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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 570 OF 2023**

Rajaram Hari Thakur )  
Aged 63 years, Occ. Retired, )  
Residing at Durga Bhavani Chawl, )  
No.1, Room No.6, Goregaon (E), )  
Mumbai - 400 063 ) .... Petitioner.

V/s

1] State of Maharashtra )  
through its Secretary, Tribal )  
Development Department, )  
Mantralaya, Mumbai - 400 032 )  
2] Scheduled Tribe Certificate )  
Scrutiny Committee, Konkan )  
Division, Thane through its )  
Member Secretary having its )  
office at MTNL Build, 6<sup>th</sup> Floor, )  
near Ganesh Talkies, Charai, )  
Dist. Thane )  
3] Municipal Corporation of )  
Greater Mumbai through Engineer )  
(Transport), having its office at, )  
2<sup>nd</sup> Floor, Worli Garage Build., )  
Dr. E. Moses Road, Mumbai-400018 ) ....Respondents.

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Mr. R. K. Mendadkar a/w Ms. Komal Gaikwad for the Petitioner.  
Mr. R.P. Kadam, AGP for Respondent-State.  
Mr. Sagar Patil for Respondent No.3-MCGM.  
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**CORAM : A.S. CHANDURKAR &  
FIRDOSH P. POONIWALLA, JJ.**

**DATE : 8<sup>th</sup> DECEMBER, 2023.**

**ORAL JUDGMENT: (Per A.S. Chandurkar, J.)**

1] Rule.

2] Rule made returnable forthwith and heard learned Counsel for the parties.

3] The Petitioner is aggrieved by the Order dated 29/11/2022 passed by the Scrutiny Committee, invalidating Petitioner's claim of belonging to Thakur Scheduled Tribe. In support of the Petitioner's claim of belonging to Thakur Community, Petitioner relied upon various pre-constitutional documents of his blood relatives. These included documents dated 05/12/1933, 06/03/1935 and 01/08/1944. These documents were verified by the Vigilance Cell. On the ground that Petitioner could not disclose affinity with members of the Scheduled Tribe, his claim was invalidated.

4] We have heard the learned Counsel for the parties and with their assistance, we have perused the documents placed on record. It is seen from the material that was considered by the

Scrutiny Committee that pre-constitutional documents of the Petitioner's blood relatives were duly verified by the Vigilance Cell and as per its report, the same were found to be existing in the old records. We find from the judgment of the larger Bench of the Hon'ble Supreme Court in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and Others* **[2023(2) Mh.L.J.785]** that pre-constitutional documents carry great probative value and they have to be given their due importance. This position has been reiterated by the Hon'ble Supreme Court in its decision in *Priya Pramod Gajbe vs. State of Maharashtra and Others* in Civil Appeal No.7117 of 2019 decided on 11/07/2023.

5] The Scrutiny Committee has discarded these documents for the reason that alongwith the old entries, it has not been mentioned that the persons named therein belonged to the Scheduled Tribe. Since the documents pertain to the period prior to the Scheduled Tribe Order coming into force, it cannot be expected that such reference would have been made against these entries. We find that the Petitioner is entitled to claim due weightage for consideration of his claim of belonging to Thakur Scheduled Tribe on the basis of these pre-constitutional documents.

6] Another reason assigned by the Scrutiny Committee for invalidating Petitioner's claim is that the Petitioner could not display affinity with members of the Scheduled Tribe. This aspect has also been considered by the Hon'ble Supreme Court in *Adiwasi Thakur Jamat Swarakshan Samiti* (supra). It has been held therein that affinity test is not a litmus test and that the same cannot be the basis either for granting or rejecting a tribe claim. It has to be noted that with passage of time and modernization, it is not expected that old traits and customs would continue to be observed by the present generation. An overall view of the matter is required to be taken into consideration by giving due weightage to the pre-constitutional documents. Since we find that there are various pre-constitutional documents having entry "Thakur", there does not appear to be any justification for refusing the Petitioner's claim in that regard. The Scrutiny Committee has misdirected itself when it observed that old entries did not have the word "caste"/"tribe" mentioned against such entries. Similarly, undue importance has been given to the absence of old traits and customs being followed by the Petitioner. Taking an overall view of the matter, we are satisfied that Petitioner has proved on the basis of various pre-constitutional documents that he belongs to Thakur

Scheduled Tribe.

7] For the aforesaid reasons, following order is passed:-

- (i) The order passed by the Scrutiny Committee on 29<sup>th</sup> November 2022 is set aside. It is declared that the petitioner has proved that he belongs to "Thakur" Scheduled Tribe.
- (ii) Within a period of two weeks of receiving copy of the judgment, the Scrutiny Committee shall issue Validity Certificate to the petitioner.
- (iii) Consequent upon issuance of the Validity Certificate, the employer - respondent no.3 shall release all service benefits of the petitioner.

8] Rule is made absolute in the above terms with no order as to costs.

**[ FIRDOSH P. POONIWALLA, J. ] [ A.S. CHANDURKAR, J. ]**