



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3868 OF 2013

Swati d/o Mangalsingh Thakur
age 29 years, occ. Service
r/o Khedi Bk Parisar
Opp. Hotel Gourav Jalgaon
Dist. Jalgaon
Presently residing at Thane

.. Petitioner

Versus

1. The State of Maharashtra
Through Principal Secretary
Finance Department
Mantralaya
Mumbai 32.
2. Deputy Direcor of Accounts & Treasury
Konkan Division, Room No. 506
5th Floor, Konkan Division
New Mumbai.
3. The District Treasury Officer
District Collector office campus
Court Naka
Thane.
4. The Committee for Scheduled Tribe
Certificate Scrutiiny and Verification of
Tribe Claim, Nandurbar Region,
Nandurbar.

.. Respondents

Mr. S. R. Barlinge, Advocate for the Petitioner.
Mr. P. K. Lakhotiya, AGP for the State.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

DATE : 23rd FEBRUARY, 2024.

JUDGMENT : (PER Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner's claim of belonging to the Thakur Scheduled Tribe category has been invalidated by the impugned judgment of the competent Committee, dated 9th October, 2012. While issuing notice on 3rd May, 2013, this Court directed that no coercive action should be taken against the petitioner only for the reason of invalidation of her tribe claim.

3. We have considered the strenuous submissions of the learned Advocates for the respective sides. The learned AGP has vehemently opposed this Petition on the ground that merely because the Petitioner claims that her close relatives carrying the surname 'Saindane' received validation certificate, would not establish her claim of belonging to the Thakur Scheduled Tribe category. So also, the Petitioner has to pass the affinity test and failing in the affinity test leads to the rejection of the claim.

4. We have perused the genealogy tree presented by the Petitioner indicating Khandu Bhagwan as her great grand father. Damodar and Shamrao are the biological children of Khandu. Damodar was born on 2nd July, 1909. Shamrao was born on 28th May, 1911. Damodar has the Thakur caste certificate. Swati is the daughter of Mangalsingh and her grand father is Shamrao. Vasant s/o Shamrao is the biological uncle of Swati. From the branch of Damodar, Sanjay, who has a validity certificate issued by the High Court, is the son of Diwakar and his grand father is Damodar. Damodar, Diwakar and Kishor have Thakur Scheduled Tribe Caste certificates. Sanjay is the biological brother of Kishor and has a validity certificate.

5. It is well settled that an affinity test is not a 'litmus paper' test. It could have persuasive value. We have noticed that some of the paternal blood relatives of the Petitioner are carrying the surname 'Thakur' and some as 'Saindane'. The controversy has its roots in this issue. For the said purpose, we have perused the oldest record that was considered by the Committee in its impugned order while rejecting the claim of the Petitioner. It would be apposite to

refer to certain details of the paternal blood relatives of the Petitioner, as under :-

a) Shamrao Khandu Thakur has a school leaving certificate dated 9th March, 1918 indicating his tribe as Thakur. A recent residence certificate dated 15th March, 1994, issued by the Administrator, Gram Panchayat Pimparkhede, indicates the tribe of Shamrao as Thakur. A certificate dated 28th March, 1944, issued by St. John Ambulance Society indicating that the tribe of Shamrao is Thakur. The Commissioner, Hindustan Scout Society, Bombay, issued a certificate in April 1943 indicating the tribe of Shamrao as Thakur. A certificate dated 25th April, 2000 issued by the President, Maharashtra Adiwasi Thakur Jamat Seva Mandal indicates his tribe as Thakur.

b) Vasant s/o Shamrao carries the surname Saindane. Shamrao carried the surname Thakur. School leaving certificate dated 1st July, 1948 indicates the tribe of Vasant as Thakur.

c) Damodar is the biological brother of Shamrao, who carried the surname Thakur. The School leaving certificate dated 8th February, 1921 indicates his tribe as Thakur. He is the first cousin grand father of the Petitioner.

d) Diwakar is the first cousin of Vasant, since the father of Diwakar, namely Damodar Thakur, and Vasant's father, Shamrao

Thakur are biological brothers. Vasant carried the surname Saindane. The school leaving certificate of Diwakar dated 1st July, 1946 indicates his tribe as Hindu Thakur.

e) Sanjay is the son of Diwakar. Sanjay carried the surname Saindane and his father Diwakar carried the surname Thakur. Sanjay is the grand cousin of the Petitioner from the paternal side and has received a validity certificate from the High Court vide judgment dated 25th November, 2003 delivered in Writ Petition No. 2097/1995.

6. It is, thus, obvious from the genealogy mentioned by the Committee in it's order and the evidence tendered by the Petitioner setting forth her genealogy tree, that many of the paternal blood relatives of the Petitioner carried the surname Thakur and others carried the surname Saindane. Sanjay, who has received the validity certificate, carries the surname Saindane and his father Diwakar carries the surname as Thakur.

7. The relations between the Petitioner and these persons is not disproved. Therefore, we deem it appropriate to rely on paragraph Nos. 22, 23 and 24 of the judgment of the Hon'ble Supreme Court

delivered in Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and others, **2023 SCC OnLine SC 326**, which concludes that if the blood relations from the paternal side with the validity holders is established, no further inquiry is necessary, in as much as, an adverse affinity test would not disprove the claim of the applicant. It is further held that when there is a clinching piece of evidence, the affinity test need not necessarily be conducted in every case and it is also not necessary that the Scrutiny Committee should send every such case to the Vigilance Cell.

8. In view of the above, **this Writ Petition is allowed**. The impugned order dated 9th October, 2012 is quashed and set aside. We conclude that the Petitioner belongs to the Thakur Scheduled Tribe category on the basis of the record available before us. The Committee shall issue a validity certificate to the Petitioner within 30 days from today.

9. Rule made absolute in the above terms.

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10. The pending **Civil Application** would not survive and **stands disposed off.**

(**R. M. JOSHI**)
JUDGE

(**RAVINDRA V. GHUGE**)
JUDGE

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