

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9417 OF 2023

Snehal Dattaram Thakur alias .. Petitioner
Sandhya Pundalik Rathod

Versus

The State of Maharashtra through its .. Respondents
Principal Secretary, Tribal
Development Department & Anr.

...
Mr.S.S.Panchpor (through VC) with Mr.Aashay Rabade for the
Petitioner.

Ms.Priyanka B. Chavan, A.G.P. for the State/Respondent.

Mr.Dipak T. Shigam, Law Officer, CVC, Thane, present.

...

**CORAM: BHARATI DANGRE &
ASHWIN D. BHOBE, JJ.**

DATED : 15th JANUARY, 2025

P.C:-

1. Despite a clear verdict of the Division Bench of this Court expressing displeasure about the approach of the Committees while deciding the claims of persons belonging to Thakar Scheduled Tribe in *Swapnil Madhukar Gangawane Vs. The State of Maharashtra & Ors.* dated 29/04/2024 in Writ Petition No.6144 of 2024 (Coram :Nitin Jamdar & M.M.Sathaye, JJ.), while dealing with an order of the Scheduled Tribe Caste Certificate Verification Committee, which invalidated the certificate issued to the petitioner belonging to Thakar

M.M.Salgaonkar

community, the very same Committee has once again indulged into invalidation of the claim of the Petitioner.

Relying upon the decision in case of ***Amol Narayan Wakkar & Anr. Vs. State of Maharashtra & Ors.***¹, which had set aside the reasoning adopted by the Committee, the Court recorded that the petitioners therein were from Sindhudurga (erstwhile Ratnagiri) District and the Scrutiny Committee, relying upon certain passages from R.E.Ethoven's "Tribes and Castes of Bombay Presidency" and extract from the Bombay Gazetteer, held that the traits of Thakar community from the erstwhile Ratnagiri District do not match with those of Thakar Scheduled Tribe and, therefore, the benefit was denied to them.

The observations of the Division Bench in ***Amol Wakkar*** (supra), and the one which is specifically recorded in paragraph 16, was reproduced, to the effect that the Court was unable to appreciate the approach of the 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 the Scheduled Tribe Order. Clearly expressing that in the wake of the decisions of the Supreme Court in ***State of Maharashtra Vs. Milind***² and in ***Palghat Jilla Thandan Samudhaya Samrakshna Samithi & Anr. Vs. State of Kerala & Anr.***³, the Committee could not have gone into the question whether petitioners belong to Thakar Nomadic Tribe or Scheduled Tribe and it was categorically observed as under :-

"...The Scrutiny Committee was thus not justified in proceeding with the inquiry on the basis of alleged socio cultural traits and ethnical

1 (2005) 1 Mah LJ 798

2 2001(1) SCC 4

3 (1994) 1 SCC 359

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."

2. Reiterating the observations in *Amol Wakkar* (supra), once again the Division Bench in *Swapnil Gangawane* (supra) concluded that Scrutiny Committees have been repeatedly taking the ground in various orders that the Thakur/Thakar community is not to be found in Sindhudurg District, and there has been area restriction and this reasoning did not find favour with the Court and on numerous occasion, the orders which incorporated this reason, were set aside.

Swapnil Gangawane (supra) thus set aside the impugned order dated 20/03/2024 passed by the Committee and the claim of the petitioner was remanded to the Committee to take a decision within the time bound manner.

3. We have before us, a Petitioner belonging to Thakar Scheduled Tribe, whose claim is rejected by the Schedule Tribe Caste Certificate Verification Committee, Kokan Division, Thane on 28/02/2023 on somehow identical ground and on

being confronted, Ms.Priyanka Chavan, the learned AGP makes a request to us that the matter be remanded back to the Committee.

This request we must specifically refuse, as after going through the impugned order of the Committee, we have formulated certain conclusions, which we would be unfolding in the paragraphs to follow and this persuade us not to remand the matter back to the Committee, but to consider the grievance of the Petitioner here itself.

4. The Petitioner, in support of her claim, produced before the Committee several documents, which included her caste certificate issued by the competent authority on 30/07/2007, classifying her as belonging to Thakar Scheduled Tribe. She produced a certificate from Sindhudurg Jilla Thakar Samaj dated 30/11/2014, declaring her to be belonging to Thakar community. In addition, she had also produced the documents relating to her service, which reflected her caste as 'Thakar'.

The extract from the School Register of her father-Pundlik Shankar Rathod dated 03/02/1948 reflecting the caste as 'Thakar' was also produced alongwith the extract from her own School Register. The caste certificate of her brother, Sunil Pundlik Rathod dated 13/01/2002 and the validity certificate issued by the very same Committee in favour of her brother is also placed on record.

5. In addition, the validity issued in favour of cousin uncle, Suhas Mukund Ratul and cousin sister Swati Laxman Ratul

belonging to Thakar Scheduled Tribe dated 06/09/2018 and 10/10/2018 were also produced before the Committee.

With almost thirty-two documents, being produced by the Petitioner in support of her claim that she belongs to Thakar community, which is recognised as a Scheduled Tribe, the Committee focused upon the school entries and the relevant extracts and this included the entries in regards to her father-Pundlik, brother- Sunil and her own documents, which clearly reflected the caste 'Thakar'. It then refer to the opinion of the Research Officer, who categorically noted that Sunil Pundlik Rathod has been conferred validity as Thakar Scheduled Tribe.

The report of the Vigilance Officer record that pursuant to the notice issued, the Petitioner presented herself for hearing and offered the necessary information as regards the cultural traits and, since, no further information was to be furnished, the file was closed by the Research Officer.

6. Proceeding to determine the issue, whether the Petitioner has established her claim as belonging to Thakar Scheduled Tribe, the Scrutiny Committee reproduced the decision of the High Court in case of ***Deepika Subhash More Vs. State of Maharashtra*** in relation to the Thakar Scheduled Tribe and arrived at a conclusion that though the entries in the School Register and other certificates reflect the caste as Thakar, these are the entries of Non-Scheduled Tribe Thakar. The basis for this is, however, unknown except the Committee rely upon the relevant extract from ***Shilpa Vishnu Thakur Vs.***

State of Maharashtra⁴, which has referred to the instructive article on the subject, “Pseudo Tribalization : An Anthropological Perspective” by Dr.Robin D. Tribhuwan, where he had referred to certain tribal communities and non-tribal communities. In the said extract, reference is made to Thakur/Thakar as tribal communities and Thakur (including Bhat, Brahmabhat, Thakur, Kshatriya Thakur, Rajput Thakur etc.) as non-tribal communities.

7. In addition, the Committee has referred to the divisions, by stating that Thakars have no endogamous divisions and reference is made to several surnames, with a conclusion being drawn about its traits and characteristics including marriage ceremonies, religion, followance of religion, death ceremonies etc. In short, the Committee has attempted to apply the affinity test by putting certain questionnaire and by relying upon the decision in the case of ***Kum. Madhuri Patil Vs. Addl. Commissioner***⁵ and the relevant extracts, which had categorically stated that the validity of the Tribes have to be tested upon its ethnological and anthropological characteristics, the Committee arrived at a conclusion that since the affinity test is not satisfied, and it is not conclusively established that the Petitioner belongs to Thakar, a Scheduled Tribe, the claim has been rejected.

8. It is unfortunate that the Committee has failed to take into consideration the fact that the Petitioner’s own brother as

⁴ (2009) 3 Mah LJ 995 (F.B.)

⁵ 1994 SCC (6) 241

well as her blood relations have been granted validity certificate and we do not find a single statement in the impugned order to the effect that the validity certificates produced by the Petitioner do not belong to the blood relations of the Petitioner.

The recent decision of the Apex Court in the case of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra & Ors.***⁶, where this very issue fell for consideration, as the Full Bench decision of this Court in the case of ***Shilpa*** (supra) was called for re-consideration, in the wake of the conflict that was expressed by the two coordinate Benches of Bombay High Court in the case of ***Vijakumar Vs. State of Maharashtra***⁷ and in the case of ***Anand Vs. Committee for Scrutiny and Verification of Tribe Claims***⁸, as in ***Vijakumar*** (supra), it was held that if a candidate fails the affinity test at any stage, a caste validity certificate cannot be granted to him, but in the case of ***Anand*** (supra), it was held that the affinity test is not the only criteria for deciding a caste claim based on a caste certificate issued by the competent authority and it was held that it can be used only to corroborate the documentary evidence.

9. Pronouncing upon this conflict and focusing itself upon the importance of affinity test, as laid down in the case of ***Kumari Madhuri Patil*** (supra), to assess the peculiar anthropological and ethnological traits, deities, rituals, customs, modes of marriage, death ceremonies, methods of

6 2023 SCC OnLine SC 326

7 (2010) 14 SCC 489

8 (2012) 1 SCC 113

burial of death bodies etc. in respect of a particular caste or tribe through the Vigilance Cell and as directed to be tested through the mechanism prescribed in the Rules framed under the Act of 2000, the Hon'ble Apex Court on the threadbare analysis of the views expressed in *Vijakumar* (supra) as well as in *Anand* (supra), arrived at a following conclusion :-

“38. Thus, to conclude, we hold that :

(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(b) For the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim; and

(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case.”

10. In the wake of the recent pronouncement of the Apex Court, where the affinity test is held to be not a litmus test to decide a caste claim and that it is not an essential part in the process of the determination and correctness of a caste or tribe claim in every case, and with a specific declaration that only when the Scrutiny Committee, after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell and while doing so, the Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant and it is only in such contingency, the

Vigilance Cell can conduct the necessary enquiry, only when an occasion for conduct of affinity test arises.

11. When the impugned order is perused by us, we have noted that several documents, establishing the claim of the Petitioner as belonging to Thakar Tribe, are brushed aside only on the ground that though the documents established that the Petitioner belong to Thakar community, he is not Thakar-a Scheduled Tribe. It is high-time that the Committee must realise that it is not open to it to enter into the controversy, particularly, when a particular caste/tribe finds its place in a particular entry of caste or tribe in the constitution order, either in Constitution (Scheduled Castes) Order, 1950 or the Constitution (Scheduled Tribes) Order 1950, as it is not open for it to assess whether this person belongs to Thakar, which is outside the entry. The position of law is very well settled in case of *Milind* (supra), the Constitution Bench decision, and in particular paragraphs 25 to 36, following the decision in the case of the *Palghat Jilla Thandan Samudhaya Samrakshna Samiti* (supra).

12. In the wake of the aforesaid, when the brother and the close blood relations have received the validity of belonging to Thakar Scheduled Tribe, we see no reason, why the benefit could not have been extended to the Petitioner and we find the approach of the Committee in unnecessarily prolonging the enquiries, despite being satisfied on the basis of the documentary evidence, by directing reference to the Vigilance

Cell is an unwarranted exercise and we hope and trust that the Scrutiny Committees henceforth, will keep in mind the ratio laid down in the decision of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra), while deciding the claim.

13. As a result of the aforesaid discussion, finding no merit and substance, we quash and set aside the impugned order dated 28/02/2023 and direct the Committee that the Petitioner shall be conferred with a validity certificate forthwith.

Writ Petition is made absolute in the aforesaid terms.

(ASHWIN D. BHOBE, J.)

(BHARATI DANGRE, J.)