



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

WRIT PETITION NO. 6272/2023

Santosh s/o Pandharinath Ingle
Aged about 48 years,
Occupation : Service,
R/o. Dedobaraja Kastuba Convent,
Gadi Madipura, Taluka – Deulgaon,
District: Buldana.

....PETITIONER

....VERSUS....

1. The Vice-Chairman/Member-Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati.
2. The Manager/President,
Deolgaon Raja Education Society
Deolgaon, District Buldhana.
3. The Headmaster
Deolgaon Raja High School
Deolgaon – Raja- 443204,
District Buldhana.
4. The Education Officer
(Secondary),
Zilla Parishad, Buldhana.

....RESPONDENTS

WITH
WRIT PETITION NO. 6273/2023

Gangadhar s/o Pandharinath Thakur(Ingle)
Aged about 59 yrs, Occ. Service,
R/o Vivekanand Nagar, Lonar,
Tah. Lonar, Distt. Buldana

....PETITIONER

....VERSUS....

1. The Vice-Chairman/Member-Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati.
2. The Headmaster
Shri Shivaji High School, Lonar,
District : Buldana
3. The President,
Shri Shivaji High School, Lonar,
District : Buldana
4. The Education Officer
(Secondary),
Zilla Parishad, Buldhana.

....RESPONDENTS

Ms Preeti D. Rane, Advocate for petitioners.
Shri A.M. Joshi, A.G.P. for respondent Nos. 1 & 4.
Shri M.R. Joharpurkar,, Advocate for respondent No.3. in W.P. No. 6272/ 2023.

CORAM : **ANIL S. KILOR AND**
SMT. M.S. JAWALKAR, JJ.

DATE OF RESERVING THE JUDGMENT: **22/03/2024**
DATE OF PRONOUNCING THE JUDGMENT : **23/04/2024**

JUDGMENT (PER: SMT. M.S. JAWALKAR, J.)

Rule. Rule made returnable forthwith.

2. Heard finally by the consent of learned Counsel

appearing for the parties at the stage of admission.

3. Petitioners in both the petitions are real brothers and claiming that they belonging to 'Thakur' Scheduled Tribe. Both the petitioners are came to be appointed as 'Peon'. Petitioners forwarded their proposal for caste verification along with necessary documents. There was vigilance enquiry on 13/03/2006. Petitioners submitted reply to the vigilance report. The Scrutiny Committee earlier invalidated the caste claim of the petitioners on 28/08/2021, on the ground of documents, affinity and area restriction. On 21/09/2021, in pursuance to the impugned order, respondent-employer terminated service of the petitioner Santosh. Therefore, petitioners filed Writ Petition Nos. 4281/2021 and 4282/2021. This Court set aside the impugned order and termination order. Matter was remanded back to the Scrutiny Committee for reconsideration. Respondent Employer was directed to reinstate petitioner in the service with continuity. The Caste Scrutiny Committee after remand again invalidated the caste claim of the petitioner on the ground of documentary

evidence, affinity and area restriction. In the present, petition order dated 11/09/2023 passed by the Caste Scrutiny Committee, Amravati is under challenge.

4. It is the contention of the petitioners that in spite of various old documents showing the petitioner's forefather belonging to 'Thakur' Tribe, the Caste Scrutiny Committee for erroneous reasons discarded the claim of the petitioner.

5. Learned Counsel relied on various judgments in support of her contention that the Caste Scrutiny Committee failed to appreciate that in absence of any scientific material available with regard to the traits/features of the Scheduled Tribe 'Thakur', the Scrutiny Committee was wholly unjustified in giving much weightage to the affinity part. It has not considered the guidelines laid down in *Madhuri Patis's* case. The Scrutiny Committee failed to give due weightage to the pre-constitutional documents which are having greatest probative value in the eye of law.

6. Learned counsel for the petitioners relied on following citations -

1. Writ Petition No. 7320/2023, Ganesh Shridhar More and another vs Vice Chairman Member-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Yavatmal.

2. Ashlesha Dattatray Suryawanshi and another Vs. Vice-Chairman/Member-Secretary Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati and others, 2024(2) Mh.L.J. 194.

3. Jayant Dilip Pawar Vs. State of Maharashtra 2018 All MR 975 SC.

4. Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others, 2011(6) Mh.L.J. 919.

5. Maharashtra Adiwasi Thakur Jamat Sanrakshan Samiti Vs. State of Maharashtra and others, (2023(2) Mh.L.J. 785)

6. Apoorva d/o. Vinay Nichale Vs Divisional Caste Certificate Scrutiny Committee and others, In WP No. 1504/2010.

7. On the contrary, Learned Assistant Government Pleader supported the order passed by Caste Scrutiny Committee and prayed for the dismissal of the present petition.

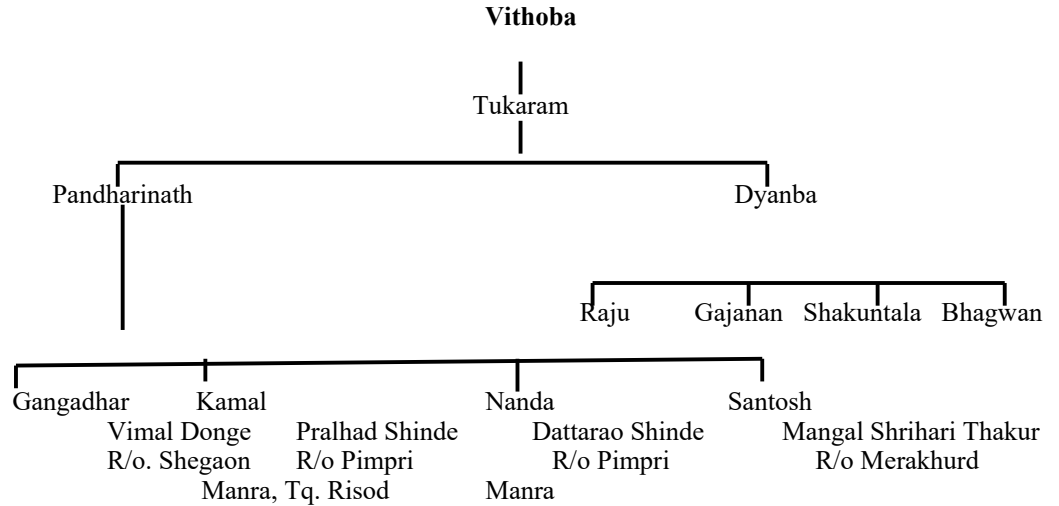
8. We have heard both the parties at length. Perused record and proceeding of the Scrutiny Committee produced by learned Assistant Government Pleader with the assistance of learned AGP.

9. The petitioners produced pre-constitutional documents on record which are as follows :

Name	Relation	Document	Date of document	Caste
Pandhari Tukaram	Father of petitioners	School leaving certificate	Date of Birth 01/07/1929, Date of admission 30/06/1937, Date of leaving school 14/06/1941	Thakur
Dyanba Tukaram	Uncle of petitioners	Extract of Kotwal book	25/05/1944	Thakur
Dyanba Tukaram	Uncle of petitioners	School leaving certificate	Date of Birth 25/05/1944, Date of admission 10/04/1952, Date of leaving school 11/12/1957	Thakur
Tukaram Thakur	Grandfather of petitioners	Extract of birth and death register	18/11/1927	Thakur
Tukaram Thakur	Grandfather of petitioners	Extract of birth and death register	01/02/1931	Thakur

10. The genealogy tree is produced on record which is not disputed by the Scrutiny committee.

GENEALOGY TREE



11. The petitioners submitted documents including pre-independence document. Apart from his caste certificate and school leaving certificate, he placed on record school leaving certificate of his father namely Pandhari Tukaram. The said documents are of 1929, wherein, the date of birth of petitioner's father is shown as 01/07/1929. There is school leaving certificate in respect of Dyanba Tukaram uncle of petitioner showing his date of birth as 25/05/1944 and shown as belonging to 'Thakur'. There is also extract of 'Dakhal Kharij' register, wherein, it is mentioned that Pandhari Tukaram, resident of Shelgaon whereas, date of birth Pandhari Tukaram is shown as 01/07/1929 and of Dyanba

Tukaram's Date of birth is shown as 25/05/1944 and caste shown as 'Thakur'. There is one extract dated 18/11/1927, wherein, it is shown that Tukaram Thakur gave birth to one male child. There is extract of birth of son namely Datta born to Tukaram Thakur dated 01/02/1931. There is no dispute that these documents are in existence showing grand father, great grandfather as belonging to 'Thakur'.

12. In earlier order in Writ Petition No. 4281/1921, of this Court "it was observed by the Court that, though petitioner heavily relied upon the documents dated 30/06/1937 and 25/05/1944, the Scrutiny Committee has not recorded any finding whatsoever on these documents. The said documents have been referred to in the report of the vigilance cell and since the petitioners seek to rely upon the same, it was necessary for the Scrutiny Committee to have consider the said aspect. It is also found that the aspect of area restriction cannot be given such importance so as to invalidate the claim on that count. With the removal of the area restriction in the year 1976, the documentary evidence along

with affinity test ought to be the primary basis for adjudicating such claim.

13. Supreme Court in it's recent decision in *Maharashtra Adiwasi Thakur Jamat Sanrakshan Samiti (Supra)* has held that the affinity test cannot be treated to be the litmus test, while considering such claim and relevance of pre constitutional documents has been reiterated. In spite of remanding the matter back to the Scrutiny Committee, the Scrutiny Committee instead of considering the old documents pertaining to year 1968, 1973, relied on the remark by vigilance cell that in the admit cancellation register 'Maratha' is scored out and 'Thakur' is mentioned in the documents dated 02/07/1968 and 7/03/1973. It is observed by Scrutiny Committee that the documents at Sr.No. 2 to 12, 23 to 27 and 30, 32 and 33 are documents in relation with the blood relatives of the petitioner and there is mention of caste/tribe as 'Thakur'. However, even though these 'Thakur' entries are there, it does not make it clear whether it is 'Thakur' belonging to Scheduled Tribe or 'Thakur' not belonging to

Scheduled Tribe. This finding while rejecting claim of the petitioner is totally erroneous and against the law established by the Court. It is time and again directed by the superior Courts one cannot add or subtract to the entry of the caste in the scheduled list.

14. As such, the Caste Scrutiny Committee has no authority to interpret the entry 'Thakur' in the documents of pre independence era. It is very surprising that the Caste Scrutiny Committee drawn imaginary inferences that the entries scoring out 'Maratha' and substituted by 'Thakur' cannot be carried out with legal process. There is no substance for such imagination when record used to be in the custody of school. Moreover, these documents are post independence era, as such, they are not having any probative value in comparison to the old entries as referred earlier showing entry 'Thakur'. The Caste Scrutiny Committee without any basis discarded old documents showing forefathers of the petitioner's belonging to 'Thakur'.

15. Learned Counsel for the petitioner relied on ***Maharashtra Adiwasi Thakur Jamat Sanrakshan Samiti*** (*supra*), wherein it is held in para 20 as under :

*“20. It is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the case to Vigilance Cell. One of the tests is as laid down in the case of **Kumari Madhuri Patil**. It lays down that the documents of the pre-Constitution period showing the caste of the applicant and their ancestors have got the highest probative value. For example, if an applicant is able to 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.”*

16. Learned Counsel for petitioner also relied on the same judgment in support of his contention that once old document indicating the forefather's of the petitioners belonging to 'Thakur' Tribe, the affinity test loses its significance.

25. Now, we come to the controversy regarding the affinity test. In clause (5) of Paragraph 13 of the decision in the case of Kumari Madhuri Patil, it is held that in the case of Scheduled Tribes, the Vigilance Cell will submit a report as regards peculiar anthropological and

ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, methods of burial of dead bodies etc. in respect of the particular caste or tribe. Such particulars ascertained by the Vigilance Cell in respect of a particular Scheduled Tribe are very relevant for the conduct of the affinity test. 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. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the applicant. But in a given case, even the parents may be unaware for the reason that for several years they have been staying in bigger urban areas. On the other hand, a person may not belong to the particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, Shri Shekhar Naphade, the learned senior counsel, is right when he submitted that the affinity test cannot be applied as a litmus test. We may again note here 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."

17. In *Jayant Dilip Pawar (Supra)*, Hon'ble Apex Court held that in view of fact that "Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.

108/1976) was published in the Gazette on 20/09/1976, the area restriction of Scheduled Tribes in the State Maharashtra for the 'Thakur' community has been deleted and all members of Thakur, Thakar, Ka Thakur, Ka Thakar. Ma Thakur and Ma Thakar are community are treated to be Scheduled Tribes. The Caste Scrutiny Committee had negated the claim of the petitioners on the ground that the relatives of the appellant were not residents of areas mentioned in the presidential order 1956 and further they were not able to give any details of customs and traditions being observed by the said community".

18. The Hon'ble Apex Court held that it is wholly irrelevant, the appellants have only to establish that they belong to community mentioned at Sr.No. 44 of Part IX of 2nd Schedule of Act No. 108/1976.

19. Learned Counsel for the petitioner further relied on *Ashlesha Dattatray Suryawanshi (Supra)*, in support of her contention that once validity is granted by the order of High Court or Supreme Court to the relatives of applicant,

Committee ought to grant validity to the applicant. This

Court held in para 17 in *Ashlesha (Supra)*, as under:

“17. 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 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.”

20. In view of *Apoorva d/o. Vinay Nichale (supra)*, the validity certificate ought to have been granted in favour of the petitioner. In para 7 of the said judgment, it is held as under:-

“We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the committee may grant

such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it."

It is also held that,

"the matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore, where a committee has given a finding about the validity of the caste of a candidate, another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it."

21. Learned Counsel for petitioner further placed reliance on judgment of this Court in *Writ Petition No. 7320/2023, Ganesh Shridhar More and another vs Vice Chairman Member-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Yavatmal*, wherein, this Court relied on the *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*.

22. As such, it appears that Caste Scrutiny Committee has not given any consideration to the pre-independence document having highest provative value and on the basis of erroneous assumptions and presumptions passed the order. There are consistent entries of 'Thakur' in all the documents. There are no reasons given while rejecting document of pre-independence era. The petitioners on the basis of pre-independence document duly established that petitioners belong to 'Thakur' Scheduled Tribe. Accordingly, we proceed to pass the following order :

ORDER

- (i) Both the Writ Petitions are allowed.
- (ii) The order dated 11/09/2023, passed by respondent No.1, The Vice-Chairman/Mamber-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati, in 1) प्रकरण क्र. सआ/अजप्रतस/अम/5-ST/2003/10016, 2) प्रकरण क्र. सआ/अजप्रतस/अम/DD/TCSC/AMT/GPT/343/13, is hereby quashed and set aside.

(iii) It is declared that petitioners in Writ Petition No. 6272/2023 and Writ Petition No 6273/2023, belongs to 'Thakur' Scheduled Tribe at Sr. No. 44 in the list of the Constitution (Scheduled Castes and Scheduled Tribes) Order, 1950.

(iv) The District Scheduled Tribe Caste Certificate Committee, Amravati, shall issue validity certificate to the petitioners as belonging to 'Thakur' Scheduled Tribe, within a period of four weeks from the date of receipt of the order.

(v) Till the certificates are issued, services of the petitioners are protected.

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

(Judge)

(Judge)

Jayashree