

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4965 OF 2014
WITH
CIVIL APPLICATION NO. 4201 OF 2018
AND
CIVIL APPLICATION NO.4203 OF 2018
BOTH IN
WRIT PETITION NO.4965 OF 2014

Shri Sagar s/o Ravindra Suryawanshi,
Age : 21 years, Occu. Student,
R/o Pampa-4, Room No.4,
Anushakti Nagar,
Mumbai — 400 094

PETITIONER

VERSUS

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai-32,
through its Secretary
2. The Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar
Division, Nandurbar, through
its Member Secretary
3. The Sub-Divisional Officer,
Jalgaon Division, Jalgaon
4. Agnel Charities' FR.C. Rodrigues
Institute of Technology,
Vashi, Navi Mumbai,
through its Principal
5. Mumbai University,
Mumbai, through its Registrar

RESPONDENTS

Mr. A.S. Golegaonkar, Advocate for the Petitioner
Mr. M.M. Nerlikar, A.G.P. for respondent Nos.1 and 3

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

**JUDGMENT RESERVED ON : 5th FEBRUARY, 2019
JUDGMENT PRONOUNCED ON : 27th FEBRUARY, 2019**

JUDGMENT (PER : SUNIL K. KOTWAL J.) :

Rule. Rule made returnable forthwith and with the consent of learned counsel for the petitioner and learned A.G.P., heard finally.

2. By filing this Writ Petition, the petitioner has sought quashment of the order dated 22nd April, 2014, passed by the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar – respondent No.2 herein, whereby the tribe certificate issued by the Sub Divisional Officer, Jalgaon in favour of the petitioner, has been invalidated.

3. Shri A.S. Golegaonkar, learned counsel appearing for the petitioner, submits that though the school record of the petitioner, his father namely Ravindra Ganesh Suryawanshi and grandfather Gana Shankar Suryawanshi shows that the petitioner belongs to Thakur Scheduled Tribe, the Scheduled Tribe Certificate

Scrutiny Committee, Nandurbar (hereinafter referred to as "Scrutiny Committee") erroneously invalidated the tribe claim of the petitioner. He has drawn our attention towards school leaving certificates of the petitioner, his father Ravindra Ganesh Suryawanshi and grandfather Gana Suryawanshi.

4. Learned counsel for the petitioner has also drawn our attention towards genealogical tree of the petitioner, submitted along with affidavit of Ravindra Ganesh Suryawanshi and submits that cousin of the petitioner namely Dhiraj Gorakh Suryawanshi has filed affidavit in support of the claim of the petitioner and a copy of his tribe validity certificate issued by the Scheduled Tribe Certificate Scrutiny Committee, Nasik Division, Nasik, dated 19th January, 2005. He submits that when the Scheduled Tribe Certificate of Dhiraj Gorakh Suryawanshi has been validated by the competent Scrutiny Committee, the Scrutiny Committee at Nandurbar should have validated the Scheduled Tribe Certificate issued by the Sub-Divisional Officer, Jalgaon in favour of the petitioner.

5. Learned counsel for the petitioner has also

drawn our attention towards entry in the relevant extract of the death register of village Paldhi (Kh.) in respect of the great grandfather of the petitioner namely Shankar Maharu, which shows his caste as Thakur. Learned counsel for the petitioner submits that though area restriction was deleted by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the Scrutiny Committee erroneously invalidated the tribe certificate of the petitioner on the ground that his origin is not from the scheduled five districts, which were specified in the Presidential Scheduled Tribe Order, 1956. He submits that recently, the Apex Court in the case of **Jaywant Dilip Pawar Vs. State of Maharashtra and others, Civil Appeal No.2336/2011**, decided on **8th March, 2017**, held that the petitioner in such cases has to only establish that he belongs to the community mentioned at Serial No. 44 of Part-IX of Second Schedule of the Act No.108/1976. Learned counsel also placed reliance on the decisions in the following cases:-

- (i) **T. Kocha Vs. State of Kerala and others Civil Appeal No.6126-6127 of 2013**, delivered by the Supreme Court of India on 13th April, 2016
- (ii) **Jaywant Dilip Pawar Vs. State of Maharashtra**

and others, Writ Petition No.2152 of 2007,
decided by Division Bench of this Court
on 26th September, 2017

- (iii) **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others 2012 (1) SCC 113**
- (iv) **Amruta Vijay More Vs. State of Maharashtra and others, Civil Appeal No.7230 of 2011,**
decided on 23rd August, 2011
- (v) **Apoorva Vinay Nichale Vs. Divisional Certificate Scrutiny Committee 2010 (6) Mh.L.J. 401**
- (vi) **Jitendra Arun Thakur Vs. Education Officer (Primary), Zilla Parishad, Jalgaon and others, Writ Petition No.6071 of 2015,** decided by this Court on 6th December, 2018
- (vii) **Ku. Ojasvi d/o Mangalsing Mahale Vs. The State of Maharashtra and others, Writ Petition No.5190/2013,** decided by this Court on 28th September, 2018
- (viii) **Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another Vs. State of Kerala and another (1994) 1 SCC 359**
- (ix) **Bhagwat Shivram Pawar Vs. State of Maharashtra and others, Writ Petition No.6659 of 2016,** decided by the Division Bench of this Court on 1st February, 2017

6. Shri M.M. Nerlikar, learned A.G.P., on the other hand, submits that all the documents placed on record by the petitioner indicate that petitioner and his forefathers belong to "Hindu Thakur" or "Thakur". He pointed out that none of the old entries in school

record of the forefathers of the petitioner indicates that they belong to Thakur Scheduled Tribe. He also submits that it is not the claim of the petitioner that his ancestors migrated from five scheduled districts in Maharashtra specified in the Presidential scheduled Tribe Order, 1956, whereby area restriction was imposed. According to the learned A.G.P, no substance is placed on record by the petitioner to show that at any time, petitioner or his forefather availed the concessions given to the Scheduled Tribe.

7. Regarding the tribe validity certificate of petitioner's cousin namely Dhiraj Gorakh Suryawanshi, the learned A.G.P. has raised objection that in the affidavit of said Dhiraj, he has conveniently not given his genealogy to show his blood relation with the petitioner. He has also pointed out that the tribe validity certificates of other so called blood relatives of the petitioner cannot be considered in absence of genealogy on record to indicate their blood relation with the petitioner. Sum and substance of the arguments made by the learned A.G.P. is that no evidence is placed on record by the petitioner before the Scrutiny Committee – respondent No.2 to show that he belongs to

the tribe and the caste mentioned in the school record as Hindu Thakur, with reference to Thakur Scheduled Tribe. In support of his submissions, the learned A.G.P. relied on the decisions in the following cases :-

- (i) ***Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others***
1994 (6) SCC 241
- (ii) ***Shilpa Vishnu Thakur Vs. State of Maharashtra and others***
2009 (3) Bom.C.R.497
- (iii) ***Ku. Yogita d/o Anil Sonawane Vs. The State of Maharashtra and others***
Writ Petition No.6103 of 2010, decided by Full Bench of this Court on 15th September, 2016

8. In number of cases, this Court and even the Hon'ble the Supreme Court of India noticed that the person belonging to non-tribal community claimed status of a tribal person, taking benefit of nomenclature of the caste synonymous with tribal groups as specified in the notification. In the case of ***Kumari Madhuri Patil and another*** (supra), the Hon'ble the Supreme Court has termed such claim as "pseudo status".

9. In the objects and reasons of Enactment "Maharashtra Scheduled Castes, Scheduled Tribes,

Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, it is mentioned that it has been brought to the notice of the Government that the incidents of procuring false Caste Certificates, in respect of Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category have reached alarming figure. It results in depriving the genuine members of the Scheduled Castes, Scheduled Tribes and Classes of the said concessions and reservations, thereby defeating the very purpose of such concessions.

10. In the case of ***Kumari Madhuri Patil and another*** (supra), the Supreme Court has emphasized the need of consideration of the entire material while determining status claim of an applicant including sociological, anthropological and ethnological perspectives. In ***Raju Ramsing Vasave Vs. Mahesh Deoras Bhivapurkar***, reported in (2009) ***Mh.L.J.1***, the Supreme Court has observed as under :-

"Before a person can obtain a declaration that he is a member of a Scheduled Tribe, he must be a member of a tribe."

In the case of **Ashwini Anil Chavan Vs. State of Maharashtra**, reported in **2006(4) Mh.L.J.415**, the Division Bench of this Court has considered the importance of affinity test.

11. The Full Bench, in the matter of **Shilpa Vishnu Thakur** (supra), has observed as under :-

"From the affidavit in reply filed by the Research Officer, the Court noted that the petitioner hailed from Khamgaon in Buldhana District. Before the area restrictions were removed in 1976, the Thakur Scheduled Tribe was restricted only to five Districts, namely (a) Ahmednagar District in Akola, Rahuri and Sangamner Taluka, (b) in Kolaba District (now Raigad), Karjat, Khalapur, Pen, Panvel and Sudhagad Talukas and Matheran, (c) in Nashik District, Igatpuri, Nashik and Sinnar Talukas, (d) in Thane district, Thane, Kalyan, Murbad, Bhiwandi, Vasai, Wada, Shahapur, Palghar, Jawhar and Mokhada Talukas. It was not the case of the petitioner that his family had migrated to Khamgaon from any of these areas.

The population of the Thakur Scheduled Tribes in Maharashtra increased from 1,78,805 in the year 1971 to 3,23,191 in the year 1981. Dealing with this, the Division Bench observed as follows :-

"This cannot be explained as a normal reproduction process leading to the increase in the population of S.T. Within 10 years. Scheduled Tribes by their very nature stay close to their original habitat unless they have migrated for work or education which very few still do. This sudden spurt, can reasonably be explained, that persons who did not belong to Thakur S.T. Because they also bore a surname Thakur made false claims as belonging to Thakur S.T. Though they did not belong to Thakur S.T."

The Court observed that the Scrutiny Committee was justified in applying the affinity test.

12. In the case of **Shilpa Vishnu Thakur** (supra), while considering the importance of anthropological material, the Full Bench observed as under :-

"37. In the compilation that has been placed on the record by the State Government, reliance is placed on the written work of Anthropologists in support of the submission that the application of the affinity test is an invaluable aid in the determination of the question as to whether an applicant belongs to

a Scheduled Tribe. A monograph by Prof. R.K. Mutatkar. Honorary Professor of Anthropology at the University of Pune, entitled '**Tribal Identity: Policy Issues**' is instructive. The monograph states that Government of India has recommended that the following broad parameters be applied in determining tribal characteristics:

- (i) Primitive traits;
- (ii) Distinct culture;
- (iii) Geographical isolation;
- (iv) Distinct dialect;
- (v) Animism;
- (vi) Clan systems;

- (vi) Shyness of nature; and
- (vii) Backwardness

The monograph notes that due to contact with the outside world and the effort to draw tribal communities into the democratic political process, a movement towards **acculturation** has been taking place. However, the author states that "**acculturation does not destroy the hard core of culture which is manifested in their rituals, beliefs, ceremonies and festivals, in the dialect, and in music and dance.**" Prof. Mutatkar speaks of the danger of allowing caste groups with a similar nomenclature or with a tribal suffix or prefix to claim benefits which are meant for genuine members of the Scheduled Tribe"

"When a non-tribal group or a caste group with similar nomenclature or with tribal suffix or prefix to their name claim tribal status, they are not only harming the interest of a tribal group with whom they are trying to identify by putting up a triable claim, but they are also harming the interest of all tribals in the State and the country, since the benefits of Scheduled Tribe are bestowed according to the generic category of Scheduled Tribe and not according to a specific tribal group. The pseudo-tribal group, therefore, nullifies the constitutional guarantees of all the Scheduled Tribes in a State and the country."

38. Another instructive article on the subject, entitled "Pseudo-Tribalization; An anthropological Perspective" is written by Dr. Robin D. Tribhuwan, an Anthropologist associated with the Tribal Research & Training Institute at Pune. The article by Dr. Tribhuwan refers to similarities of nomenclatures between tribal and non -tribal communities. This is evident from the following table:

Sr .N o.	Tribal communities	Non tribal communities
1	Mahadeo Koli, Tokre Koli, Malhar Koli	Koli (including Son Koli Suryawanshi Koli, Valti Koli etc):
2	Dhanwar	Dhangar
3	Thakur/Thakar Ka-Thakur/Ka- Thakar Ma-Thakur/ Ma Thakar	Thakur (including Bhat Brahmabhat, Thakur, Kshatriya Thakur, Rajput Thakur, Sindhi Thakur, Maratha Thakur, Pardeshi Thakur):
4	Gond Gowari	Gowari

5	Mannerwarlu	Munnurwar/ Mannerwar /Mannawar
6	Halba/Halbi	Koshti/Halba Kosthi

The monographs of Prof. Mutatkar and Dr. Tribhuwan have emphasized that there has been a rapid rise in the growth rate of the Scheduled Tribes between 1971 and 2001 which is not reflective of a natural biological growth but an attempt by communities which do not genuinely have an affinity to Scheduled Tribes towards pseudo-tribalization. There contributions in the written work of experts on the subject only to go emphasis the dangers of the benefits granted to the Scheduled Tribes being frittered away at their expense if unverified claims of impostors are not nipped in the bud."

13. While considering the effect of removal of area restriction by Act No.108 of 1976, the Division Bench of this Court, relying upon Full Bench judgment in the matter of **Shilpa Vishnu Thakur** (supra), in the matter of **Dinesh Ramesh Thakur Vs. State of Maharashtra and others, reported in 2013 (3) Bom.C.R.463**, observed as under :-

"We need not dilate over the issue as, in our view, upon removal of the area restriction by the amending Act of 1976, the persons belonging to a particular Scheduled Tribe, though residing in different areas than earlier specified or migrated from the said area, can also claim to be belonging to the same Scheduled Tribe. In our view, however, the respondent Tribe Scrutiny Committee is not prohibited from applying the test of original place of residence as one of the factors to be considered in arriving at a decision of validation of the claim of the claimant in view of the clear pronouncement of law in Full Bench decision of this Court in *Shilpa Vishnu Thakur Vs. State of Maharashtra & others* (supra)"

14. Even in the matter of ***Ku. Yogita d/o Anil Sonawane*** (supra), Full Bench of this Court concluded that in such matters, one of the important factors, for Tribe Scrutiny Committee to consider would be to find if or not applicant proves that he or his ancestors resided or migrated from earlier scheduled area.

15. In the case of ***Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others*** (supra), the Apex Court laid down certain broad parameters, which

are to be kept in view while dealing with the caste claim. While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents. 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. While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. The affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject the claim. In this case, the Apex Court has also made it clear that the burden of proving the caste claim is upon the applicant and he has to produce all the requisite documents in support of his claim. The Scrutiny Committee can only scrutinize the documents and material produced by the applicant. In case the material produced by the applicant does not prove his claim, the Scrutiny Committee cannot gather the evidence on its own to prove or disprove his caste.

16. Keeping in mind the above principles of law, if the material placed on record is examined to find out whether the Scrutiny Committee – respondent No. 2 has

taken probable view or its finding is perverse, it has come to our notice that in the school leaving certificate of the father of the petitioner namely Ravindra Ganesh Suryawanshi, his caste is mentioned as "Hindu Thakur". Even in the extract of school admission register of Ravindra Ganesh Suryawanshi, his caste is mentioned as "Hindu Thakur". This entry is recorded in the school record on 22nd June, 1971. Even the certificate issued by Nuclear Power Corporation of India Limited shows that as per the official record, caste of Shri R.G. Suryawanshi is mentioned as "Hindu-Thakur". Another important aspect is that the school leaving certificate of grandfather of the petitioner namely Gana Shankar Thakur, his caste is mentioned as "Hindu-Thakur". The school leaving certificate shows that grandfather of the petitioner was admitted in the school on 7th September, 1946 and he left the school on 18th August, 1954. Thus, entry regarding caste of the grandfather of the petitioner must have been taken in the school record at the time of admission i.e. on 7th September, 1946, which is pre-Independence entry. Even this important document does not indicate that the grandfather of the petitioner was recognized as Thakur Scheduled Tribe. In this Writ Petition, the extract of

death entry register of village Paldhi (Exh-F1) shows that on 14th November, 1941, the caste of the great grandfather namely Shankar Maharu is recorded as simply "Thakur". Thus, it reveals that except the school record of the petitioner, in every school record and even in Government record, entry of caste "Hindu Thakur" or "Thakur" is recorded, including pre-Independence Government record and school record. Thus, the finding of the Scrutiny Committee cannot be faulted with that no school record or Government record is placed on record, which would show that the category of father, grandfather or great grandfather of the petitioner is recorded as Thakur Scheduled Tribe. These entries show that ancestors of petitioner belong to caste "Thakur", which is non-tribal caste.

17. In absence of an authentic record showing the category of the petitioner and his forefathers as Scheduled Tribe, the Scrutiny Committee is certainly justified while considering the Vigilance Cell report and affinity test. The Vigilance Cell report does not show that the petitioner belongs to Thakur Scheduled Tribe category. Even the concerned Research Officer has written special note that the petitioner cannot clear

even the affinity test. The entire school record and Government record placed on record by the petitioner shows that the petitioner and even his great grandfather are hailing from village Paldhi (Kh), Taluka Dharangaon, District Jalgaon, which is not the place specified in scheduled five districts under the Presidential Scheduled Tribe Order, 1956. In the circumstances, except the validity certificate of Dhiraj Gorakh Suryawanshi, his affidavit and tribe validity certificate of one Bhagwat Raosaheb Suryawanshi supported by his affidavit, no other substance is on record, which slightly indicates that the petitioner falls within category of Thakur Scheduled Tribe. As rightly held by the Scrutiny Committee, Bhagwat Raosaheb Suryawanshi is not blood related with the family of the petitioner. Therefore, the validity certificate of Bhagwat Raosaheb Suryawanshi and his affidavit do not carry any importance.

18. No doubt, the validity certificate issued by the Scrutiny Committee at Nasik dated 19th January, 2005 shows that the caste certificate of Dhiraj Gorakh Suryawanshi as belonging to Thakur Scheduled Tribe is validated by the said Scrutiny Committee. However,

Dhiraj Gorakh Suryawanshi, in his affidavit, has conveniently not mentioned his genealogy to show how he is blood related with the petitioner. No doubt, father of the petitioner, in his affidavit, has given the genealogy to show that Dhiraj Gorakh Suryawanshi is distant cousin of the petitioner. However, this genealogy is not supported by other supporting documentary evidence to show that Dhiraj Gorakh Suryawanshi is blood relative of the petitioner.

19. Even in the case of **Raju Ramsing Vasave** (*supra*), relied on by the petitioner, the Apex Court has made it clear that if it is found that in granting a certificate in favour of member of a family vital evidence had been ignored, it would be open to the Committee to arrive at a different finding. Thus, because the caste certificate of Dhiraj Gorakh Suryawanshi is validated by the Scrutiny Committee, Nashik, the Scrutiny Committee at Nandurbar is not bound to validate the caste certificate issued in favour of the petitioner. The validity certificate is issued in favour of Dhiraj Gorakh Suryawanshi carries only persuasive importance and not more. Otherwise also, it cannot be ignored that though petitioner heavily relied

on validity certificate issued in favour of Dhiraj Suryawanshi, the detailed order passed by the Scrutiny Committee, Nasik is not placed on record by the petitioner to show that speaking order was passed by the said Scrutiny Committee, after considering every relevant material placed on record and after its full satisfaction. Therefore, only on the basis of validity certificate issued in favour of Dhiraj Suryawanshi, thereby claim of the petitioner cannot be validated, when it is not supported by affinity test and other material placed on record.

20. The case of **Jaywant Dilip Pawar** (supra), relied on by the petitioner, is distinguishable on facts that in that case, the High Court dismissed the writ petition preferred by the appellants without going into merits of the matter afresh. Therefore, the matter was remanded by the Supreme Court to the High Court for fresh consideration in accordance with law.

21. The case of **Amruta Vijay More** (supra), relied on behalf of the petitioner, is distinguishable on facts for the reason that in that case, the claim of the appellant was rejected by the Scrutiny Committee solely on the ground of affinity test. The High Court merely

dittoed the observations made by the Scrutiny Committee.

22. Even the case of **Apoorva Vinay Nichale** (supra), relied on by the petitioner, is distinguishable for the reason that in that case, the caste claim of the sister of the petitioner was validated on the basis of same documentary evidence relied on by the petitioner therein.

23. In the case of **Bhagwat Shivram Pawar** (supra), the validity certificate of many near relatives of the petitioner therein were available on record. However, no such certificates are before the Scrutiny Committee at Nandurbar in the present case. In other cases, relied upon by the petitioner, the pseudo status claimed by the petitioner is not for consideration. Thus, those cases were decided on the basis of peculiar facts before the Court.

24. Accordingly, our conclusion is that the petitioner can not bring on record reliable documentary evidence to prove that he belongs to Thakur Scheduled Tribe. On the other hand, the documents placed on record show that even grandfather of the petitioner was educated. The origin of the petitioner and his

ancestors is not from scheduled five districts. The petitioner even could not clear the affinity test. Therefore, the cumulative effect of these circumstances is that the petitioner cannot discharge the burden to prove that he falls in the category of Thakur Scheduled Tribe. On the other hand, the possibility cannot be ruled out that the petitioner is claiming pseudo status as Thakur Scheduled Tribe. In the circumstances, the view taken by the Scrutiny Committee, at Nandurbar while invalidating the tribe claim of the petitioner is the possible view and cannot be termed as perverse one, which calls for interference by this Court by invoking writ jurisdiction.

25. In the result, the Writ Petition being devoid of merit, is dismissed. The parties to bear their own costs. Rule stands discharged accordingly.

26. In view of dismissal of Writ Petition, Civil Application Nos.4201/2018 and 4203/2018 do not survive and stand disposed of.

(SUNIL K. KOTWAL)
JUDGE

[T.V. NALAWADE]
JUDGE

After pronouncement of the order, learned counsel appearing for the petitioner prays for grant of stay to the above order. The effect and operation of this order is stayed for a period of four weeks from today.

(SUNIL K. KOTWAL)
JUDGE

[T.V. NALAWADE]
JUDGE

npj/wp4965-2014