



Judgment

139 wp7328.22

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR**

**WRIT PETITION NO.7328 OF 2022**

1. Ashlesha d/o Dattatray Suryawanshi,  
aged about 21 years, occupation student.

2. Revati d/o Dattatray Suryawanshi,  
aged about 23 years, occupation student.

Both r/o Ramnagar, behind Petrol  
Pump, Nandura Road, Jalgaon  
Jamod, district Buldhana-443 402. .... **Petitioners.**

**:: V E R S U S ::**

1. The Vice-Chairman/Member-  
Secretary  
Scheduled Tribe Caste Certificate  
Scrutiny Committee,  
Chaprashipura, Amravati.

2. The Principal,  
Maharashtra National Law  
University,  
6<sup>th</sup> Floor, MTNL Building,  
Hiranandani Garden, Powari,  
Mumbai-400076.

3. The Principal,  
Shri Gurudeo Ayurved College &  
Hospital,  
Gurukunj Ashram, Mozri,  
tahsil Tiosa, district Amravati.

4. The Registrar,  
Maharashtra University of Health  
Sciences, Mhasrul, Vani-Dindori

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Road, Nasik-422004.

..... **Respondents.**

=====  
Ms.P.D.Rane, Counsel for Petitioners.  
Shri Abhijit Deshpande, Counsel for Respondent No.4.  
Shri N.S.Autkar, Assistant Government Pleader for  
Respondent No.1.

=====  
**CORAM : AVINASH G.GHAROTE & URMILA JOSHI-PHALKE, JJ.**  
**CLOSED ON : 09/11/2023**  
**PRONOUNCED ON : 29/11/2023**

**JUDGMENT : (Per : Urmila Joshi-Phalke, J.)**

1. Heard learned counsel Ms.P.D.Rane for petitioners, learned counsel Shri Abhijit Deshpande for respondent No.4, and learned counsel Shri N.S.Autkar for respondent No.1.

2. By this petition, petitioners take exception to order dated 6.9.2022 passed by respondent No.1 – Scrutiny Committee, Amravati (the Committee) invalidating tribe claim of petitioners as belonging to caste “Thakur” Scheduled Tribe.

3. The petitioners are real sisters and they are pursuing their education. They claim to be of caste “Thakur” Scheduled Tribe.

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4. A proposal of petitioner No.1 for validating her caste claim was forwarded to the Committee along with necessary documents on 7.10.2020. Whereas, a proposal of petitioner No.2 was forwarded in the year 2020. The petitioners relied upon eleven documents, out of them five documents were pre-constitutional. As per family tree submitted by petitioners, "Balwant" is great-grandfather whose caste is recorded as "Thakur". There are consistent entries in the name of their forefathers recording them as "Thakur".

5. Learned counsel Ms.P.D.Rane for petitioners, submitted that as per the family tree, caste of "Balwant", who is great-grandfather of petitioners, was recorded as "Thakur" while recording birth entry of his son on 19.2.1913. As per birth extract, said "Balwant" has two sons viz. "Keshav" and "Digambar", who are also recorded as "Thakur" during pre-independence era. "Keshav's" son "Bhaskar" is also recorded as "Thakur". The School Leaving Certificate of another son of "Balwant" viz.

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"Digambar" also shows belonging to be "Thakur". Thus, there are consistent entries showing forefathers of petitioners to be "Thakur". There is no dispute as to the family tree.

Learned counsel further submitted that the Committee referred the claim of petitioners for vigilance. The Vigilance Committee collected some documents showing "Keshav", the son of "Balwant", gave birth to a daughter viz. "Gani" who is recorded as "Bhat" in the year 1953. On the basis of the said entry, the claim of petitioners is invalidated. In fact, after receipt of Vigilance Report, petitioner No.1 filed an affidavit and explained the documents. The petitioners explained that the said entry is not relating to her family members. The Committee has ignored all pre-independence documents which have probative value and invalidated the claim. In fact, on the basis of the same documents, cousin grandfather viz. "Surendra" and cousin uncle "Sagar" of petitioners were granted Caste Validity Certificates by

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order of this court in Writ Petition No..2513/2019 and 1674/2015 respectively. However, the Committee, without considering the same, invalidated the caste claim of petitioners illegally and arbitrarily which is liable to be set aside.

6. In support of her contentions, learned counsel Ms.P.D.Rane for petitioners placed reliance on following decisions:

**1. Pravin s/o Madhukar Suryawanshi and anr vs. The Vice-Chairman/Member-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati and ors decided by this court on 12.12.2022 in Writ Petition No.5891/2022;**

**2. Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and ors, reported in 2023(2) Mh.L.J. 785;**

**3. Gaurav s/o Pradeep Wagh vs. The Vice-Chairman/Member Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Nagpur and ors decided by this court on 15.8.2023 in Writ Petition No.7815/2022, and**

**4. Ku.Ekta d/o Ganpatrao Ghodmare vs. The Vice-Chairman/Member, Secretary Scheduled Tribe Caste Certificate Scrutiny Committee,**

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**Nagpur and anr decided by this court on 25.9.2023 in Writ Petition No.4895/2022.**

7. *Per contra*, learned Assistant Government Pleader Shri N.S.Autkar for respondent No.1, submitted that there are adverse entries showing that family members of petitioners are recorded as "Bhat". He placed reliance on birth register extract entry of dated 28.3.1916 showing one "Balwant" was recorded as "Bhat" while registering birth date of his male child born on 27.3.1916. He further invited our attention to another birth entry showing that "Keshav" s/o "Balwant" registered birth date of his daughter and while taking the said entry, he was recorded as "Bhat" on 5.3.1953. He further submitted that the family tree submitted by petitioners does not show the son born to "Balwant" in the year 1916 and daughter born to "Keshav" on 5.3.1953. Thus, petitioners have suppressed these adverse entries. The explanation put forth by petitioners is not satisfactory. Thus, the Committee rightly invalidated the caste claim of petitioners and no interference is called for.

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8. In support of his contentions, learned Assistant Government Pleader Shri N.S.Autkar for respondent No.1 also placed reliance on the decision of the Honourable Apex Court in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and ors *supra***.

9. Undisputedly, cousin grandfather viz. "Surendra" and cousin uncle "Sagar" of petitioners were granted Caste Validity Certificates by order of this court in Writ Petition No..2513/2019 and 1674/2015 respectively. The Caste Validity Certificates granted to them are not challenged subsequently. The relationships of petitioners with said "Surendra" and "Sagar" are not disputed. The family tree submitted by petitioners and Vigilance Cell are similar. There are no contrary names as to the family tree is concerned. The Committee has not disputed the family tree. As per the family tree submitted with the Vigilance Report, "Atmaram" is original ancestral who has two sons viz. "Balwant" and "Gangaram". Said "Balwant" has two

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sons viz. "Keshav and "Digambar". Said "Balwant" is great-great-grandfather of petitioners. Said "Keshav" is great-grandfather and said "Digambar" is cousin great-grandfather of petitioners. The great-great-grandfather of petitioners "Balwant" has one brother viz. "Gangaram" who has one son viz. "Bhanu" who died in his childhood. Said "Keshav", the great-grandfather of petitioners, has three sons viz. "Bhaskar", "Krishna" alias "Balkrishna", "Madhav". Whereas, "Digambar" has one son viz. "Surendra" and one daughter viz. "Meera". "Keshav's" son "Bhaskar" is the grandfather of petitioners.

10. The document, on which petitioners placed reliance on, is birth entry dated 19.2.1913 registered on the same day, shows great-great-grandfather of petitioners "Balwant" belongs to "Thakur". The birth entry showing birth of a male child to "Keshav" wherein "Keshav" recorded as "Thakur" on 17.10.1942. The School Leaving Extract of son of "Keshav" viz. "Bhaskar" (grandfather of petitioners) showing his birth date as

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27.10.1942 and recorded as "Thakur". The extract of birth of "Balkrushna", another son of "Keshav", was born on 25.8.1951 wherein also caste is shown as "Thakur". The School Leaving Certificate of "Digambar" (cousin great-grandfather of petitioners) shows his birth date as 1.7.1917 and he was admitted in Zilla Parishad Primary School from 8.12.1922 to 1.3.1929 and also recorded as "Thakur". The School Leaving Certificate of "Keshav" shows that he was admitted in Zilla Parishad School, Gawandgaon, taluka Anjangaon, district Amravati in the year 1909 and was born on 22.1.1904 and also recorded as "Thakur". Thus, there are consistent entries in the name of forefathers of petitioners during pre-independence era showing them to be "Thakur".

11. Learned counsel Ms.P.D.Rane for petitioners, vehemently submitted that all these documents of pre-independence era having probative value are not considered by the Committee. The Committee referred the claim of petitioners for vigilance for enquiry without

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recording any reasons. In the light of the above submissions, if sub rule (2) of Rule 12 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, 2000 (Act No.23 of 2001) is perused, it provides that only if the Scrutiny Committee is not satisfied with documentary evidence produced by applicant, it shall forward application to the Vigilance Cell for conducting enquiry. While interpreting the said Rule, the Full Bench of the Honourable Apex Court in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and ors** *supra* held that, "in every case, as a matter of routine, the Scrutiny Committee cannot mechanically forward the application to Vigilance Cell for conducting an enquiry. When sub rule (2) of Rule 12 contemplates that only if the Scrutiny Committee is not satisfied with the documents produced by the applicant that the case should be referred to Vigilance Cell, it follows that the Scrutiny

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Committee is required to pass an order recording brief reasons why it is not satisfied with the documents produced by the applicant. Before referring the case to the Vigilance Cell, application of mind to the material produced by the applicant is required and therefore, the application of mind must be reflected in the order sheets of the Scrutiny Committee.

12. Perusal of the record nowhere reflects that the Committee recorded its reasons as to dissatisfaction of the record and its reasons for referring the application to the vigilance. The Committee placed reliance on the documents collected by the Vigilance Cell showing adverse entries in the name of some of so claimed ancestors of petitioners who are recorded as "Bhat". The Vigilance Cell and the Scrutiny Committee placed reliance on two entries; viz. (1) birth extract registering birth entry of one "Balwant" showing male child was born on 27.3.1916 wherein he was recorded as "Bhat" and (2) birth entry of daughter of "Keshav" viz. "Gani" showing

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"Keshav" as "Bhat" dated 5.3.1953. While replying the Notice issued by the Committee, after receipt of the Vigilance Cell Report, petitioners denied any relationship with both entries. As far as entry No.2 is concerned, though petitioners denied any connection with the said entry, pleadings show that petitioners admitted that "Keshav" has one daughter. Placing reliance on these entries, the Committee has invalidated the tribe claim of petitioners by giving weightage to the documents obtained by the Vigilance Cell. Admittedly, there are consistent entries since 1913 showing forefathers of petitioners as "Thakur". While ignoring the said entries, the Committee has not given any reasons for such considerations. Insofar as entry showing "Balwant" is recorded as "Bhat" in birth extract entry dated 27.3.1916, which is denied by petitioners with specific contention that the said entry is not related to their family members. The respondents could not point out through any documents that the said entry relates to "Balwant" who is shown in the family tree.

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13. It is common knowledge that several persons could be found of the similar names in one village.

14. When the Committee came with a specific case that the adverse entry is in connection with the name "Balwant", who is great-great-grandfather of petitioners, the Committee has to show the connection.

15. It is well settled that entries of pre-independence era have probative value. .

16. The Full Bench of the Honourable Apex Court in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and ors** *supra* held in para No.20 that one of the tests is as laid down in the case of **Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Development and others, reported in AIR 1995 SCC 94.** It lays down that the documents of the pre-constitution period showing the caste of applicant and their ancestors have got highest probative value. For example, if an applicant is able to

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produce authentic and genuine documents of the pre-constitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations provided to the Tribes included in the ST order. In such a case, a reference to Vigilance Cell is not warranted at all.

17. In the present case, such is not the case. On the contrary the Committee ought to have considered that on the basis of the similar documents, the Tribe Validity Certificates are granted to cousin grandfather and cousin uncle of petitioners. The Committee must be mindful of the fact that it is not an appellate authority to test correctness of order of validation issued by this court after scrutiny of the material. The Committee, while examining the claim of petitioners, ought to have considered that the Tribe Validity Certificates are granted to the family members of petitioners in view of judgments of this court after verifying and scrutinizing the documents. The said judgments have attained finality and the same were not

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challenged. The Tribe Validity Certificates granted to family members of petitioners can only be ignored in the event of receiving evidence that the Tribe Validity Certificates have been obtained by playing a fraud. It is only in such cases, in case fraud is established, the Committee can re-examine the facts.

18. In the present case, it is nowhere contended by the Committee that earlier Tribe Validity Certificates granted are either obtained by fraud or by coercion. The Committee must understand that such approach would result into anomaly in the family if they have different social status. The Committee is under obligation to rely upon the Tribe Validity Certificates granted in view of the judgments of this court and cannot adopt an approach as it is sitting in appeal over the judgment of this court.

19. Learned Assistant Government Pleader Shri N.S.Autkar for respondent No.1, also stressed that petitioners could not prove affinity test. He placed reliance on the judgment of the Honourable Apex Court in

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the case of **Shilpa Thakur vs. State of Maharashtra, reported in 2009(3) Mh.L.J. 995** wherein the Full Bench has held that affinity test is an integral part of determination of correctness of claim of caste certificate. The said judgment was referred by the Honourable Apex Court in the case of **Vijay Kumar vs. State of Maharashtra and ors, reported in (2010) 14 SCC 489** wherein certificate issued to uncle of appellant was found to be of no use and as such certificate is/was not found to be validated by the Committee. However, in another judgment in the case of **Anand vs. Committee for Scrutiny and Verification of Tribe Claims and ors, reported in (2012)1 SCC 113** wherein the judgment in the case of **Shilpa Thakur supra** was referred to, it was held that the affinity test is not a litmus test and that document of pre-constitutional era is of highest probative value in the eyes of law. The same view is reiterated by the Honourable Apex Court in the recent judgment in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and ors supra** wherein in

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paragraph No.25 it is held that the Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. It is further held that question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with the material produced by the applicant. While concluding, the Honourable Apex Court held that affinity test will not be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the tribe validity claim and in short, affinity test is not a litmus test to decide a tribe claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case.

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20. In the light of the above, when question as to whether affinity test is an integral part of determination of correctness of claim and when petitioners had submitted number of documents which were pre-constitutional having high probative value showing their tribe as "Thakur" and when family members hold a tribe validity and when tribe "Thakur" has been included in the Presidential Order 1950 as "Scheduled Tribe", we are of a considered view that the tribe claim of petitioners ought to have been considered by the Committee giving appropriate weightage to Tribe Validity Certificates issued to the family members by orders of this court so also the pre-constitutional documents. The co-ordinate bench of this court in the case of **Apoorva d/o Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee NO.1 and ors, reported in 2001(6) Mh.L.J. 401** has held that where tribe claim of a person has been scrutinized and accepted and one Committee has given a finding about validity of his tribe, another Committee ought not to refuse the

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same status to his/her blood relatives who apply subsequently.

21. We are aware regarding fact that "Thakur" community also belongs to upper caste. However, when caste "Thakur" is mentioned in the pre-constitution documents and the said caste has been included in the Scheduled Tribe Category and when the Caste Validity Certificates are granted to the family members, the claim of petitioners requires consideration. The Committee, therefore, committed an error invalidating the caste claim of petitioners.

22. In the light of the above facts and circumstances, the petition deserves to be allowed by directing the Committee to issue Caste Validity Certificates to petitioners as belonging to "Thakur" Scheduled Tribe. We accordingly, pass following order:

**ORDER**

(1) The writ petition is **allowed**.

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(2) The order dated 6.9.2022 passed by respondent No.1 – Scrutiny Committee, Amravati invalidating tribe claim of petitioners as belonging to “Thakur” Scheduled Tribe is quashed and set aside.

(3) It is declared that petitioners belong to “Thakur” Scheduled Tribe and the Committee shall, within a period of four weeks from receipt of copy of this order, issue Caste Validity Certificates to petitioners accordingly.

(4) Till petitioners receive Caste Validity Certificates, they are free to refer copy of this order to indicate that they have been held entitled to receive Validity Certificates as belonging to “Thakur” Scheduled Tribes.

The petition stands disposed of.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G.GHAROTE, J.)

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