



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

Writ Petition No.2728/2022

1. Seema d/o Vinayak Shankhpal,  
Age 35 years, Occ.-Service,  
Jalamb Road, Vitthal Nagar, Khamgaon,  
Tq. Khamgaon, Dist. Buldhana.
2. Jyoti d/o Vinayak Shankhpal,  
Age 41 years, Occ. Service,  
R/o. As above.
3. Prashant s/o Vinayak Shankhpal,  
Age 47 years, Occ.-Medical Practitioner,  
R/o. As above.

.... Petitioners.

Versus

1. The State of Maharashtra  
Department of Tribal Development, Mantralaya, Mumbai-32,  
Through its secretary.
2. The Scheduled Tribe Certificate Scrutiny Committee,  
Amravati Division, near Government Guest House, Amravati  
Through it Member Secretary.
3. The Desk Officer,  
Department of Co-operation Marketing and Textiles,  
Maharashtra State, Mantralaya, Mumbai-32. .... Respondents.

Mr. A.P. Chaware, Advocate for the petitioners.  
Mrs. N.P. Mehta, Addl.GP for the respondents.

**CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ**  
**DATE : 18-03-2024.**

**J u d g m e n t** (Per Abhay J Mantri, J.)

**Rule.** Rule is made returnable forthwith.

2. Heard finally with the consent of learned Counsel for the parties.

3. The challenge raised in this petition is to the order dated 31-03-2022, passed by respondent no-2 Member-Secretary, the Scheduled Tribe Certificate Scrutiny Committee, Amravati (for short – *the 'Scrutiny Committee'*), wherein the tribe claim of the petitioners as that of they belong to '*Thakur*' Scheduled Tribe category came to be rejected.

4. Petitioner no.1 is in private service, petitioner no.2 appointed as a Deputy Registrar of Co-operative Societies and petitioner no.3 is carrying out the profession of Medical Practitioner. They are real brother and sisters.

5. The petitioners obtained caste certificates on 18-12-1996, 09-01-1998, and 07-07-1989 respectively from the District Magistrate Jalgaon (Jamod), as they belong to the '*Thakur*' Scheduled Tribe. A proposal of petitioner no.1 was referred to respondent no.2-Scrutiny Committee for verification of tribe claim as she belongs to '*Thakur*' Scheduled Tribe for educational purposes on 28-01-2003. So far as petitioner no.2 is concerned, a proposal for verification of his tribe claim was referred to the Scrutiny Committee on 15-06-2010 and a proposal for verification of the tribe claim of petitioner no.3 was referred to the Scrutiny Committee for educational purposes on 24-08-1992, which was

earlier rejected by the Committee by an order dated 10-06-1993. Thereafter, by an order dated 29-07-2013, this Court in Writ Petition No.1300/1994 quashed and set aside the order passed by the Committee as well as Appellate Authority and remanded the matter back to the Committee for fresh consideration,

6. It is contended that the petitioners have submitted 59 documents in support of their claim, out of them 07 documents are of the pre-Constitutional era which denotes their caste as '*Thakur*' Scheduled Tribe. However, the Scrutiny Committee without considering those documents and relying on one document of the year 1945 inferred that the caste of the grandfather of the petitioners as '*Bhat Thakur*' rejected their claim. As such, this petition.

7. Learned Advocate for the petitioners strenuously argued that the petitioners in support of their claim have filed as many as 59 documents and out of them 07 documents are pre-Constitutional era from the year 1932 onward. The Committee has not considered the same and rejected the claim without assigning any cogent reason. Hence, the said order is liable to be set aside. In support of their submissions, the petitioners have relied upon the Authorities as mentioned in the petition and thus urged for allowing the petition.

8. *Per contra*, learned Additional Government Pleader vehemently submitted that though the petitioners have submitted

11 pre-Constitutional era documents, however, these documents are only to be considered after verification by the Vigilance Cell. The finding of the Vigilance Cell is adverse to the claim of the petitioners and therefore those documents are not helpful for the petitioners in support of their claim. Learned Additional Government Pleader further submitted that one entry about the birth register in support of the grandfather of the petitioners denotes the caste of the grandfather of the petitioners as 'Bhat Thakur'. So also she argued that the petitioners have failed to prove the affinity test and failed to discharge the burden cast upon them and therefore she urged for dismissal of the petition.

9. We have appreciated the submissions of both the learned Counsel. Perused the impugned order and record. It emerges that the petitioners in support of their claim have produced 07 documents from the pre-Constitutional era between the period from 1930 to 1945 pertaining to their grandfather and great-grandfather, wherein caste of them is shown as '*Thakur*' Scheduled Tribe. The other documents have also denoted the caste of the petitioners as '*Thakur*' except one document dated 22-02-1945 pertains to their grandfather.

10. It is pertinent to note that neither the Vigilance Cell nor the Scrutiny Committee have disputed the said documents or their genuineness. Therefore, there is no reason to discard those documents while considering the claim of the petitioners.

11. The petitioners have also produced validity certificates of one Santosh Devidas Thakur, Ramesh, and Rajesh Shankhpal (Thakur) in support of their claim. Also, they have produced the validity certificate of one Rajendra Gathe who is the maternal uncle of the petitioners.

12. In the aforesaid background, having regard to the pre-Constitutional entries of the '*Thakur*' about the blood relation of the petitioners, it is claimed that the petitioner's claim for validity ought not to have been rejected when the relationship with the aforesaid members is not in dispute. *Besides*, in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs State of Maharashtra and others*, reported in *2023(2) Mh. L.J. 785*, the Hon'ble Apex Court in paragraph 20, held as under :-

*"20. It is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the case to the 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 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."*

13. Similarly, in the case of *Jaywant Dilip Pawar vs State of Maharashtra and others*, reported in *2018(5) All MR 975 (S.C.)*, the Hon'ble Apex Court has held that the question of area restriction

does not arise as the same has been removed. *Likewise*, the question of affinity test is concerned in the case of *Anand vs Committee for Scrutiny and Verification of Tribe Claims and others*, reported in *2011(6) Mh.L.J. 919*, the Hon'ble Apex Court held that “*the affinity test cannot be termed as a litmus test.*”

14. Having considered the aforesaid facts and law laid down by the Hon'ble Apex Court, it reveals that the above-referred documentary entries of the year 1932 onward speak of ancestors of the petitioners, who belonged to the '*Thakur*' community. The said entries pertain to the various public documents such as School Records and Register of Birth and Death. Documents from the pre-constitutional era have more probative value. Therefore, based on one document of the year 1945, which shows that the grandfather of the petitioners belongs to the 'Bhat Thakur' community is not sufficient to discard the entries in other pre-Constitutional documents or cannot vitiate the claim of the petitioners as they belong to '*Thakur*' Scheduled Tribe. On the contrary, the law laid down in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra), *Anand* (supra), and *Jaywant Pawar* (supra) is applicable in the case in hand.

15. In the aforesaid backdrop, it seems that the claim of the petitioners was rejected solely based on one document of the year 1945 and an affinity test, particularly; when the petitioners have furnished the documents and details about their caste/tribe. The

documents of the pre-constitutional entries have greater probative value than the subsequent documents, which denote the cast of the ancestors of petitioners, that they belong to the '*Thakur*' Scheduled Tribe. Thus, in our view, the Committee has erred in rejecting the prayer of the petitioners.

16. In the light of above discussion, we deem it appropriate to allow the present petition and pass the following order :-

- (a) The impugned order dated 31-03-2022 passed by respondent no. 2 Scrutiny Committee is hereby quashed and set aside.
- (b) It is declared that the petitioners have proved that they belong to the '*Thakur*' Scheduled Tribe.
- (c) Within a period of four weeks from the receipt of a copy of this judgment respondent no. 2 - the Scrutiny Committee shall issue a Caste Validity Certificate in favour of the petitioners.
- (d) As a sequel of above, the respondent no.3 is directed not to take any coercive action against petitioner no.2 based on order dated 31-03-2022 passed by the Committee.

17. Rule is made absolute in the above terms with no order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J)