



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 1600/2008

with

Civil Application No.507 of 2017

and

Civil Application No.5436 of 2023

....

Nitin S/o. Pauladsingh Pawar,
Age : 45 years, Occ.Service,
R/o. Vidya Nagar, Dondaicha,
Tq.Sindkheda, Dist.Dhule.

...Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Tribal Development Department,
Mantralaya,Mumbai-32.
2. The Scheduled Tribe Caste
Certificate Verification Committee,
Through its Chairman/Director,
Nashik Division Nashik.
3. The Taluka Executive Magistrate
Tahsil Office, Shindkheda,
Dist.Dhule.

4. The Superintending Engineer,
Mah.State Electricity Distribution Co.Ltd.
Dhule.

...Respondents

...

Advocate for Petitioner : Mr. A.S.Golegaonkar

Addl.GP for Respondent/State : Mr. P.S.Patil

...

CORAM : S.G.MEHARE &

SHAILESH P. BRAHME, JJ.

RESERVED ON : 03rd MARCH 2025

PRONOUNCED ON : 13th MARCH 2025

JUDGMENT [Per Shailesh P. Brahme, J.] :

1. Rule. Rule is made returnable forthwith by the consent of the parties. Heard both sides finally.

2. Petitioner is challenging judgment and order dated 27.04.2007 passed by the Scrutiny Committee invalidating his tribe certificate of Scheduled Tribe 'Thakur'. Petitioner has relied on the validities issued to Hiralal Kashiram Thakur and Sonal Limba Thakur, paternal relatives of the petitioner. He is also relying on the pre-independence record of his father Pauladsingh Krushna Pawar of 22.06.1938 and of uncle Kashiram Krushna Thakur of 08.09.1931. He is relying on the order passed in the matter of Milindkumar Pauladsingh Pawar on 08.11.2006 in Writ Petition No.2124 of 1996.

3. Learned counsel Mr.Golegaonkar appearing for the petitioner submits that the pre-constitutional record which was verified during the vigilance has not been doubted by the Committee. It has a greater probative value and it would enure to the benefit of the petitioner. He would further submit that petitioner's real brother Milindkumar was denied the validity certificate by the Scrutiny Committee. Against that he had preferred appeal before Additional Commissioner, Nashik Division, Nashik. His appeal was allowed on 27.01.1993 holding him eligible to Scheduled Tribe 'Thakur' validity. The said judgment was sought to be reviewed by issuing notice on 11.05.1993. It was challenged before the co-ordinate Bench in the above referred matter and it was quashed. It is further submitted that the findings recorded by the scrutiny committee regarding affinity test and the area restrictions are unsustainable.

4. Learned counsel for the petitioner relies on the latest judgments of the Supreme Court in the matters of **Maharashtra Adiwasi Thakur Jamat Swarkshan Samiti vs. State of Maharashtra and others** reported in (2023) 2 Mh.L.J.785, **Baburao Rajaram Shinde vs. State of Maharashtra and others** reported in (2002)4 Mh.L.J.310 and **Pandurang Rangnath Chavan vs. State of Maharashtra and others** reported in [1998(2) Mh.L.J806].

5. *Per contra*, learned AGP Mr.Patil supports the impugned judgment and order. He has tendered on record the original files of the petitioner and the earlier validity holders in the family. He would submit that Milind Kumar, petitioner's brother was never issued with validity certificate. There was no confirmation of the order passed by the appellate authority on 27.01.1993. It is further submitted that the validities issued to Hiralal and Sonal are unreliable because due procedure of law was not followed in their cases. It is vehemently submitted that the old school record which is pressed into service only shows entry of Thakur but that is merely synonymous to the Scheduled Tribe Thakur but in fact it is upper-caste *Thakur*. He would submit that affinity test was being conducted by the expert persons and the petitioner failed to get through the same.

6. Learned AGP would further submit that full-bench judgment in the matter of **Shilpa Vishnu Thakur Vs. State of Maharashtra and Others** reported in (2009) 5 AIR Bom R.478 still holds the field. The affinity test in a given circumstance needs to be followed. All core issues decided by full bench in the matter of **Shilpa Vishnu Thakur Vs. State of Maharashtra and Others** (supra) have not been answered by the Supreme Court in the matter of **Maharashtra Adiwasi Thakur Jamat Swarkshan Samiti vs. State of Maharashtra and others** reported in 2023(2) Mh.L.J.785. These matters are *sub-judice* before Supreme Court for the left out issues of **Shilpa Vishnu Thakur** (supra).

7. We have considered rival submissions of the parties. We have gone through relevant documents on the record from the paper-book as well as original files produced before us.

8. The petitioner is relying on the validities issued to his cousin Hiralal Kashiram Thakur and niece Sonal Limba Thakur. The relationship has not been disputed by the respondents. In case of Hiralal, it transpires that vigilance inquiry was conducted. He was issued with validity certificate by order dated 30.04.2003. It can not be said to be a reasoned order. The documentary evidence has not been dealt with by the Committee. Only reliance is placed upon certain previous decisions of the High Courts and the Supreme Court.

9. In case of Sonal Limba Thakur, we notice similar type of cryptic order was passed by the Scrutiny Committee granting validity without their being any discussion on the material pressed into service by the claimants. Apparently, both validities of Hiralal and Sonal can not be relied upon just because those validities are still intact. There is want of due procedure of law, appreciation of material by the committee and reference to the affinity test. We accept the submissions of learned AGP that those validities are not reliable.

10. In the present case, the petitioner's real brother

Milindkumar's tribe claim was rejected by the Scrutiny Committee by order dated 01.10.1992. Being aggrieved he had preferred appeal before Additional Divisional Commissioner, Nasik Division Nasik. His appeal was allowed vide reasoned order dated 27.01.1993. Considering material placed on record, he was held to be belonging to the 'Thakur' Scheduled Tribe. The appellate authority considered pre-constitutional school record of his father. It's a fact that after the decision of the appellate authority, he was not issued with validity certificate by the Scrutiny Committee. However, in sum and substance the tribe claim of Milindkumar was accepted and absolute finding was recorded that he was belonging to the Scheduled Tribe 'Thakur'. Issuance of validity certificate to him is a mere formality which could not be done for the reasons best known to the parties. In all probability the concerned claimant also might not have persuaded the authorities for issuing the validity certificate. We do not accept the submissions of learned AGP that just because there was no validity issued to Milindkumar, the judgment passed by the appellate authority would not enure to the benefit of the petitioner.

11. It's a matter of record that the school record of petitioner's father of 22.06.1938 and that of his uncle Kashiram Krushna Thakur of 08.09.1931 was considered during the vigilance and no doubt was expressed about its genuineness either in the vigilance report or by the Committee.

In view of judgment of Supreme Court in the matter of **Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others** reported in (2012) 1 SCC 113, these documents are having greater probative value and those would enure to the benefit of the petitioner.

12. Learned AGP has taken us through affinity test. It was conducted by the experts. The petitioner could not withstand the test. It is contended that in view of decision of full-bench in **Shilpa Vishnu Thakur** (supra), the affinity test is decisive. By considering the judgment in **Shilpa Vishnu Thakur** (supra), Supreme Court decided in the matter of **Maharashtra Adiwasi Thakur Jamat Swarkshan Samiti vs. State of Maharashtra and others** reported in 2023(2) Mh.L.J.785, affinity test is not a litmus test. We are bound by the decision in **Maharashtra Adiwasi Thakur Jamat Swarkshan Samiti** (supra). In the present facts of the case when there is pre-constitutional record and validity of real brother Millindkumar supporting the petitioner's claim, the result of the affinity test is inconsequential.

13. It is canvassed by learned AGP that all contours of full-bench judgment in **Shilpa Vishnu Thakur** (supra) has not been dealt with by Supreme Court in **Maharashtra Adiwasi Thakur Jamat Swarkshan Samiti** (supra). Few issues are left to be decided and for that purpose matters are pending in the Supreme Court. We have already dealt with this submission in Writ Petition No.9283 of 2012 and observed as follows :

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 but 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.

. In view of the above observations, we can not accept the submission of learned AGP.

14. In the wake of the facts that pre-constitutional record and validity of Milind kumar are corroborating the tribe claim, we can not accept the submission of learned AGP that reference to Thakur in the school record is only synonymous to entry at Sr.No.44 of the Constitutional order. Learned counsel for the petitioner has referred to judgment of **Baburao Rajaram Shinde vs. State of Maharashtra and others** reported in (2002)4 Mh.L.J.310. It's relevant paragraph is as follows :

32. The Scrutiny Committee has limited role to investigate whether the claimant before it belongs to "Thakur or Thakar" caste and on that basis it may take steps as are mandated by law laid down by the Supreme Court in Kum. Madhuri Patil's case, AIR 1995 SC 94. On adjudication if the Committee records a finding in the affirmative, it has to certify that the claimant belongs to the Scheduled Tribe and it cannot venture into

any further inquiry into such a claim. In the case at hand, the Committee recorded a finding that the petitioner had claimed to belong to Thakar Scheduled Tribe and the claim was subjected to verification by the Committee which recorded a finding on adjudication of this claim that the petitioner belonged to "Hindu Thakar" caste which falls in the Other Backward Classes. The petitioner has challenged this finding on the ground that once he was found to be belonging to the "Thakar caste" it was incompetent for the Committee to give any further declaration regarding his social status and to hold that the claimant belonged to "Hindu Thakar" caste - a non-tribal group. If the Committee was satisfied that the claimant did not belong to Thakar caste, it had the powers to give a declaration accordingly. It certainly did not have the powers to give a further declaration and that too contrary to the petitioner's claim that he belonged to Hindu Thakar caste. These submissions have considerable force and we agree that once the Committee recorded a finding that the claimant belongs to Thakar caste it had no jurisdiction to give any further declaration and the only course available to it in such cases was to validate the claimant's social status as belonging to the Scheduled Tribe (entry no. 44). It is for these reasons that the impugned order is contrary to law and the Scrutiny Committee has fallen in serious error in denying the petitioner's Scheduled Tribe claim. The said order is, therefore, unsustainable and it requires to be quashed and set-aside.

. We are in agreement with the views expressed by the Co-ordinate Bench.

15. A useful reference can be made to judgment of another co-ordinate bench in the matter of **Prakash Shrawan Deore vs. Scheduled Tribe Certificate Scrutiny Committee and Anr.** reported in 2020(1) Bom.C.R.205. Following are the relevant extracts:

8. The Division Bench of this Court in the judgment and order passed in the said petition referred to the documents which were discussed

hereinabove and found that, though in some documents 'Hindu' was mentioned, the same entry related to the religion of the Petitioner's forefathers and the caste was Thakur'. After considering the entire material and the judgment of the Hon'ble Apex Court in the case of Palghat Jilla Thandan Samudhaya Samrakshna Samithi vs. State of Kerala: 1994(1)SCC 359, the Division Bench observed in paragraphs 5, 6 and 7 thus:

"5. In the Presidential Order, Thakur tribe has been categorised as Scheduled Tribe at Serial No. 44. It would, thus, not be open to either the State Government or to the Court to hold that Thakur does not belong to Scheduled Tribe. In the instant case, petitioner has been found to belong to Thakur Community but has been held to belong to a non-tribal group. This is specifically prohibited under the aforesaid judgment of the Supreme Court.

6. In the instance case, the documentary evidence produced by the petitioner shows that the petitioner belongs to Thakur. Thakur in the aforesaid entry at Serial No. 44 in the Presidential Order is shown to belong to Scheduled Tribe. It will, therefore, be not open either to the State Government or to any Court to hold that the said Thakur does not belong to Scheduled Tribe but to a high caste.

7. In the circumstances, the impugned order, which is annexed at Exhibit 'B' to the petition, is quashed and it is declared that the Petitioner belongs to Thakur Scheduled Tribe."

Not only this but also the scrutiny committee at Nashik vide order dated 5th October, 1999, after considering the judgment and order of the Division Bench of this Court in the case of Pitambar Deore (supra) held the claim of the Pitambar's son, namely Rajesh, to be valid.

10. The aforesaid observations are not only contrary to the law laid down by the Hon'ble Apex Court in the case of Palghat (supra) but also totally in ignorance of the observation made by the Division Bench of this Court in the case of the Petitioner's father's real brother, namely Pitambar. The committee could not have ignored the said observations. As a matter of fact, in view of the judgment of this Court in the case of Apoorva Nichale (supra) in view of the validity in favour of the Petitioner's close blood relatives, the committee ought to have granted validity in favour of the Petitioner. Undisputedly, the decision of the committee is dated 9th

January, 2013 i.e. after the judgment of the Division Bench in the case of Apoorva Nichale (supra).

12. No doubt that the learned AGP relied on the judgment of the Full Bench of this Court in the case of Shilpa Thakur (supra) that the claim cannot be decided only on the basis of the documentary evidence but the affinity test also plays an important role. However, it is to be noted that the judgment of the Full Bench in the case of Shilpa Thakur is dated 7th May, 2009, whereas the judgment of Anand Kathole is delivered by the Hon'ble Apex Court on 8th November, 2011. In the case of Rashmi Metaliks Limited and anr. vs. Kolkata Metropolitan Development Authority and ors. (2013) 10 SCC 95, the Hon'ble Apex Court has frowned upon the practice of lawyers citing multiple judgments in support of a proposition of law. Any sincere student of law, leave aside a practising lawyer, who has put a number of years at the bar, is expected to know that the judgment of High Court, including the judgments delivered by the Full Bench, which has taken a view, which is contrary to the view taken by the Hon'ble Apex Court, subsequently, the earlier judgment stands impliedly over-ruled. We do not understand the propriety in citing the judgment which is impliedly over-ruled.

16. Reference to paragraph No.12 of above referred judgment can be had to reject the submission of learned AGP for over emphasizing on Shilpa Vishnu Thakur (supra). The findings recorded by the Committee in respect of area restrictions are unsustainable in view of judgment of Supreme Court in the matter of **Palghat Jilla Thandan Samudhaya Samrakshana Samithi and Anr. Vs. State of Kerala and Anr.** reported in 1994 (1) SCC 359 and **Jaywant Pawar vs. State of Maharashtra** in Special Leave to Appeal No.2627 of 2010.

17. We are of the considered view that petitioner has made out a case for causing interference in the impugned judgment

and order. We therefore pass following order :

ORDER

- A) Writ Petition is allowed.
- B) The Judgment and order dated 27.04.2007 passed by Scrutiny Committee is quashed and set-aside.
- C) The Respondent/Scrutiny Committee shall issue tribe validity certificate of '*Thakur*' *Scheduled Tribe* forthwith to the petitioner.
- D) Civil Applications stand disposed of.
- E) Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]

[S.G.MEHARE, J.]

VSJ