



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14641 OF 2021

Rahul Rajendra Thakur
Age : 29 years, Occu : Education,
R/o Plot No. 42 B, Rajeshwari Vihar,
Korit Road, Nandurbar
Tq. and Dist. Nandurbar

.. Petitioner

Versus

1] Scheduled Tribe Certificate
Scrutiny Committee,
Nandurbar Division,
Nandurbar,
through its Member Secretary

2] College of Pharmacy (D. Pharm)
Chincholi – Mohu, Tq. Sinnar,
Dist. Nashik, through its Principal

.. Respondents

...
Advocate for petitioner : Mr. Mahesh S. Deshmukh and Mr. Umesh Gite
AGP for the respondent – State : Mr. A.A. Jagatkar
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 28 JULY 2023
PRONOUNCED ON : 24 AUGUST 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule made returnable forthwith. Learned AGP waives service for the respondent no. 1. At the joint request, the matter is heard finally at the stage of admission since the petitioner is seeking admission to a professional course in the current academic year.

2. By resorting to section 7(1) of the Maharashtra Act no. XXIII of 2001, the respondent - scrutiny committee by the order under challenge has confiscated and cancelled the tribe certificate of the petitioner of Thakur scheduled tribe.

3. The learned advocate Mr. Deshmukh for the petitioner would submit that the impugned order is perverse and arbitrary. Even the oldest entry of the grandfather from the birth record of the village of the year 1935 has been conveniently overlooked and some contrary entries of latter period of the years 1943, 1944, 1947 as Hindu Bhat or Bhat have been resorted to to discard the claim. Besides, he would point out that the old school record of petitioner's great grandfather - Khandu Bhika Thakur and his sister Rupi Bhika Thakur of the year 1912 of Zilla Parishad Kendra School no. 1, Betawad, Tq. Shindkheda, District - Dhule has been ignored. The original entries were in Modi script. Its translation was also produced by the petitioner. The translation was done by the curator of a Government department and still it has been overlooked. He would submit that even that record was subjected to verification by the vigilance officer who submitted the report and produced the copies in Modi script. In spite of availability of such oldest record, inference has been drawn by stray contrary entries. The approach of the committee is clearly perverse and arbitrary.

4. Mr. Deshmukh would further submit that the committee has also resorted to area restriction which legally it could not have done in view of The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and in the light of the observations in ***Palaghat Jila Thandan Samuday Sanrakshan Samiti and Another Versus State of Kerala and Another; (1994) 1 SCC 359***. He would then submit that the committee has also resorted to affinity test which is not a litmus test and has limited scope. He would point out that even in respect of the affinity test, it is not that the petitioner has completely failed. Some positive responses were given to the queries being put to test the affinity of the family to the traits of the community. He would, therefore, submit that the petitioner's genuine claim has been turned down illegally.

5. Learned AGP would support the order. He would submit that the committee has undertaken a threadbare scrutiny. No plausible explanation was coming forth in respect of contrary entries of pre-presidential order period. A lame excuse was sought to be extended that those were recorded erroneously which the committee has rightly refuted. The learned AGP would further submit that the committee has rightly resorted to the area restriction while applying the affinity test to buttress its inference that the claim of the petitioner was not tenable.

6. We have carefully considered the rival submissions and perused the record.

7. The impugned order itself produces charts of the favourable and contrary entries which are as under:-

Sr. No.	Document Type	Document Holder's name	Relation with the applicant	Entry of Caste	Date of Entry
1	Birth certificate	Baap Khandu Bhika	Grandfather	Thakur (ठाकूर)	Birth date – 21.11.1935
2	School record	Ambubai Damu Khandu	Cousin Aunt	Hindu Thakur (हिंदू ठाकूर)	Birth date - 21.01.1959
3	School record	Devidas Damu Salunke	Cousin Uncle	Hindu Thakur (हिंदू ठाकूर)	08.12.1961
4	School record	Shivaji Shamrao Thakur	Uncle	Hindu Thakur (हिंदू ठाकूर)	13.06.1968
5	School record	Rohidas Damu Thakur	Cousin Uncle	Hindu Thakur (हिंदू ठाकूर)	12.06.1969
6	School record	Mangala Shambhau Thakur	Aunt	Hindu Thakur (हिंदू ठाकूर)	01.02.1971
7	School record	Sanjay Shamu Thakur	Uncle	Hindu Thakur (हिंदू ठाकूर)	09.06.1978
8	School record	Rajendra Shamu Thakur	Father	Hindu Thakur (हिंदू ठाकूर)	30.12.1981
9	School record	Rahul Rajendra Thakur	Applicant	Hindu Thakur (हिंदू ठाकूर)	16.06.1998
10	School record	Yogesh Rajendra Thakur	Brother	Hindu Thakur (हिंदू ठाकूर)	04.06.2001
11	School record	Rohini Rajendra Thakur	Sister	Hindu Thakur (हिंदू ठाकूर)	07.07.2003

Educational Record :

Sr. No.	Document Type	Student's name	Relation with the applicant	Caste	Date of Admission
1	School Record	Shamu Khandu Thakur	Cousin Grandfather	Hindu Bhat (हिंदू भाट)	01.06.1943
2	School Record	Damu Khandu Thakur	Cousin Grandfather	Hindu Bhat (हिंदू भाट)	01.08.1944
3	Death Record	Banchhi Baap Khandu	Cousin Grandfather	Bhat (भाट)	Date of Death 28.09.1947
4	Birth Record	Baap Khandu Bhika	Grandfather	Thakur (ठाकूर)	Date of Birth 02.04.1946

8. We appreciate the fact that it is not a mathematical calculation while appreciating the old record when it is either produced or collected for or against the claim of a person of belonging to a particular tribe or caste. However, conspicuously, except the three contrary entries wherein the petitioner's cousin grandfathers have been

described as Hindu Bhat, Hindu Bhat and Bhat between years 1943 to 1947, there is at least one entry of the year 1935 mentioned at serial number 1 of the first chart wherein the child born to petitioner's great grandfather - Khandu Bhika has been described as Thakur. Conspicuously, the committee has simply brushed aside this entry when it was expected of it to have dealt with this entry which is prior in point of time than the contrary entries the committee was relying upon. There is no discussion about this older entry prima facie substantiating petitioner's claim of belonging to Thakur scheduled tribe.

9. Again, apart from the above entries, the petitioner had produced even older entries in the school record of Zilla Parishad School Betawad of the year 1905 wherein his great grandfather Khandu Bhika and his sister were described as Thakur. Pertinently, these two documents which are in Modi script together with the translation made by the curator of the State run archive from Dhule was produced by the petitioner's father before the committee on 28-01-2021. It is thereafter that a further vigilance enquiry was undertaken and a report was submitted by the vigilance officer before the committee on 14-09-2021 expressly mentioning therein about having collected the school record in respect of Khandu Bhika and Rupy Bhika Thakur from Zilla Parishad school Betawad which entries were in Modi. If such is the state-of-affairs and particularly when again in the petitioner's reply to such vigilance report expressly adverting

attention of the committee to these two oldest entries of the school record of the year 1904-05, the committee for the reasons best known to it has completely and outrightly ignored both these old entries. In the light of ***Anand Katole Vs. Committee for Scrutiny and Verification of Tribe Claims and others; (2012) 1 SCC 113***, these being the oldest entries would carry greater probative value than the contrary entries relied upon by the committee which are of the years 1943-44 and 1947.

10. It is thus apparent that there are at least three older entries of the year 1904, 1905 and 1935 which were expressly brought to the notice of the committee as can be seen from the submissions advanced before it by petitioner's learned advocate and reproduced in paragraph no. 5 of the impugned order. If such is the state-of-affairs, the approach of the committee in simply overlooking the older entries and drawing an inference based on the entries of the latter point of time, is clearly perverse, arbitrary and capricious.

11. In our considered view, such old record clearly substantiate petitioner's claim of belonging to Thakur scheduled tribe.

12. Again, in spite of the area restriction having been removed way back in the year 1976, and even when the petitioner's documentary evidence was sufficient to substantiate his claim, resorting to the affinity test, is clearly illegal.

13. True it is that the committee seems to be skeptical about the fraudulent claims being made by the non-tribals thereby affecting the genuine tribals. However, being skeptical is one thing and being cynical is another. Merely because the committee has some bad experience one cannot comprehend as to how it could be to the extent discarding the pre-presidential order entries also.

14. The approach of ignoring the favourable entries of the older period while drawing an inference on the basis of contrary entries of the latter period is clearly perverse.

15. The writ petition is allowed.

16. The impugned order is quashed and set aside.

17. The respondent - scrutiny committee shall immediately issue the tribe validity certificate to the petitioner of belonging to Thakur scheduled tribe.

18. Rule made absolute accordingly.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/