



Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8618 OF 2019**

Vaibhav Dharma Pawar & Ors

...Petitioners

Versus

State of Maharashtra through its Secretary, Tribal
Development Department, Mantralaya, Mumbai
& Ors

...Respondents

**Mr RK Mendadkar, with CK Bhangoji, for the Petitioners.
Ms Reena Salunkhe, AGP, for State.**

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ**

DATED: 9th August 2019

PC:- (Per G.S. Patel, J.)

1. Rule. Respondents waive service. By consent Rule is made returnable forthwith and taken up for hearing and final disposal. Heard Mr Mendadkar for the Petitioner and Ms Salunkhe, learned AGP for Respondents Nos. 1 and 2.

2. By this Writ Petition under Article 226 of the Constitution of India the two Petitioners, who are siblings, assail the Judgment and Order dated 26th April 2019 of the 2nd Respondent, the Scheduled Tribe Certificate Scrutiny Committee, Nashik. This was

communicated to the Petitioners by an endorsement dated only as late as 16th July 2019. By the impugned order, the 2nd Respondent Committee invalidated the caste certificates of both Petitioners. The Petitioners claimed to belong to the Thakur Scheduled Tribe. This is a notified Scheduled Tribe under Entry No. 44 of the Constitution (Scheduled Tribe) Order, 1950 as periodically amended.

3. The Petition sets out that the Petitioners were granted caste certificates by the Competent Authority certifying that they belong to the Thakur Scheduled Tribe in the State of Maharashtra. The 1st Petitioner was issued a caste certificate on 25th August 2011. His sister, the 2nd Petitioner, was issued a certificate on 7th July 2011. Copies of these certificates are annexed as Exhibit “B” to the Petition.

4. As the Petitioners desired to enroll or take admission in institutes for higher studies, they moved the 2nd Respondent Committee at Nashik for a verification of their caste certificates. Their application was supported by necessary documents. These included, inter alia, a school leaving certificate of the Petitioners’ grandfather one Dhondu Raising Thakur. This showed his tribe as Thakur as on 20th May 1902 i.e. well before Independence. Similarly, they also produced a school leaving certificate of one Kashiram Dhondu Thakur, a paternal cousin grandfather, dated 17th August 1933, and therefore also pre-Independent, also showing his tribe as Thakur. The post-Independence documents included one of the Petitioners’ father Dharma which showed his certificate as Thakur, a caste validity certificate for Dharma of 13th October

2000; a school leaving certificate of the Petitioners' paternal uncle Keda Tulshiram Pawar showing his tribe as Thakur as on 15th July **1968**; the school leaving certificate of another paternal uncle Suresh Kashiram Pawar showing his tribe as Thakur on 29th June 1971 and the school leaving certificate of the 2nd Petitioner issued on 4th June 1999 showing her tribe as Thakur.

5. The application was followed by the usual Vigilance Cell Report into the caste claim. The police authorities of the Vigilance Cell examined the documents and confirmed their genuineness. The cell also recorded the statements of the Petitioners father in relation to the Thakur tribe's traits, characteristics, traditions, customs and so on. The Vigilance Cell confirmed that the Petitioners' father had been granted a caste validity certificate and noted the genealogy of family tree. The Vigilance Cell submitted a report to the 2nd Respondent Committee on 4th August 2014. There was a remark on this that the original place of residence of the Petitioners i.e. Khamkheda, Taluka Devla, District Nashik does not fall within a tribal area and also commented that the information said to have been supplied by the Petitioners' father did not accord with the noted or documented traditions of the Thakur tribe. The Petitioners were asked for their explanation.

6. The Petitioners were called for hearing on 4th July 2019 when they, their father and their grandfathers appeared. During the course of hearing, the Petitioners pointed out that there were at least two pre-Independence entries in their immediate paternal family recording the tribe as Thakur in respect of their great grandfather, Dhonduraising Thakur on 20th May 1902 and that of their cousin

grandfather Kashiram Dhondu Thakur on 17th August 1933. It was also pointed out that the Petitioners' father himself had a caste certificate following the due procedure. They claimed to have been covered by the decision of the Supreme Court in *Anand v Committee for Scrutiny and Verification of Tribe Claims & Anr.*¹

7. Despite all this material the 2nd Respondent Committee passed the impugned order invalidating and cancelling the caste certificate of both Petitioners.

8. We have heard Mr Mendadkar and carefully considered the material on record and examined the impugned order. We find it impossible to sustain this order. The 2nd Respondent Committee seems to have proceed almost entirely on the basis that the Petitioners did not fulfil the so-called 'affinity test', meaning that they could not clearly and unequivocally attest to the various established customs, traits and traditions said to be common to the Thakur Scheduled Tribe. This finding completely overlooks the decision of the Supreme Court in *Anand*. The affinity test is not a litmus test. That is now settled law.

9. Apart from the decision itself there is a historical reason with the development of society why this cannot be a determinative test. As people have progressed in life, they may not necessarily adhere to or even be fully aware of the oldest historic traditions of their tribe, caste or even community. This does not necessarily mean that for

1 (2012) 1 SCC 113.

that reason alone they are not *members* of that caste, tribe or community.

10. We find that the scrutiny committee materially misdirected itself on law. It make extensive reference to the decision of this Court in *Chhaya Jaswantsingh Hajari v State of Maharashtra*,² which said that if a candidate could not pass the affinity test, then the certificate had to be invalidated. This was followed most notably in *Monika Satish Thakur v State of Maharashtra and Ors.*³ What the 2nd Respondent Committee completely overlooked, although we are unable to see how it could have so done, was the much more recent decision of a Division Bench of this Court (BR Gavai J as he then was, and NJ Jamadar J) in Writ Petition No. 2363 of 2013, *Prakash Shravan Deore v Schedule Tribe Certificate Scrutiny Committee, Nashik*. That was a decision against this very committee. The Division Bench held that the decision in *Monika Satish Thakur* was per incuriam (paragraphs 13 and 14) because it ran completely contrary not only to the Supreme Court decision in *Anand* but also to the decision of this Court in *Apoorva Vinay Nichale v Divisional Caste Certificate Scrutiny Committee and Ors.*⁴

11. In *Prakash Shravan Deore*, the Division Bench of this Court went so far as to impose costs of one month's salary for each of the three members of the committee, noting that this conduct in ignoring binding decisions of this Court was deliberate and could not be accidental.. This gives us a measure of the distress caused by

2 Writ Petition No. 4198 of 2005 decided on 1st August 2008.

3 Writ Petition No. 10123 of 2010.

4 2010 (6) MLJ 401.

this very committee to the Division Bench in view of his demonstrated and obdurate refusal to follow decisions of this Court.

12. The impugned order is also inconsistent and self-contradictory. The lineage of the Petitioners is not in doubt. Their genealogy is not questioned. It follows therefore that if the Petitioners' claim to being of the Thakur Scheduled Tribe is to be invalidated, then the 2nd Respondent Committee was bound to return a finding that the pre-Independence documents of the Petitioners' paternal ancestors, all showing the Thakur entry, were incorrect, fake, or could not be believed. The 2nd Respondent Committee returns no such finding. It cannot. It simply ignores them from any meaningful consideration

13. There is yet another logical flaw in the 2nd Respondent's approach. If the certificates issued to the Petitioners are to be invalidated then the 2nd Respondent Committee ought necessarily to have called into question the caste validity certificate of the Petitioners' father, Dharma Tulshiram Pawar, although that is now nearly 20 years old and has never been disturbed since. The 2nd Respondent Committee has not done so. There is such a thing after all as a finality to these matters.

14. This committee seems not to have learnt its lesson. Despite that imposition of costs it passes almost stereotyped standardised template orders again and again, constantly chanting the refrain that the affinity test is the beginning and the end of everything and that nothing else matters. It entirely overlooks the settled law on the

subject regarding pre-Independence documents, and the weight to be attached to these. We are constrained now to note that if we find any further instances of this kind of thoughtless, casual and cavalier approach we will have no option but to take even more stringent action against this committee.

15. In fact paragraph 9 of the impugned order at pages 29 to 31 would indicate prima facie that the sole basis and foundation of the impugned order was the affinity test and nothing else.

16. As to the question of territoriality, i.e. that the Petitioners claim to be from Khamkheda, Tal. Devla, Dist. Nashik, and that this is not known in Scheduled Tribes and Scheduled Castes Order (Amendment) Act, 1956, again the 2nd Respondent Committee fell into manifest error. It wholly ignored the effacement of the area restrictions by the Scheduled Castes and Scheduled Tribes Ordes (Amendment) Act, 1976, which specifically *deleted* the area restriction of Scheduled Tribes in Maharashtra for the Thakur community. The Supreme Court has noted this in its 8th March 2017 order in *Jayant Dilip Pawar v State of Maharashtra & Ors.*⁵ This order was placed before the 2nd Respondent Committee by the Petitioners (page 28). There is simply no discussion on it.

17. Having regard to the exigencies of the situation and since the Petitioners are seeking further educational admission, we will allow the Writ Petition and make absolute.

5 Special Leave Petition No. 2336 of 2011.

18. On 8th August 2019 we pass the following order which is reproduced below:

For the reasons separately recorded, the following order is passed:-

1. The writ petition succeeds. The impugned order passed by the Scheduled Tribe Certificate Scrutiny Committee, Nashik dated 26th April, 2019 is quashed and set aside.

2. Now, in tune with the caste validity certificate issued to the father-Dharma Pawar, the petitioner shall be issued the certificate validating his claim towards "Thakur Scheduled Tribe", Entry No. 44 of the Scheduled Tribe Control Order, 1950. the certificate of validity shall be issued latest by 9th August, 2019 by 3.00 p.m.

3. The certificate of validity is being insisted for admission to the MBA course by the Commissioner of Common Entrance Test Cell and other authorities. Since we have set aside the order of the Committee, upheld the claim of the petitioner and directed that the formal certificate be drawn up and issued to the petitioner, latest by tomorrow, if the petitioner remains present before the Commissioner, today or tomorrow, he shall not insist on production of certificate of validity, but must proceed on the footing that our order and directions have validated and accepted the claim. On the strength of our order, the admission provisionally granted can be regularised.

4. In the light of the fact that our reasoned order may not be ready before 16th August, 2019 because of the intervening holidays, we have issued this direction and the reasoned order shall be made available on 16th August, 2019.

5. All concerned to act upon the authenticated copy of this order.

19. The Petition is disposed of in these terms. For the present there will be no order as to costs. We do, however, make it clear that if we see further instances of the 2nd Respondent Committee continuing to conduct itself in this fashion, we may be prompted to initiate far more drastic action than has been taken so far.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)