



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

WRIT PETITION NO. 3164/2022

Shri Chandrakant s/o Vishnu Ahirkar,
Age 52 years, Occupation – Service,
R/o Gajanan Nagar, Near Dr. Bhande
College, Malkapur, Akola, Tahsil and
District Akola.

.... **PETITIONER**

VERSUS

- 1) Schedule Tribe Caste Certificate
Scrutiny Committee, Old Bypass,
Chaprashipura, Amravati, through
its Vice-Chairman/Jt. Commissioner,
- 2) The Berar General Education Society,
Akola, Ratanlal Plot, Akola,
through its President.
- 3) Shri Radhakisan Laxminarayan
Toshniwal Science College, Civil Lines
Road, Akola, through its Principal.

.... **RESPONDENTS**

WITH

WRIT PETITION NO. 1444/2023

Kuldip s/o Chandrakant Ahirkar,
Age 20 years, Occupation – Student,
R/o Gajanan Nagar, Near Dr. Bhande
College, Malkapur, Akola, Tahsil and
District Akola.

.... **PETITIONER**

VERSUS

Schedule Tribe Caste Certificate
Scrutiny Committee, Old Bypass,
Chaprashipura, Amravati, through
its Vice-Chairman/Jt. Commissioner.

.... **RESPONDENT**

Mr. A.P. Kalmegh, Counsel for the petitioners,
Ms. K.P. Marpakwar, AGP for respondent No.1/State.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATE OF RESERVING THE JUDGMENT : 2nd MAY, 2024
DATE OF PRONOUNCEMENT OF THE JUDGMENT : 9th MAY, 2024.

JUDGMENT : (Per : ABHAY J. MANTRI, J.)

These writ petitions arising out of the order dated 26-04-2022 passed by respondent No.1-Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati (for short the “*Scrutiny Committee*”), whereby the claim of the petitioners belonging to ‘*Thakur*’ Scheduled Tribe Category came to be rejected.

2. The petitioner Kuldip in Writ Petition No.1444/2023 is the son of the petitioner Chandrakant in Writ Petition No.3164/2022. They both claim that they belong to the ‘*Thakur*’ Scheduled Tribe Community. On 27-03-1985 the Executive Magistrate, Akola, and on 19-12-2017 the Sub-Divisional Officer, Malkapur, District-Buldhana issued the Caste Certificate in favour of petitioner Chandrakant that he belongs to Thakur Scheduled Tribe. Similarly, on 12-05-2017 the Sub-Divisional Officer, Malkapur issued the Caste Certificate in favour of petitioner Kuldip, who belongs to the ‘*Thakur*’ Scheduled Tribe.

3. By appointment order dated 16-08-1996, petitioner Chandrakant was appointed to the post of Peon in the Scheduled Tribe Category in respondent No.3-College. Accordingly, he submitted his Caste Certificate along with necessary documents to respondent No.2-Management. Respondent No.2-Management vide letter dated 01-11-2012 had forwarded his proposal for verification of the tribe claim to respondent No.1-Scrutiny Committee, which was received by it on 01-4-2013.

4. Petitioner Kuldip is pursuing his studies. Accordingly, he submitted his Caste Certificate along with the necessary documents to respondent No.1-Scrutiny Committee through the college for verification of his caste claim, which was received by the Scrutiny Committee on 03-06-2021.

5. It further appears that petitioner Chandrakant initially had filed Writ Petition No.2359/2013 before this Court prayed for issuing direction to respondent No.1-Scrutiny Committee for expeditiously deciding his claim. This Court on 20-08-2013 disposed of the petition directing respondent No.1-Scrutiny Committee to expedite the matter. Similarly, petitioner Kuldip vide Writ Petition No.4124/2021 approached this Court to seek direction against the respondent No.1-

Scrutiny Committee to dispose of the claim expeditiously. By order dated 22-11-2021, this Court directed the Committee to dispose of the claim of the petitioner expeditiously.

6. The petitioners in support of their claims had submitted sixteen documents before respondent No.1-Scrutiny Committee. The Scrutiny Committee being dissatisfied with the genesis of those documents forwarded the claim to the Vigilance Cell to conduct the enquiry. In pursuance of the same, the Vigilance Cell conducted the enquiry and submitted its reports before the Scrutiny Committee on 13-04-2015 and 18-11-2021. As the petitioners Chandrakant and Kuldip are father and son, the Scrutiny Committee heard both the claims together and disposed of by common order. The Scrutiny Committee after considering the Vigilance Cell Reports, documents placed before it, and the statements of the petitioners, passed the impugned order invalidating the claim of the petitioners that they belong to the '*Thakur*' Scheduled Tribe. Hence, this petition.

7. Mr. A.P. Kalmegh, learned Counsel for the petitioners vehemently submitted that the petitioners in support of their caste claim had produced sixteen documents before the Scrutiny Committee, out of which three documents are from the pre-constitutional era

pertaining to the father, grandfather, of the petitioner Chandrakant. However, the Scrutiny Committee has not considered the same and rejected the claim of the petitioners only on the ground that the inconsistent entries 1977 pertain to petitioner Chandrakant and his sisters were found as ‘Kunbi’ and ‘Maratha’ cast. Based on these entries and affinity tests and the ground of area restrictions, the Scrutiny Committee has rejected the claim of the petitioners. The said order is contrary to the documents placed on record. Therefore, he has urged for setting aside the same.

8. To buttress his submissions, he has relied on the judgment of the Hon’ble Supreme Court in *Priya Pramod Gajbe v. State of Maharashtra and Others*, 2023 SCC OnLine SC 909, the judgments of this Court in *Writ Petition No.5662/2021 (Yash s/o Manik Ingle v. Schedule Tribe Caste Certificate Scrutiny Committee, Amravati)* and *Writ Petition No.5219/2023 (Mangesh Sheshnarayan Gavhankar vs. Schedule Tribe Caste Certificate Scrutiny Committee, Amravati)*.

9. As against above, Ms. K.P. Marpakwar, learned Assistant Government Pleader for respondent No.1-Scrutiny Committee has strenuously argued that the document dated 20-07-1977 of the petitioner Chandrakant denotes that he belongs to the ‘Kunbi’ caste. Also, the petitioners failed to show that they were residents of the area

notified in the Presidential Order. As such, she has submitted that the anomaly concerning the *Kunbi* caste would substantiate that the petitioner does not belong to the '*Thakur*' Scheduled Tribe. Hence, she urged that the committee after applying the affinity test is justified in rejecting the petitioners' claim.

10. We have appreciated the submissions of both parties. Have gone through the order impugned, the documents placed on record, and the judgments relied upon by the learned Counsel for the petitioners.

11. On perusal of the documents on record, it seems that the petitioners in support of their claim have relied upon as many as sixteen documents out of which three documents are from the pre-constitutional era from the years 1927 to 1934 pertain to the father and grandfather of petitioner Chandrakant. In those documents, the caste of their ancestors is mentioned as '*Thakur*'. The reference to the said documents is made in paragraph No.2 of issue No.1 of the impugned order. Neither the Vigilance Cell nor the Scrutiny Committee have disputed those documents or their genuineness. Therefore, there is no reason to discard the entries in those documents. The other documents also denote that the petitioners and their ancestors belong to the '*Thakur*' caste.

12. It further reveals that during the vigilance cell enquiry, they found three documents pertaining to petitioner Chandrakant and his two sisters Ms. Sunanda and Chanda wherein the caste of the petitioner Chandrakant is shown as 'Kunbi' and the caste of his two sisters are shown as 'Maratha'. Those documents are from the years 1976 and 1977 respectively. It is to be noted that the three documents about the father and grandfather of petitioner Chandrakant are prior to the pre-constitutional era. Therefore, those documents have more probative value than the subsequent documents. However, the Scrutiny Committee has not taken into consideration these documents and given undue importance to the documents of the years 1976 and 1977.

13. It is pertinent to note that the Hon'ble Apex Court in the cases of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others* (2023)(2) Mh.L.J. 785 and *Anand v. Committee for Scrutiny and Verification of Tribe Claims and others*, 2011(6) Mh.L.J. 919 has held that "*the oldest documents are greater probative value than the subsequent documents.*" Thus, in view of the dictum laid down in the said authorities, the Scrutiny Committee ought to have considered those documents instead of giving undue importance to the subsequent documents.

14. As per the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976) published in the Gazette, the area restriction is removed in respect of the Thakur caste. Moreover, in view of the dictum laid down in *Jaywant Dilip Pawar vs State of Maharashtra and others*, 2018(5) All MR 975 (S.C.), the question of area restriction does not arise as the same has been removed. Likewise, as per the law laid down in the cases of *Anand and Priya Pramod Gajbe* (cited supra) “*the affinity test cannot be termed as a litmus test.*” Therefore, in view of the dictum laid down in the cases of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*, *Anand*, *Priya Pramod Gajbe*, and *Jaywant Dilip Pawar* (cited supra), it cannot be said that the petitioners have failed to prove the affinity test. Also, the question of area restriction does not arise.

15. Having heard the aforesaid discussions, facts, and law laid down by the Hon’ble Apex Court, it reveals that the petitioners have produced the documents from the years 1927 to 1934 pertaining to his father and grandfather, which speak that their ancestors belonging to ‘*Thakur*’ Scheduled Tribe. The said entry pertains to public documents such as school records and extracts of the birth and death register. These documents from the pre-constitutional era have more probative value than the subsequent documents. So based on the three

subsequent documents of the years 1976 and 1977 about the petitioner Chandrakant and his two sisters would not vitiate the claim of the petitioners or it would not be proper to discard the entries in pre-constitutional documents that they belong to '*Thakur*' Scheduled Tribe. As such, based on the said documents as well as the law laid down by the Hon'ble Apex Court as referred above, in our view, the petitioners have discharged their burden under section 8 of the said Act, consequently, this Court is required to accept that they belong to the '*Thakur*' Scheduled Tribe Caste. That being so, they are entitled to get the validity certificate.

16. In the aforesaid background, it is evident that the impugned order passed by respondent No.1-Scrutiny Committee is contrary to the documents on record as well as the dictum laid down by the Hon'ble Apex Court. Based on the said findings, the impugned order cannot be sustained in the eyes of the law. As a result, the same is liable to be quashed and set aside.

17. In the light of the above discussions, we deem it appropriate to allow the petition. Accordingly, we allow the petition and pass the following order.

- (a) The impugned order dated 26-04-2022 passed by respondent No.1-Scrutiny Committee is hereby quashed and set aside.

- (b) It is hereby declared that the petitioners belong to the ‘**Thakur**’ Scheduled Tribe’.
- (c) Respondent No.1-Scrutiny Committee is directed to issue Validity Certificates in favour of the petitioners that they belong to the ‘Thakur’ Scheduled Tribe, within a period of four weeks from the date of production of a copy of this judgment.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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