

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.241 OF 2022

Saurabh

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32
Through its Secretary
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division,
Aurangabad
Through its Member Secretary

..RESPONDENTS

...

Mr.Sushant C. Yeramwar, advocate for the
petitioner.

Mr.P.S. Patil, Addl. GP for the respondent/State.

...

CORAM : S.V. GANGAPURWALA
AND
S.G. DIGE, JJ.

DATE : 6th JANUARY, 2022

JUDGMENT (Per S.G. Dige, J):-

. Rule. Rule made returnable forthwith.
With consent of both parties, heard finally at
admission stage.

2. By this petition, the petitioner is

challenging the impugned decision of the Scheduled Tribes Scrutiny Committee, Aurangabad Division, Aurangabad – respondent no.2 (for short, “the Scrutiny Committee”) dated 15th December, 2021 invalidating the tribe claim of the petitioner as belonging to “Thakur, Scheduled Tribe community.

3. Brief facts of the case are as under :-

The tribe certificate of the petitioner as belonging to Thakur, Scheduled Tribe was referred to respondent no.2 – Scrutiny Committee for verification through the College of petitioner along with the documentary evidence of 1337 Fasli and certificates of validities issued in favour of his real brother – Subham Ashok Nikam, cousin brother – Yeshraj Dilip Nikam and cousin sister – Tanushree Dilip Nikam under the orders passed by this Court in respective Petitions. The Scrutiny Committee had referred the matter for vigilance inquiry. After receiving vigilance cell report, the Scrutiny Committee served copy of the vigilance cell report to the petitioner directing to submit reply to it. Accordingly, the petitioner had filed reply to the vigilance cell report. Considering the documents on record and vigilance cell report, the Scrutiny Committee invalidated the Tribe claim of the petitioner vide the impugned order.

Against the said order, this Petition.

4. It is contention of learned counsel Shri Yeramwar for the petitioner that the Scrutiny Committee overlooked documentary evidence since 1337 Fasli showing the social status of the family of the petitioner namely as Thakur, Scheduled Tribe. The Vigilance Cell Officers intentionally did not collect the proper evidence, which shows that the petitioner was belonging to Thakur Scheduled Tribe. The caste validity certificates are issued in favour of the petitioner's real brother, cousin brother and cousin sister. The Scrutiny Committee has discarded the evidentiary value of these validity certificates. These certificates of validities have been granted by this Court that too after considering all aspects but it was not considered by the Scrutiny Committee. The learned counsel for the petitioner relied upon the judgments in the cases of **Anand V. Committee for Scrutiny and Verification of Tribe Claims and others**, reported in **2011(6) Mh.L.J. (S.C.) 919**, Shubham Ashok Nikam V/s Director of Technical Education, Maharashtra State and others in Writ Petition No.10202 of 2018, decided on 20th July, 2021 and Yashraj S/o Dilip Nikam V/s The State of Maharashtra and another in Writ Petition No.5293/2021, decided on 25th March, 2021.

5. It is the contention of learned Addl. G.P. Mr. Patil that there are contra-entries in the record of the petitioner. The petitioner's relatives have shown their caste as "Maratha" as well as "Bhat". There are contra entries and the petitioner failed to prove affinity test. Hence, the order passed by the Scrutiny Committee is legal and valid.

6. We have considered the submissions of both the learned counsel. Perused the record.

7. The Scrutiny Committee has rejected the caste claim of the petitioner on following three grounds (i) Whether the applicant proves his claim with the help of documentary evidence ? – **No**, (ii) Whether, the applicant proves his claim through the certificate issued to his close blood relatives ? – **No** and (iii) Whether the applicant has proved his affinity with community – **No**.

8. Before coming to the legality of the impugned order, we would prefer to mention that, the real brother – Subham Ashok Nikam, cousin brother Yeshraj Dilip Nikam and cousin sister-Tanushree Dilip Nikam are issued with validity certificate of Thakur, Scheduled Tribe under the orders passed by this Court in respective petitions. The documents produced by the petitioner before the Scrutiny Committee are as

under :-

अ.क्रं	दस्तऐवजाचे नाव	दस्तऐवज धारकाचे नाव	अर्जदाराशी नाते	जातीची नोंद	प्रवेश / नोंदणी दिनांक
1	जात प्रमाणपत्र	सौरभ अशोक निकम	अर्जदार	ठाकूर	22 / 08 / 2021
2	शपथपत्र(नमुना फ)	सौरभ अशोक निकम	वडील	—	16 / 09 / 2021
3	बोनाफाईड प्रमाणपत्र	सौरभ अशोक निकम	अर्जदार	—	28 / 07 / 2021
4	विद्यार्थी प्रवेश व निर्गम उत्तरा	सौरभ अशोक निकम	अर्जदार	ठाकूर	15 / 06 / 2004
5	विद्यार्थी प्रवेश व निर्गम उत्तरा	सौरभ अशोक निकम	अर्जदार	ठाकूर	15 / 06 / 2011
6	विद्यार्थी प्रवेश व निर्गम उत्तरा	सौरभ अशोक निकम	अर्जदार	ठाकूर	18 / 06 / 2012
7	शाळा सोडल्याचे प्रमाणपत्र	सौरभ अशोक निकम	अर्जदार	ठाकूर	18 / 06 / 2012
8	जन्म प्रमाणपत्र	सौरभ अशोक निकम	अर्जदार	—	30 / 11 / 1998
9	आधार कार्ड	सौरभ अशोक निकम	अर्जदार	—	—
10	रहिवास प्रमाणपत्र	सौरभ अशोक निकम	अर्जदार	—	09 / 08 / 2021
11	विद्यार्थी प्रवेश व निर्गम उत्तरा	अशोक शेनफडू निकम	वडिल	ठाकूर	23 / 06 / 1975
12	जात प्रमाणपत्र	अशोक शेनफडू निकम	वडिल	ठाकूर	08 / 07 / 1985
13	सेवापटाच्या प्रथम पृष्ठाची प्रमाणपत्र	अशोक शेनफडू निकम	वडिल	ठाकूर	—
14	वैधता शपथपत्र	शुभम अशोक निकम	भाऊ	—	16 / 09 / 2021
15	वैधता शपथपत्र	शुभम अशोक निकम	भाऊ	ठाकूर	26 / 07 / 2021
16	वैधता शपथपत्र	यशराज दिलीप निकम	चुलत भाऊ	—	16 / 09 / 2021
17	वैधता शपथपत्र	यशराज दिलीप निकम	चुलत बहिण	ठाकूर	16 / 04 / 2021

18	वैधता शपथपत्र	तनुश्री दिलीप निकम	चुलत बहिण	—	16 / 09 / 2021
19	वैधता शपथपत्र	तनुश्री दिलीप निकम	चुलत बहिण	ठाकूर	20 / 11 / 2019
20	विद्यार्थी प्रवेश व निर्गम उत्तरा	यशराज दिलीप निकम	चुलत भाऊ	ठाकूर	18 / 06 / 2008
21	विद्यार्थी प्रवेश व निर्गम उत्तरा (उर्दु भाषांतर प्रत)	त्रंबक शेनफडू	आजोबा	ठाकूर	फसली 1937
22	जात प्रमाणपत्र	तनुश्री दिलीप निकम	चुलत बहिण	ठाकूर	16 / 08 / 2010
23	जात प्रमाणपत्र	यशराज दिलीप निकम	चुलत भाऊ	ठाकूर	16 / 08 / 2010
24	जात प्रमाणपत्र	शुभम अशोक निकम	भाऊ	ठाकूर	19 / 04 / 2008
25	विद्यार्थी प्रवेश व निर्गम उत्तरा	तनुश्री दिलीप निकम	चुलत बहिण	ठाकूर	17 / 06 / 2005
26	विद्यार्थी प्रवेश व निर्गम उत्तरा	दिलीप शेनफडू निकम	काका	ठाकूर	28 / 06 / 1976
27	विद्यार्थी प्रवेश व निर्गम उत्तरा	अरुण शेनफडू निकम	काका	ठाकूर	01 / 01 / 1972
28	विद्यार्थी प्रवेश व निर्गम उत्तरा	प्रकाश शेनफडू निकम	काका	ठाकूर	13 / 06 / 1974
29	विद्यार्थी प्रवेश व निर्गम उत्तरा	बाळकृष्ण शेनफडू	काका	ठाकूर	17 / 07 / 1958
30	विद्यार्थी प्रवेश व निर्गम उत्तरा	साहेबराव शेनफडू	काका	ठाकूर	01 / 11 / 1957
31	विद्यार्थी प्रवेश व निर्गम उत्तरा (उर्दु भाषांतर प्रत)	अशोक शेनफडू निकम	वडिल	ठाकूर	23 / 06 / 1975
32	7 / 12 उत्तरा	दिलीप शेनफडू निकम	काका	—	2020—21
33	खासरा पाहणी पत्रक	राजाराम सखाराम	खापर पंजोबा	—	1953—54

9. This chart shows the oldest entry of the petitioner's grand-father Trambak Shenphadu is of 1337 Fasli i.e. year 1927, which shows caste as "Thakur". Thereafter, the entry of petitioner's uncle Sahebrao Shenphadu is of the year 1957 and the entry of the petitioner's uncle Balkrushna Shenphadu is dated 17th July, 1958, which show caste as "Thakur". The Scrutiny Committee has observed that there are contra-entries of Maratha and Bhat mentioned in school record of close blood relatives of petitioner. The contra evidence obtained by the Vigilance Officer in respect of Dadasaheb Murlidhar Nikam and Kiran Murlidhar Nikam showing their caste status as Bhat is concerned, it appears from the record that the Scrutiny Committee has validated the tribe claim of these persons by following due procedure of law and that too after considering the above stated contra evidence. Moreover, these are isolated entries. The pre-constitutional document records caste as Thakur in case of petitioner's ancestors. The petitioner has denied the relationship of some distant relatives, who are posed as "Bhavki" by Vigilance Officer. The relationship of these distant relatives having contra-entries in school record could not be established by the respondents. We do not agree with the observation made by the Scrutiny Committee in respect of contra entries. When,

there is reliable documentary evidence right from the petitioner's grandfather of year 1927, 1957 and 1958 showing their caste as Thakur and in vigilance report, it is not stated that these documents are false, we do not see any justifiable reasons to discard the documentary evidence of year 1927. The document of year 1927 is pre-independence document which has a higher degree of probative value to the declaration of status of a caste.

10. The Scrutiny Committee in order has observed that considering the education background of petitioner's family, it appears that the petitioner's family belong to upper caste Thakur and not the Thakur, scheduled tribe. It is significant to note that the Scrutiny Committee has accepted the documentary evidence since 1927 to 2012 in respect of petitioner's blood relatives showing caste status as Thakur, but at the same time, tried to distinguish the Thakur, Scheduled Tribe with Thakurs from upper caste. In the case of ***Pandurang Rangnath Chavan Vs. State of Maharashtra*** reported in ***1998(2) Mh.L.J. 806***, the Division Bench of this Court has made legal position clear that area restriction stands removed and once the enactment comes in enforcement, I.e, Presidential Order of Scheduled Tribes (Amendment) Act, 1976, throughout State, the community included in Scheduled Tribes

Category is entitled and stands Tribal. Further, it has been made clear by this Court that once a particular caste is included in the Presidential Order that has to be read as it is. Hence, the observation of the Scrutiny Committee that the Thakur and Scheduled Tribe Thakur are having different status, is erroneous and improper.

11. The Scrutiny Committee has further observed that original place of residence of the petitioner is not from Scheduled Area for Thakur, Scheduled Tribe or family of the petitioner is not migrated from the Scheduled area for Thakur, Scheduled Tribe. In our view, the Scrutiny Committee has not considered the fact that the area restriction has been removed by the Amendment Act, 1976. After this amendment, it is not permissible to rely on area restrictions placed by order of 1950. It is precisely to overcome the difficulties of tribals. In this context it may be useful to place reliance in the case of ***Mayuri Sunil Thakur Vs. State of Maharashtra and Ors.*** (Writ Petition No.8738 of 2019 dated 09.08.2019 at principal seat Bombay). As such the observations made by the committee regarding absence of migration of petitioner's family are erroneous.

12. Coming to the issue of proving of petitioner's claim through validity certificates

issued to his close blood relatives, the Scrutiny Committee has observed that some of the caste validities are obtained by suppressing the material facts and producing false information. There are about 33 caste validity certificates issued in the family of the petitioner. In our view, some caste validites are given under the orders of this Court including the real brother of the petitioner. The said orders are not reviewed. Other caste validities are issued by the concerned Scrutiny Committee by following due procedure. So it ought not to have been brushed aside by the Scrutiny Committee. The reliance can be placed on the judgment in the case of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Scrutiny Committee and others** reported in 2010(6) Mh.L.J. 401 and in the case of **Anita Atmaram Gaikwad Vs. State of Maharashtra & others** in Special Leave to Appeal (Civil) No.23081/2010 (Civil Appeal No.3881/2013) decided on 16.04.2013 wherein it has been observed that the caste validity certificate issued in favour of close blood relative that too by following due procedure cannot be discarded by the Committee as it is substantive documentary evidence.

13. So far as the issue regarding affinity test, the Scrutiny Committee has observed that petitioner has failed to prove the affinity test. The Scrutiny Committee while recording negative

finding in respect of affinity test has observed that the surnames of petitioner's close blood relatives do not match with "Thakur" community. It is significant to note that 33 caste validities have been issued to the petitioner's close blood relatives considering all aspects including the surnames. Moreover surname cannot depict any one's caste, so in our view observations of the Scrutiny Committee that surnames of petitioner's blood relatives do not establish 'Thakur' caste, is erroneous.

14. The Scrutiny Committee has further observed that dialect of 'Thakur' community is different whereas petitioner's family member speaks in impure Marathi language. Petitioner's family celebrates Hindu festivals whereas Thakur communities festivals are different. The petitioner's family performs the marriage ceremony as per Hindu tradition whereas Thakur Community's marriage traditions are different. It is also observed that the petitioner's family are not aware about the custom and usages of 'Thakur' community. In our view, if any one claims he belongs to particular caste, one cannot expect that such person should use traditions and traits of that community in his day to day life, as due to modernisation, the present life style of particular community may not match with traditional characteristics of their tribe

community. The affinity test is not a litmus test. The Apex Court has held in **Anand's case (supra)**, that a cautious approach has to be adopted, and with the migrations, modernization 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. It holds that the affinity test may not be regarded as a litmus test for establishing the link of the petitioner with a Scheduled Tribe. The affinity test is to be used to corroborate the documentary evidence and it is not to be used as the sole criteria to reject a claim. In view of the above, oldest documentary entries of petitioner's family are of the years 1927, 1957 and 1958. These entries are genuine one. At the time of putting entry of 'Thakur' in school record ancestors of petitioner were not aware about benefits getting to their next generation, but said caste was recorded in their school record so it has more probative value. Considering these three old entries as well as 33 caste validities of 'Thakur' scheduled tribe issued to close blood relatives of the petitioner establishes that the petitioner belongs to 'Thakur' caste, we are of the view that finding of the Scrutiny Committee in respect of affinity test is improper and erroneous.

15. In the light of above, we pass the following order :-

ORDER

(i) The Writ Petition is allowed.

(ii) The impugned judgment and order of the scrutiny committee is quashed and set aside.

(iii) The scrutiny committee shall issue validity certificate to the petitioner of "Thakur" (Scheduled Tribe).

(iv) Rule is made absolute in above terms. No costs.

(S.G.DIGE, J.)

(S.V. GANGAPURWALA, J.)

SGA