

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7667 OF 2020

Rushikesh Bharat Thakur
Age – 19 years, Occu.: Education,
R/o. 51-B. Sadashiv Nagar, Shahada
Tq. Shahada, Dist. Nandurbar.

... Petitioner.

Versus

1. Union of India,
Ministry of Education
Through its Secretary
2. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32
Through its Secretary
3. Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar,
Through its Member Secretary.
4. Director of Medical Education & Research,
CET Cell, Opp. Government Dental
College & Hospital Building, St. George's
Hospital Compound, Near CST Railway
Station, Mumbai – 400 001.
5. Commissioner,
State CET Cell Maharashtra
8th floor, New Excelsior Building
CET Cell (DMER), Opp. Govt. Dental
College, St. George's Hospital Campus
Fort, Mumbai – 400 001.

... Respondents.

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Mr. Sushant C. Yeramwar, Advocate for the Petitioner.
Mr. A.G. Talhar, Assistant Solicitor General, for Respondent No.1.
Mr. A.R. Kale, A.G.P. for Respondent Nos. 2 to 4.
Mr. M.D. Narwadkar, Advocate for Respondent No.5

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**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

Closed for Judgment on : 08.12.2020

Judgment Pronounced on : 16.12.2020

JUDGMENT (PER SHRIKANT D. KULKARNI, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of learned counsel of both the sides, heard finally at admission stage.
2. The petitioner by this petition filed under Article 226 of the Constitution of India prays for quashing and setting aside the impugned order dated 20.10.2020 passed by respondent No.3 / Scheduled Tribe Certificate Scrutiny Committee, Nandurbar (hereinafter referred to as the “committee”) whereby the caste claim of the petitioner came to be invalidated.
3. The petitioner claims to belong to ‘Thakur’ Scheduled Tribe. He has received tribe certificate from the competent authority. While prosecuting studies, tribe certificate of the petitioner was referred by the college to respondent No. 3 / committee for validation. The petitioner submitted cogent evidence in the form of the old record of grandfather, real brother of the grandfather and uncle prior to 1950 from the parental side. The vigilance was conducted and the petitioner

has submitted his reply in response to the notice issued by the committee. It is contended by the petitioner that the committee has invalidated the tribe claim of the petitioner without considering the old record. The findings recorded by the committee are erroneous. The old record clearly establishes the fact that the caste of the petitioner is recorded as 'Thakur' in respect of his blood relatives from the parental side.

4. Heard Mr. Sushant Yeramwar, learned counsel for the petitioner,. Mr. A.G. Talhar, the learned A.S.G. for respondent No.1, Mr. A.R. Kale, the learned A.G.P. for respondent Nos. 2 to 4 and Mr. M.D. Narwadkar, the learned counsel for respondent No. 5.

5. We have perused the file / proceeding called from the committee.

6. Mr. Yeramwar, the learned counsel for the petitioner vehemently submitted that the impugned order is illegal, improper and contrary to the various judgments of the Hon'ble Supreme Court and the Bombay High Court. The school admission record pertaining to the real brother of grandfather and father shows the cast as 'Thakur'. These being old record prior to Presidential Order are having more probative value. The committee has not considered the same aspect. He submitted that

area restriction has been removed by Parliament Act No.108 of 1976 and 'Thakur' are recognised as Scheduled Tribe throughout the State. He submitted that the affinity test is not a litmus test. He submitted that the findings recorded by the committee are perverse. The impugned order passed by the committee needs to be quashed and set aside and validity certificate needs to be issued in favour of petitioner holding that he belongs to 'Thakur' Scheduled Tribe.

7. The learned A.G.P. Mr. Kale, invited our attention to the impugned order passed by the committee and submitted that the committee has taken into consideration all the relevant documents and papers. The committee has also considered vigilance report and the report submitted by the Research officer. After careful examination of the documentary evidence, vigilance report and the report submitted by the Research officer, the committee found that the petitioner has failed to prove that he belongs to 'Thakur' Scheduled Tribe. The committee has not committed any legal error while arriving at such conclusion. He submitted that there is no merit in the petition.

8. Mr. A.G.Talhar, the learned A.S.G. for respondent No.1 and Mr. M.D. Narwadkar the learned counsel for respondent No.2 echoed the argument advanced by Mr. Kale, the learned A.G.P. They submitted

that the petitioner has failed to prove that he belongs to 'Thakur' Scheduled Tribe.

9. We have considered the arguments advanced by the learned counsel for both the sides.

10. The petitioner has cleared NEET (UG) 2020 and MHT-CET 2020 as well and exploring possibility to take admission in Health Science courses.

11. On studying the impugned order passed by the committee, it is found that the committee has invalidated the claim of the petitioner on the following three points :

(i) The petitioner has failed to prove his tribe claim on the basis of documentary evidence.

(ii) The petitioner has not produced any tribe validity certificate of blood relatives.

(iii) The petitioner has failed to prove his affinity test.

12. On making scrutiny of the original file / proceeding of the committee, it is found that the petitioner's father has produced genealogy and details of his family by way of statement during the vigilance enquiry. The petitioner has produced his school record, school record of his father, wherein their caste has been recorded as

'Hindu Thakur'. Dashrath Hari lalsing happens to be the grandfather of the petitioner. As per the school record of petitioner's grandfather Dashrath Hari Lalsing, his caste has been shown as 'Thakur' and birth date as 04.10.1919. The documentary evidence pertaining to petitioners grandfather, wherein the caste 'Thakur' has been recorded and birth date as 04.10.1919, it has probative value in the eyes of law. The said document is of pre-independence era and before issuance of Presidential Order. Ramdas Hari Thakur who happens to be the cousin grandfather of the petitioner, his school record shows the entry of 'Thakur' in the caste and the said document is of dated 03.06.1947. Another cousin grandfather of the petitioner whose school record dated 20.10.1951, wherein the caste has been shown as 'Hindu Thakur'.

13. Having regard to the above documentary evidence, it is clear that the petitioner has produced two important documents of the pre-independence era and before issuance of Presidential Order. There are no contra entries found in the school record from the parental side of the petitioner. The vigilance officer has not collected any contrary evidence to disbelieve the documentary evidence produced by the petitioner. There is no justifiable reason to discard the documents of the pre-independence era in absence of any contra evidence. The

documentary evidence of the pre-independence era and before issuance of Presidential Order has probative value and it needs to be believed unless contrary entries are shown.

14. The committee has completely overlooked this legal aspect and invalidated the caste claim of the petitioner. It is stated in the vigilance report that the concerned vigilance officer could not collect the extract of the school admission register of the petitioner's grandfather since that record is very much old. It is not the case that said record is not available. It is particularly stated that since the register is old one, it is unable to take extract of the same. It is nowhere stated that entry of the petitioner's grandfather Dashrath Hari Lalsing, with caste 'Thakur' and birth date as 04.10.1919 is manipulated. In the above premise, the finding recorded by the committee against point No.1 seems to be erroneous.

15. Now coming to the another finding recorded by the committee regarding failure to prove the affinity test. The genuineness of a caste claim needs to be considered not only by way of detail examination of the documents but also on the affinity test, which would include the anthropological and ethnological traits etc. of the petitioner. The affinity test is not a litmus test.

16. We would like to place reliance in case of *Anand Vs. Committee for Scrutiny and Verification of Tribe claim and ors.* reported in *(2012)1 SCC 113*, wherein it is observed by the Hon'ble Supreme Court that the affinity test is not a litmus test. 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. While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. the affinity test may not be regarded as a litmus test for establishing the link of the petitioner with a Scheduled Tribe. Nevertheless, the claim by the petitioner 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.

17. On careful scrutiny of the genealogy coupled with the documentary evidence produced by the petitioner right from the pre-independence era make out a clear picture that the caste of the family of the petitioner is recorded as “Thakur” since the year 1919. In the above background, no more weightage can be given to the affinity test and anthropological and ethnological traits.

18. No validity certificate is yet issued in the blood relatives of family of petitioner. How that can be a ground to reject the tribe claim of the petitioner. That finding is certainly erroneous and does not stand on the legal platform.

19. In the light of above, the findings recorded by the committee are found erroneous. The committee has not properly considered the documents of the pre-independence era and arrived at incorrect conclusion simply on the basis of vigilance report and the report submitted by the Research officer. There are no contra entries to throw away the tribe claim of the petitioner. The vigilance report also nowhere speaks about contra evidence. The impugned order rendered by the committee invalidating tribe claim of the petitioner needs to be quashed and set aside. The petitioner is entitled to get the tribe validity certificate. With these reasons, we conclude and proceed to pass the following order.

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ORDER

(i) The order / decision rendered by respondent No.3 / Scrutiny Committee, Nandurbar dated 20.10.2020 is hereby quashed and set aside.

(ii) Respondent No.3 / Scrutiny Committee, Nandurbar shall issue validity certificate to the petitioner of being a member of 'Thakur Scheduled Tribe' forthwith.

(iii) Rule is made absolute accordingly.

(iv) The writ petition is disposed of. No order as to costs.

(**SHRIKANT D. KULKARNI**)
JUDGE

(**S.V. GANGAPURWALA**)
JUDGE

S.P. Rane