroyed, all the old entries on which the petitioner has relied upon, are disbelieved by the respondent Scrutiny Committee.

24. In respect of the affinity test, the Hon'ble Supreme Court in the case of *Anand vs. Committee for Scrutiny (supra)* has specifically laid down the principles as reproduced above by holding that the affinity test is not to be considered as a litmus test for deciding the caste claim of the candidate. It is further held in the catena of judgment that the affinity test arises only in

those cases where the Scrutiny Committee has not satisfied with the material produced by the applicant. Again the Caste Scrutiny Committee is required to apply its own mind while conducting the affinity test. But in present matter there is no consideration of law laid down by the Hon'ble Supreme Court of India.

25. In the present petition, from the record it is clear that the officer has conducted the affinity test by recording the statement in question-answer form. The petitioner has answered the questions and established that she belongs to Thakur Scheduled Tribe. We are of the opinion that her family at present are residing in rural area and nature of their living standard has been changed during the passage of time. Therefore, the affinity test cannot be applied as a litmus test in the matter.

26. In the background of the above said reason, we are of the opinion that respondent Scrutiny Committee failed to consider the factual as well as legal aspect involved in the matter and thereby erroneously rejected the caste claim of the petitioner. Hence we proceed to pass the following order :

- (a) The Writ Petition is allowed.
- (b) The order dated 29.12.2023 passed by the respondent no. 1 Caste Scrutiny Committee is hereby quash and set aside.
- (c) Respondent no. 1 Caste Scrutiny Committee is hereby directed to

issue caste validity certificate to the petitioner of Thakur Scheduled Tribe within a period of four weeks from the date of this order.

27. Rule is made absolute in aforesaid terms. No order as to costs.

(PRAVIN S. PATIL, J.)

(SMT. M.S. JAWALKAR, J.)

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