



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

**WRIT PETITION NO. 5631 OF 2023**

1. Vivek S/o. Santosh Donge,  
Aged about 18 yrs, Occ. Student,

2. Gauri D/o. Sahadeo Donge,  
Aged about 18 yrs, Occ. Student,

Both R/o. Gopalkhed, Post -  
Gandhigram, Tah. & Distt. Akola

....**PETITIONERS**

**...VERSUS...**

1. The Vice-Chairman/Member-  
Secretary Scheduled Tribe Caste  
Certificate Scrutiny Committee,  
Chaprashipura, Amravati.

2. The Principal,  
Shri Sant Gajanan Maharaj College  
of Engineering,  
Khamgaon Road, Shegaon-444203

3. The Commissioner,  
State Common Entrance Test Cell,  
Maharashtra State, 8<sup>th</sup> Floor, New  
Excelsior, A.K. Nayak Marg, Fort,  
Mumbai - 400001.

....**RESPONDENTS**

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Ms. Preeti Rane, Advocate for petitioners.  
Ms. Deepali Sapkal, AGP for respondent/State.  
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**CORAM : VINAY JOSHI AND SMT. M.S. JAWALKAR, JJ..**

**DATE : 19/07/2024**

**JUDGMENT (PER : SHRI VINAY JOSHI, J)**

Heard.

2. **Rule.** Rule made returnable forthwith.

3. Heard finally by consent of learned counsel appearing for the parties.

4. The petitioners who are brother and cousin sister, have impugned herein the order dated 21/08/2023 passed by the respondent no. 1 – The Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati, (for short, ‘Scrutiny Committee’), whereby the petitioners’ claim for the ‘Thakur’ Scheduled Tribe, which is enlisted at Sr. No. 44 in the Constitution (Scheduled Tribes) Order, 1950, has been rejected.

5. The learned counsel appearing for the petitioners took us through the impugned order to contend that, despite

producing several pre-Constitutional documents, the Scrutiny Committee has rejected the claim of the petitioners only on account of failure in affinity test. Our attention has been invited to the Vigilance Report, which has not doubted the correctness of pre-Constitutional documents. The Vigilance Cell has referred two documents bearing entry as 'Hindu' Thakur'. However, those documents have not been submitted. Moreover, these documents are stated to be of the year 2011. The petitioners have also produced one of the documents dated 30/06/2011, which does not bear the caste as 'Hindu' Thakur but the caste only 'Thakur' is mentioned.

6. The petitioner has produced the following pre-Constitutional documents, which are referred by the Committee.

Sr. No. (As per impugned order)	Name	Relation	Document	Date of document	Caste	Page Nos. of Paper Book
6	Tulshiram Ramchandra Donge	Grandfather of petitioner nos. 1 and 2.	School Leaving Certificate	24/08/1946	Thakur	41

7	Entry regarding Ramchandra Madhoji gave birth to one son	Great Grandfather	Birth Entry	28/11/1938	Thakur	43
13	Tulshiram Ramchan	Grandfather of petitioner nos. 1 and 2.	Extract of admission register of students.	24/08/1946	Thakur	42
14	Entry regarding Ramchandra Madhoji gave birth to one son	Great Grandfather	Birth Entry	09/1933	Thakur	44
15	Entry regarding Ramchandra Madhoji gave birth to one son	Great Grandfather	Birth Entry	06/1944	Thakur	46
16	Entry regarding Ramchandra Madhoji gave birth to one daughter (Panchfula)	Great Grandfather	Birth Entry	07/1941	Thakur	45

7. We have examined all the above documents pertaining to the petitioners' father/grandfather and great-grandfather, which bears a 'Thakur' entry. All these documents are pre-Constitutional, of which, the genuineness

has not been doubted. In true sense, the Vigilance has not procured any adverse documents particularly of pre-Constitutional era.

8. It has been observed by the Supreme Court in the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti .V/s. The State of Maharashtra and others - 2023 [2] Mh.L.J. 785* that,

*“(a) Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.*

*(b).....*

*(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. As regards to the affinity test is concerned, in the case of **Anand .vrs. Committee for Scrutiny and Verification of Tribe Claim and others - 2011[6] Mh.L.J. 919**, it is held as under :

“18. .. (i)

.. (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, modernisation 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, 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 tribes' 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. In the result, it is apparent that, despite several pre-Constitutional undisputed documents, the Scrutiny Committee has merely rejected the caste claim on the basis of failure in affinity test.

11. As observed above, the affinity test shall be used as a support and shall not be decisive one. In the

circumstances, we are of the view that, the Scrutiny Committee erred in rejecting the petitioners' claim for 'Thakur' Scheduled Tribe. In view of that, the petition deserves to be allowed, hence, the following order:-

**ORDER**

- 1) Writ Petition is allowed.
- 2) The order dated 21/08/2023 passed by the respondent no. 1 -The Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati is hereby quashed and set aside.
- 3) It is declared that the petitioners namely Vivek S/o. Santosh Donge and Gauri D/o. Sahadeo Donge belongs to 'Thakur' Scheduled Tribes, which is Entry No. 44 in the Constitution (Scheduled Tribes) Order 1950.
- 4) The Scrutiny Committee shall issue validity certificates to both the petitioners within a period of four weeks from the date of communication of this order.

- 5) In the meantime, the petitioners may act on this order for all purposes to establish that they are declared to be belonging to 'Thakur' Scheduled Tribe.
- 6) The respondent no. 2 - The Principal, Shri Sant Gajanan Maharaj College of Engineering, Shegaon shall act upon this order till the validity certificates have been submitted by the petitioners.
- 7) Rule is made absolute in above terms. No costs.

Steno copy to this order shall be supplied to the parties.

**(Judge)**

**(Judge)**

*B.T.Khapekar*