



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

**WRIT PETITION No. 6509 OF 2023**

**PETITIONER:** : Ganesh S/o. Maroti Bayaskar,  
Aged about 40 years, Occ. Student,  
R/o. At Post-Rajanda, Tah. Barshitakli  
Dist. Akola

**Vs.**

**RESPONDENTS** : 1 State of Maharashtra,  
through its Secretary, Tribal  
Development Department,  
Mantralaya, Mumbai-400 032.  
2 Scheduled Tribe Certificate  
Scrutiny Committee, Amravati  
Division, Amravati, through its  
Member Secretary, having its  
Office at Sana Building,  
Chaprasipura, Amravati,  
Dist. Amravati.  
3 State Common Entrance Test Cell,  
Maharashtra State, Mumbai,  
Through its Commissioner,  
At 8<sup>th</sup> Floor New Excelsior Building,  
A.K. Nayak Makr, Fort, Mumba-400 001  
(R.No. 3 deleted as per Court's order  
dated 27/09/2023)

Shri G.G. Mishra, Advocate for the petitioner.  
Shri A.M.Joshi, AGP for respondent Nos. 1 & 2.

**CORAM:** AVINASH G. GHAROTE AND  
SMT. M.S. JAWALKAR, JJ.

**RESERVED ON** : 13<sup>th</sup> FEBRUARY, 2024

**PRONOUNCED ON : 28<sup>th</sup> FEBRUARY, 2024**

**JUDGMENT (Per : SMT. M.S. JAWALKAR, J.)**

**Rule.** Rule made returnable forthwith.

2. Heard finally by consent of learned Counsel appearing for the parties.

3. The Petitioner has challenged the order dated 04/07/2023 of invalidation of the Caste claim of the petitioner by the Caste Scrutiny Committee, Amravati. The petitioner claims to be belonging to “Thakur” Scheduled Tribe, which is recognized at Sr. No.44 in the Constitution (Scheduled Tribe) Order, 1950. The petitioner is in need of Caste Validity for education purpose, therefore he himself applied to the Scrutiny Committee on 20/09/2003. It is contended that the petitioner has been conferred upon the caste certificate of ‘Thakur’ Scheduled Tribe issued by Tahsildar and Executive Magistrate, Patur, Dist. Akola dated 31/10/1996. This is the second round of litigation.

4. The Scrutiny Committee invalidated the caste claim of the petitioner vide order dated 13/09/2004 by applying the Affinity Test. The said order was challenged by the petitioner by filing Writ Petition No.4632/2004, which came to be allowed by this Court with direction to respondent No.2 Committee to take a fresh decision as early as possible and any case by 31/05/2010.

5. The Scrutiny Committee handed over the proposal to the Vigilance Cell. On the report of Vigilance Cell, it is found that there is one adverse entry in the caste column of one of the cousin brother of the petitioner. Accordingly, Caste Scrutiny Committee invalidated his caste claim and passed an impugned order without considering the pre-constitutional documents from petitioner's paternal side which clearly demonstrates that he belongs to 'Thakur' Scheduled Tribe. Following documents are produced along with other documents:

Name	Relation	Document	Date of document	Caste
Hari Shivram	Cousin Uncle of the petitioner	School leaving	22/06/1931	Thakur

		Certificate		
Shivram Bhika Thakur	Cousin Grandfather of the petitioner	Birth Entry	31/07/1925	Thakur
Shreeram Shivram	Cousin Uncle of the petitioner	School leaving Certificate	10/08/1929	Thakur
Sivram Bhikaji Thakur	Cousin Grandfather of the petitioner	Birth Entry	15/11/1923	Thakur

6. Learned Assistant Government Pleader supported the decision of the Caste Scrutiny Committee.

7. Heard both the parties. Perused record of Caste Scrutiny Committee produced by learned Assistant Government Pleader. The documents which are relied by petitioner are verified from the record. There is no dispute over family tree placed on record by the petitioner. The oldest document is in respect of Shivram Bhika Thakur, the cousin grandfather of the petitioner whose birth entry is there, wherein he was shown as belonging to "Thakur". As such, another document at page No.153 of record shows that son of Shivram i.e. Shriram having date of birth as 16/11/2023 in his school leaving certificate and shown as belonging to "Thakur" Community. There is school leaving

certificate at page No.150 in respect of Hari Shivram. Date of document is 22/06/1931, he is cousin uncle of the petitioner and is shown belonging to "Thakur" Tribe. All these documents are consistently showing entries of blood relatives from paternal side of petitioner as belonging to "Thakur" Tribe. There is death certificate of deceased Bhivaji i.e. father of petitioner in which it is shown as he belongs to 'Thakur' Tribe.

8. The learned Counsel for petitioner relied on *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and ors. In Civil Appeal Nos.2502/2022*, wherein the Hon'ble Apex Court held that:

*"(b) for the reasons which we have recorded, affinity test cannot 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 caste validity claim; and*

*(c) In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case."*

9. Learned Counsel for petitioner also relied on *Priya Pramod Gajbe Vs. State of Maharashtra and others*, 2023 SCC OnLine SC 909, wherein Hon'ble Apex Court relied on citation in *Anand V. Committee for Scrutiny and Verification of Tribe Claims*, (2012) 1 SCC 113, wherein the Hon'ble Apex Court, held in paragraph No.12 as under:

“22. .... (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, modernization 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, the 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 tribe's 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."*

10. As such, there are pre-independence documents showing tribe of forefather of petitioner as 'Thakur' Tribe. Therefore, there was no reason to discard his claim. Even if, there is entry contrary or some addition to 'Thakur', the oldest entry will prevail over the subsequent entries. So far as affinity test is concerned, in view of the fact that many tribal communities are now migrated to urban areas, as such, they may not have knowledge of the customs, rituals prevalent in their community. However, for the reason

mentioned above, petitioner's claim cannot be denied, specifically when, there is documentary evidence available. Since the oldest undisputed documents produced by the petitioner relates to the year 1923 and subsequent to that, these are other documents having probative value. The Committee was not justified in invalidating the claim of the petitioner applying affinity test and area restriction.

11. The Hon'ble Apex Court in *Jaywant Dilip Pawar Vs. State of Maharashtra and ors., 2018 (5) All MR 975* held that, so far as area restriction of scheduled tribe in State of Maharashtra, 'Thakur' community was deleted after Amendment Act, 1976 was published and all members of 'Thakur' community are to be treated as Scheduled Tribe. Court further held that observation of Scrutiny Committee is wholly irrelevant. Applicants only to establish that they belong to community mentioned at Sr. No.44 of part-9 of second Schedule of Amendment Act, 1976.

12. In the light of the above discussion, the petitioner is entitled for relief prayed for. The petitioner has duly



established that he belongs to 'Thakur' Tribe. Accordingly, following order is passed.

**ORDER**

i) The order dated 04/07/2023 passed by the respondent No.2/ Schedule Tribe Certificate Scrutiny Committee, Amravati, in application No. सआ/अजपतस/अम/GMB/2003 is hereby set aside.

ii) It is declared that the petitioner belongs to 'Thakur' Scheduled Tribe which is entry No.44 in the Constitution (Scheduled Tribes) Order, 1950.

iii) The Schedule Tribe Caste Certificate Verification Committee, Amravati shall issue validity certificate to the petitioner within a period of four weeks from today.

13. Rule is made absolute in above terms. No costs.

(SMT. M.S.JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)

*B.T.Khapekar/R.S. Sahare*