



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

WRIT PETITION NO.2537 OF 2024

Gayatri Ganesh Bayaskar -Vs-Schedule Tribe Caste Certificate and anr.

Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.A.P Kalmegh, counsel for the petitioner/s.  
Mr. D.P.Thakare, Addl.G.P for respondent No.1.

**CORAM: NITIN W. SAMBRE AND  
MRS.VRUSHALI V. JOSHI, JJ.**  
**DATE : 28<sup>th</sup> NOVEMBER, 2024.**

1. Heard.

2. The challenge is to the order impugned dated 29/12/2023 passed by the respondent-Committee, whereby the claim of the petitioner of belonging to 'Thakur Scheduled Tribe' came to be rejected.

3. The petitioner in support of the Tribe claim, has produced documents in relation to his grandfather and great grandfather of pre-independence era. Such tribe entries of pre-independence era are discarded.

4. The respondent Committee so as to reject the Tribe Claim of the petitioner has recorded the following

reasons:-

(a) The cousin brother of the petitioner namely Prakash suffered invalidation vide order 28.12.2004 which was not questioned and as such the said concluding evidence is formed to be the basis for rejection.

(b) The tribe claim of the father of the petitioner Ganesh was negated on 15/07/2005 and said order was also not questioned.

5. The Committee has further recorded that the petitioner does not belong to 'Thakur Scheduled Tribe' as the affinity test is not satisfied. So also, considering the area restrictions, the petitioner does not deserve to be granted Scheduled Tribe status.

6. Drawing support from the declaration order passed by this Court in **Writ Petition No.1206 of 2024 (Pratik Prakash Bayaskar Vs. The Vice-Chairman/Member) decided on 16/08/2024**, it is urged by the learned counsel appearing for the petitioner that even if the Tribe Claim of cousin brother Prakash was invalidated on 28/12/2004, son of Prakash is granted declaration by this Court as belonging to Scheduled Tribe

in the aforesaid judgment. As such, his contentions are the order of invalidation issued in favour of Prakash even though was not questioned by him will not come in his way for seeking declaration of Scheduled Tribe status.

7. His further contentions are father Ganesh though suffered invalidation on 13/10/2017, since he has expired, the said order was not questioned. According to Shri. Kalmegh the learned counsel appearing for the petitioner, pre-constitutional era entries in relation to great grandfather and grandfather reflected in the chart considered by the Committee would demonstrate that the petitioner belongs to Scheduled Tribe and the claim is based on the documentary evidence.

8. As against above, the Additional Government Pleader would urge that once the orders of invalidation in relation to Prakash and Ganesh are not questioned, the Committee was justified in considering the said evidence against the petitioner. According to the learned Additional Government Pleader, it is necessary for the petitioner to satisfy affinity test which he has failed to

satisfy. That being so, the order impugned is quite justified.

9. We have considered the rival submissions.

10. The record depicts that the pre-constitutional era entries in relation to great grandfather Chahadu @ Shrawan of 06/12/1932, cousin grandfather Ganpat of 21/09/1932, grandfather Sakharam of 28/04/1942 depict the tribe entry of 'Thakur'.

11. These entries are not disputed in the order of the Committee.

12. In view of the aforesaid entries, this Court has granted declaration in favour of Pratik son of Prakash on 16/08/2024 in Writ Petition No.1206 of 2024 as that of belonging to Thakur Scheduled Tribe.

13. Once, there is a declaration in favour of cousin brother of the petitioner, namely, Pratik by this Court of belonging to 'Thakur Scheduled Tribe', in our opinion, such declaration having been based on the documentary evidence, which is also produced by the petitioner on

record, the case of the petitioner deserves to be treated similarly.

14. Merely because father of the petitioner Ganesh or his uncle Prakash has chosen not to question the Committee's order of invalidation will by itself cannot be termed as an impediment by itself in the matter of claiming Scheduled Tribe status. The father of the petitioner is informed to have been expired which was the cause for not questioning the order of the Committee.

15. This Court is required to be sensitive to the observations made by the Apex Court in the matter of *Maharashtra Adiwasī Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others*, (AIR 2023 SC 1657) which reads thus:-

“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<sup>1</sup>. It lays down that the documents of the preConstitution 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 preConstitution 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. In this background, it has to be held that once the petitioner has produced pre-constitutional era documents to justify that he belongs to ‘Thakur Scheduled Tribe’, such documentary evidence will have more probative value and it has to be inferred that the petitioner has discharged the burden contemplated under Section 8 of the Maharashtra Scheduled Caste, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 in the matter of proving the claim for issuance of validity.

17. Apart from above, Apex Court in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* supra has already dealt with the sanctity of the affinity test in an eventuality, where the candidate has produced pre-constitutional era documents.

18. As such, based upon the affinity test, it cannot be said that the Committee in isolation can be the author

of order of rejection thereby discarding the valuable evidence of pre-constitutional era. That being so, in our opinion, the order impugned dated 29/12/2023 is not sustainable and is liable to be quashed and set aside. The petition accordingly stands allowed.

19. The order impugned is hereby quashed and set aside. The respondent Committee is directed to issue Caste Validity Certificate to the petitioner within a period of four weeks from the receipt of copy of this order.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)