IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 9283 Of 2012
With
Civil Application No. 13617 Of 2012

Lahu Dasharath Thakur,
Age : 23 years, Occupation-Service,
R/o. At post Nipane,
Tq. Erandol Dist, Jalgaon,
Presently residing at Muktainagar,
Tq. Muktainagar, Dist. Jalgaon. .. **Petitioner**

Versus

1. Scheduled Tribe Certificate
   Scrutiny Committee, Nandurbar
   Region, Nandurbar,
   Through its Member Secretary.

2. Executive Engineer,
   Maharashtra State Electricity
   Distribution Company Ltd.,
   Bhusawal, Chopde Building,
   Tapi Nagar, Bhusawal,
   Dist. Jalgaon.

3. Assistant Engineer,
   Maharashtra State Electricity
   Distribution Company Ltd.,
   Muktainagar Division,
   Tq. Muktainagar, Dist. Jalgaon. .. **Respondents**

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* Advocate for the Petitioner : **Mr. Sushant C. Yeramwar**

* Addl.GP for Respondent No.1/State : **Mr. Pravin S. Patil**

* Advocate for Respondent Nos. 2 & 3 : **Mr.Dhananjay P. Deshpande**

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CORAM : S.G. MEHARE AND SHAILESH P. BRAHME, JJ..

RESERVED ON : 04th MARCH 2025

PRONOUNCED ON : 11th MARCH 2025

FINAL ORDER (Per Shailesh P. Brahme, J.) :

1. Heard both sides finally.

2. This petition is directed against judgment and order dated 29.09.2012 passed by the Respondent/Scrutiny Committee, invalidating the tribe certificate of Scheduled Tribe Thakur of the Petitioner. The Committee invalidated the certificate on the area restriction and affinity test. It is held that surname of the Petitioner is confusing and is not decisive to determine his caste.

3. Petitioner has relied on various school entries, revenue record, death certificate, domicile certificate etc. Out of that school entries of Girdhar, Piraji and Jairam are pre-constitutional documents.

4. Learned Counsel for the Petitioner Mr. Yeramwar submits that in view of pre-constitutional record, Committee ought to have accepted tribe claim. He would submit that finding recorded by the Committee that the documents pressed into service did not show caste as Thakur Scheduled Tribe, is perverse. It is further submitted that the finding in respect of area restriction and affinity test are unsustainable. It is emphasized by learned Counsel that once pre-constitutional documents indicate caste as Thakur, no further inquiry is necessary. He would rely on the judgment of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.**, 2023 SCC Online SC 326.

5. Per contra, Mr. Pravin Patil learned Additional GP for the Respondent No.1 supports impugned judgment and order. The documents pressed into service only indicate caste as Thakur. Hence it is imperative to consider result of affinity test. He would submit that entry "Thakur" in the documents is not sufficient because in all probabilities, Petitioner and his forefathers would belong to upper caste – Thakur. It is further submitted that affinity test is conducted by the experts and it cannot be discarded. He would further submit that the permanent place of residence of the Petitioner is decisive which does not support his claim.

6. Learned Additional GP has also canvassed that judgment

of Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra) is not helpful to the Petitioner. All aspects of the matter which are covered by Full Bench Judgment of Bombay High Court in the matter of Shilpa Vishnu Thakur Vs. State of Maharashtra in Writ Petition No.5028/2006, are not dealt with by the Supreme Court. Still the matters are subjudiced before the Honourable Apex Court for the adjudication as to whether reference to Thakur only would be conclusive to treat Scheduled Tribe Thakur or further inquiry is permissible to find out that it is Thakur other than the Scheduled Tribe.

7. Having considered rival submissions of the parties, it reveals that Petitioner is not relying on any validity issued to paternal side blood relatives. His reliance is on following pre-constitutional documents :

i School Admission Registered Extract of Girdhar Lukdu Thakur of 01.03.1914

ii School Admission Registered Extract of Piraji Lukdu Thakur of 01.07.1947

iii School Leaving Certificate of Girdhar Lukdu Thakur of 01.03.1914

iv School Leaving Certificate of Piraji Lukdu Thakur of 01.07.1947

v Village Form No.14 of Jairam Lukdu Thakur

. In the above documents, caste was mentioned as Thakur. Girdhar is the cousin grandfather and Piraji is grandfather of the Petitioner. Jairam is his great grandfather.

8. In the present matter, vigilance inquiry was conducted. The Vigilance Cell did not express any reservation about the genuineness of the documents. The Committee also did not castigate the old record. The pre-constitutional record has greater probative value is settled position of law as per **Kumari Madhuri Patil and Ors. Vs. Addl. Commissioner, Tribal Development and Ors.**, AIR 1995 SC 94 and **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Others**, (2012) 1 SCC 113.

9. Learned Additional GP did not point out any circumstance or material to doubt the pre-constitutional record. Only objection was that caste mentioned as Thakur would not be Scheduled Tribe Thakur, but also the upper caste Thakur or besides Scheduled Tribe Thakur. In this regard, a useful reference can be made to the decision of the Division Bench in the matter of **Ravindra Pralhadrao Khare Vs. State of Maharashtra and Others**, in Writ Petition No.11241/2012. The coordinate bench had occasion to deal with the issue that if only Thakur is mentioned as caste in pre-constitutional document, then what would be the consequences. We reproduce paragraph nos. 3, 4,

5 and 6 :

3. We have carefully considered the submissions. It will be necessary to make a reference to the impugned judgment and order. The Caste Scrutiny Committee has referred to the school record of the Petitioner's father which discloses that in the year 1948, his caste was recorded as "Thakur". The Scrutiny Committee has also referred to the death extract of the grand father of the Petitioner which shows that in the year 1947, his caste has been shown as "Thakur". The third important document referred to by the Scrutiny Committee is the service book of the Petitioner's father which shows that his caste was "Thakur". These three documents have been brushed aside by the Scrutiny Committee by making following observations:

> As said earlier, the only caste entry as Thakur does not clarifies whether the incumbent belongs to Thakur, Scheduled Tribe or Thakur, non-tribal group. Hence, though the document is oldest, the same cannot be treated as conclusive in nature while determining the tribe claim of the applicant.

4. We fail to understand as to how the Caste Scrutiny Committee expects the documents of the years 19471948 to mention as to whether the caste "Thakur" belongs to the category of Scheduled Tribe or the category of non-tribal. In the years 19471948, such entries could not have been made. Another finding recorded by the Tribunal is that the Petitioner could not establish his affinity to the caste and to the area. On this aspect, it will be necessary to make a reference to what is held by the Apex Court in the case of Anand (supra) in Paragraph 22. The Paragraph 22 of the said decision reads thus:

> "18. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:
>
> (i) While dealing with documentary evidence, greater reliance may be placed on pre Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that 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;

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

(Underlines added)

5. The Apex Court has held that the affinity test may be used to corroborate the documentary evidence but should not be the sole criteria to reject the caste claim.

6. In the present case, three material documents which we have referred to earlier have been brushed aside by the Scrutiny Committee by recording reasons which are not at all justified and thus, the claim is rejected primarily on the basis of the affinity test. In view of the law laid down by the Apex Court in the case of Anand (supra), only on the basis of the affinity test, the caste claim of the Petitioner could not have been rejected."

10. The present case is squarely covered by the principles laid down by the coordinate bench referring to the decision of Supreme Court in the matter of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Others (supra). Even reliance on the affinity test cannot be a sole criteria to reject the claim. The finding recorded by the Committee for

discarding the pre-constitutional record is perverse which is appearing on page no.48 of the paper-book.

11. In the present case, during the vigilance inquiry, the pre-constitutional documents were found to be genuine. By presidential order of 1950 for the first time, caste Thakur was included at entry no.44 in the list of the Scheduled Tribe in the State of Maharashtra. There are in all four documents of pre-independence period to support claim. Under these circumstances, reliance on the result of affinity test is misplaced. In respect of affinity test, principles are reiterated by the Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra). Affinity test cannot be a sole criteria to reject the Petitioner's claim. The observations of the Committee on the affinity test are unsustainable.

12. Learned Additional GP has strenuously taken us through the niceties of affinity test and the findings recorded by the Committee on Anthropological traits, Ethnic linkage,, Dialect and place of residence etc. The affinity test is being conducted by the experts and their opinion cannot be discarded. However, the fact remains that the law is that it is not a litmus test. In the facts and circumstances, just because there is affinity test conducted by the experts, we are not convinced of the

submissions of the learned Additional GP that petitioner's claim is rightly rejected.

13. Learned Additional GP has also taken through the observations of the Committee in respect of place of residence of the Petitioner and his forefathers to buttress that the findings on area restrictions are legal and proper, in view of removal of area restrictions in 1976 and judgment of the Supreme Court in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr**, (1994) 1 SCC 359. The place of residence of the Petitioner or his forefathers would be insignificant. The submission in this regard of learned Additional GP cannot be accepted.

14. It would be useful to refer to observations of Supreme Court in paragraph no.21 of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra) which is as follows :

> "21. In the impugned judgment in Civil Appeal No. 2502 of 2022 (Shilpa Vishnu Thakur's case2), the Full Bench of the Bombay High Court has noted that people having the surname "Thakur" belong to both forward castes and various backward castes. Therefore, the Full Bench may be right in saying that in every case, only on the basis of the surname Thakur, it cannot be concluded by the Scrutiny Committee that the applicant belongs to Scheduled Tribe Thakur notified in the Entry 44 of the Maharashtra list. However, we must note that in the case of a person having the surname Thakur, there may be evidence in the form of entry of the name of the caste as a Tribe or Scheduled Tribe in the land records, school or college records or any official records concerning the applicant or his ancestors. Only on the ground that the persons having the surname Thakur may belong to a forward caste as well, it is not necessary that in every case, the Scrutiny Committee should send the case to Vigilance Cell. It all depends on the nature of the documents produced before the Caste Scrutiny Committee and the

> probative value of the documents. Therefore, whenever a caste claim regarding Thakur Scheduled Tribe is considered, the Caste Scrutiny Committee in every case should not mechanically refer the case to the Vigilance Cell for conducting an enquiry including affinity test. The reference to the Vigilance Cell can be made only if the Scrutiny Committee is not satisfied with the material produced by the applicant."

15. It is clearly observed that it would depend on the nature of the document produced before the Committee and the probative value for referring matter to the Vigilance Cell. In respect of probative value of the documents in question, we have already recorded our findings. The above observation is also answer to the arguments of learned Additional GP that mere mentioning of Thakur would not be sufficient.

16. According to the learned Additional GP, all the issues are not answered or dealt with by the Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra), which were addressed by the Full Bench of Bombay High Court in the matter of Shilpa Vishnu Thakur (supra). This submission is absurd. It is difficult to accept that only few issues are dealt with and few are left unanswered. The possibility of re-visiting the earlier decision of High Court or Supreme Court cannot be ruled out in future, but that does not mean that this Court should wait for inordinate period till decision on a particular issue is handed down.

17. Even if for time being the submission is accepted that

issue of Thakur would not conclusively amount to Scheduled Tribe Thakur is subjudice before the Supreme Court, that does not preclude this Court from deciding the matters. Therefore, we reject the submission of Mr. Pravin Patil that still few issues are subjudiced before the Supreme Court and judgment in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra) is not final verdict.

18. Our attention is adverted to various categories of the Scheduled Tribe with synonymity which are recorded by the Committee on page no.52 of the paper-book in five categories. We are concerned with serial no.1 as it refers to Thakur which is found at serial no.44 of constitutional order. Serial Nos.2 and 3 are Thakar and therefore they are irrelevant. Serial Nos. 4 and 5 refers to Thakur of upper caste or some other caste. We do not find that in the present case, there is possibility of any fraud on part of Petitioner or his forefathers by representing themselves to be Scheduled Tribe Thakur. In the wake of pre-constitutional record, they have to be treated as Scheduled Tribe Thakur. In the absence of any material, they cannot be treated as upper caste Thakur.

19. Learned Additional GP has referred to judgment of Full Bench in the matter of Yogita d/o Anil Sona Wane Vs. State of Maharashtra and Others, 2016 SCC OnLine Bom 14960. In

the wake of latest decision of the Supreme Court in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra), we need not refer to decision of Full Bench of Bombay High Court.

20. We find that impugned judgment and order is unsustainable. Petition deserves to be allowed. Hence we pass following order :

ORDER

(i) Writ Petition is allowed.

(ii) Impugned judgment and order dated 29.09.2012 is quashed and set aside.

(iii) The Respondent/Scrutiny Committee shall issue validity certificate of Thakur Scheduled Tribe to the Petitioner forthwith.

(iv) Civil Application stands disposed of.

[SHAILESH P. BRAHME]
JUDGE

[S.G. MEHARE]
JUDGE

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