

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.92627 OF 2020

Vilas Dinkar Bhat
Age 66 Years, Occ.Pensioner
R/o At Magarwadi, Post Tarapur
Taluka Pandarpur Dist.Solapur ... Petitioner

V/s.

1. The State of Maharashtra
Through its Secretary Tribal
Development Department having
Office at Mantralaya, Mumbai ...
2. The Scheduled Tribe Caste
Scrutiny Committee, 5th Floor,
C Wing, Kapil Towers Near RTO Office
Pune Division, Pune through
Member Secretary ...
3. The Tahsildar, Shrigonda
Dist.Ahmednagar ...
4. The Tahsildar, Taluka Madha
Dist.Ahmednagar ... Respondents

Mr.Girish Godbole learned Counsel i/b Mr.S.T.Bhosale for the Petitioner.

Mr.K.A.Thorat AGP for the Respondent-State.

**CORAM : S. C. GUPTE AND
MADHAV J. JAMDAR, JJ.**

DATE OF RESERVE : 22ND OCTOBER, 2020.

**DATE OF PRONOUNCEMENT : 3RD NOVEMBER, 2020.
(THROUGH VIDEO CONFERENCING)**

JUDGMENT : (PER MADHAV J. JAMDAR, J)

1. Heard learned Counsel for the Petitioner and learned AGP for the Respondents.

2. Rule. Rule made returnable forthwith. By consent of the parties taken up for final hearing at the stage of admission. Learned AGP waives service for the Respondent-State.

3. The Petitioner by way of the present writ petition filed under Article 226 of the Constitution of India has challenged the order dated 30/01/2020 passed by the Scheduled Tribe Scrutiny Committee, Pune Division, Pune (*hereinafter referred to as "the committee"*) by which his claim of belonging to Thakar tribe (Schedule Tribe) was rejected and further prayed to issue declaration that he belongs to "Thakar" tribe (Scheduled Tribe).

4. It is the contention of the Petitioner in the Writ Petition that his grand-father, namely, Balbhim Sakharam Thakar, was the resident of village Chibhale, Taluka Shrigonda, District Ahmednagar and he left the said village in the year 1923-24 due to epidemic of plague. The grand-father of the Petitioner shifted to village Magarwadi, Taluka Pandharpur, District Solapur and since then he continued to reside in the said village. The Petitioner was appointed on the post of Talathi in or about 1980, and although he was appointed against open category, his claim was referred to the Committee for verification to get benefit of reservation under Scheduled Tribe for promotion. The Caste Scrutiny committee invalidated the claim of the Petitioner by the order dated 26/10/1995. The Petitioner challenged the same by way of filing Writ Petition No.7518 of 2002; however, the same

was rejected by the order dated 12/07/2004 and Review Petition filed in this Court also was dismissed by the order dated 11/12/2006. The Petitioner challenged the aforesaid orders by filing Civil Appeal No.2095 of 2007 and the Hon'ble Supreme Court set aside the order passed by the Committee as well as the orders passed by this Court and remanded the matter to the Committee for its disposal afresh within six months. While remanding back the matter, the Hon'ble Supreme Court has specifically observed that although the Committee has considered some documents, however, all the documents on which the Petitioner had placed reliance were not considered. The Committee by the impugned order again invalidated the claim of the Petitioner.

5. Mr.Godbole, learned Counsel appearing for the Petitioner, submitted that the committee by the order dated 26/10/1995 invalidated the claim of the Petitioner and the said order was upheld by this Court by rejecting the Writ Petition and Review Petition, however, the Hon'ble Supreme Court by the order dated 10/08/2018 quashed the order of the Committee as well as this Court's orders and remanded back the matter to the committee for reconsideration. In spite of this, the Committee by considering the observations in the earlier order of the committee, which was set aside, rejected the claim of the Petitioner. It is his contention that when the Hon'ble Supreme Court had directed denovo enquiry, the findings of the committee recorded inter alia on the basis of observations made in the earlier order which was set aside, is grave illegality and irregularity. He submitted that the pre-constitutional documents clearly support the Petitioner's claim that he belonged to Thakar Scheduled Tribe. He submitted that pre-constitutional entries on many occasions had recorded "Marathi" as the caste, however, "Marathi" is not the caste and it is the language and there is difference between "Marathi" and "Maratha". He, therefore,

submitted that the entry of Marathi cannot be treated as adverse entry, as far as Petitioner's claim that he belonged to Thakur caste is concerned. He further submitted that the Committee has called for original record regarding entries dated 31/07/1918, 08/08/1918 and 2/11/1921 and accordingly Tahasildar, Shrigonda, Tal. Ahmednagar was present with record of village Chimbale and found that the said entries were genuine entries and inspite of that the same were discarded by the committee. He submitted that the Committee has relied on several documents which are not the documents connected with the Petitioner in any manner whatsoever. He submitted that during his employment, the Petitioner could not get the order re-validating his tribe claim and, therefore, retired from the employment without getting benefit of Schedule Tribe reservation; however, his son and daughter are educated and, therefore, if validation certificate is issued they will get the benefit. He has relied on various Judgments of this Court in support of his case.

6. Mr.K.S.Thorat, learned AGP appearing for the Respondent-State, on the other hand, supported the impugned order. He relied on Vigilance Cell report dated 22nd January, 2019 which mentions that few witnesses, namely, Shri Bhiva Babu Gaikwad, Age-85 and some other witnesses have stated that in said village, at no point of time, and even presently the people from Thakar caste were and are residing and in fact there is no agricultural land in the name of persons belonging to Thakar caste in the said village. He submitted that although enquiry was made and record was perused of Zilla Parishad primary school at village Chimbale, Taluka Shirgonda, District Ahmednagar and at village Madhevadgaon, Taluka Shrigonda, District Ahmednagar, however, the entries in the name of the Petitioner's relatives shows Maratha or Marathi. He also relied on the observations of the Research Officer stating that the entries in the record are Marathi / Hindu-

Maratha / Hindu-Thakar / Hindu (Maratha), Hindu (Bigarmagas) and Marathi. It is further recorded that the statement of the Petitioner recorded by the Vigilance Cell sets out details of customs, religious functions, cultural programmes, etc. which do not match with Thakar caste.

7. A perusal of the impugned order shows that the committee has considered about 27 documents which are pre-constitutional documents and 10 documents are issued after 1950. As far as 27 pre-constitutional documents are concerned, 23 documents records caste as “Marathi” whereas 4 documents record caste as “Thakar” .

8. The details of 4 pre-constitutional documents as recorded in the impugned order which records caste as “Thakar” are set out hereinbelow for ready reference :

Sr. No.	Date of Entry	Name	Caste Recorded	Relationship with the Petitioner	Name of the Village where concerned record is found	Nature of Record
4	31/07/1918	(Girl) Balbhim Sakharam Thakar	Thakar			Death Register
5	08/08/1918	(Boy) Balbhim Sakharam	Thakar	Uncle	Chimbhale	Death Register
10	02/11/1921	Devrao Balbhim Sakharam Thakar	Thakar	Father	Chimbhale	Birth Register
27	25/04/1950	Anandi Dinkar Balbhim Thakar	Thakar	Sister	Madha	Birth Register

9. The record shows that the committee verified the original record by calling the record and the same was produced by the Tahsildar, Shrigonda. The records of birth and death register of village Chimbhale dated

31/07/1918, 08/08/1918 and 02/11/1921 are verified by the Committee and the Committee was satisfied about the genuineness of those entries and recorded the same in Roznama dated 30.12.2019. These very important four documents are discarded by the Committee by recording finding in paragraph 7 that many documents, containing pre-constitutional entries, record the caste as Maratha or Marathi and the same cannot be ignored. The said finding of the committee is perverse as none of the documents out of 27 documents which are pre-constitutional entries, record caste of the Petitioner as "Maratha". Out of 27 documents, 23 documents record caste as "Marathi", whereas 4 documents record caste as "Thakar". Mr. Godbole is right in his submission that the caste recorded as "Marathi" is not a caste but is a language and, therefore, the said documents or said entries cannot be considered as adverse to the Petitioner's claim. Mr. Godbole in support of his submission also relied upon order dated 05/10/2017 passed by this Court in Writ Petition No.10388 of 2017 where the claim that the Petitioner is belonging to "Rajgond (S.T.)" was rejected on the ground that the caste of the Petitioner's father, uncle and others were shown to be "Hindu-Telang (Rajgond)/Hindu-Rajgond/Hindu-Rajgond Telang". In the said background, this Court observed that "Telang" is not caste but is a surname or description relating to the area from where the person belongs and "Hindu" is also not a caste but is a religion. This Court further observed that on the basis of "Telang" or "Hindu" mentioned in the documents of relatives of the Petitioner, the caste validity claim of the Petitioner could not have been rejected. This Court further observed that said entries are inconsequential. Thus, 23 documents recording caste as "Marathi" cannot be considered as adverse entries, as far as the Petitioner's claim that he belong to "Thakar" Scheduled Tribe is concerned. As far as 4 documents which are pre-constitutional documents, the committee has called for original record and found that the entries dated 31/07/1918, 08.08.2018 and 02/11/2021 are

genuine entries. As far as entry dated 25/04/1950 is concerned, there is nothing to indicate that the said entry is not a genuine entry. The Hon'ble Supreme Court in the judgment reported in **2011(6) Mh.L.J. 919 (SC)** in the matter between **Anand Katole vs Committee for Scrutiny and Verification of Tribe Claims and Others** held that while dealing with documentary evidence greater reliance be placed on pre-independence documents as they furnish a higher degree of probative value to declaration of the status of the caste as compared to post-independence documents. Therefore, the aforesaid 4 documents are very important for deciding the caste claim of the Petitioner, and the Committee could not have discarded the same.

10. As far as post-independence documents are concerned, the Petitioner has relied on 10 documents, out of which 7 documents record caste as "Hindu-Thakar", 1 document records caste as "Hindu-Bigarmagas" and 2 documents record caste as "Hindu-Maratha". However, as set out hereinabove the pre-independence documents are very important. Thus, the finding recorded by the Committee that if the documents in totality are taken into consideration, then majority of the documents, particularly old records, are contrary to the claim of the Petitioner as belonging to "Thakar" Scheduled Tribe is perverse.

11. The Committee in the order has heavily relied on the statements of the witnesses from village Chibhale, Taluka Shrigonda, District Ahmednagar. The said witnesses have stated that at no point of time previously as well as presently the people belonging to "Thakar" caste were residents of the said village. It is significant to note that in fact even the case of the Petitioner is that his grand-father was resident of the said village Chibhale till 1923-24 and thereafter he shifted to village Magarwadi, Taluka Pandharpur, District

Solapur due to epidemic of plague. Further, it is to be noted that the Committee directed Tahsildar Chibhale and Tahsildar Magarwadi to remain present with the original records and found that the original records of village Chibhale of the year 1918 shows aforesaid entries dated 31/07/1918, 08/08/1988 and 02/11/1921 are genuine entries. In view of the said old documentary evidence of pre-independence era, the reliance on statement of witnesses is not proper.

12. Mr.K.S.Thorat, learned AGP, submitted that the statement of the Petitioner recorded by the Vigilance Cell sets out details of customs, religious functions, cultural programmes, etc., however, they do not match with Thakar caste. As regards the affinity test, the Hon'ble Apex Court in **Anand Katole (supra)** held that a cautious approach has to be adopted, and with the migrations, modernization and contacts with other communities, the tribal communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. It has been held that affinity test may not be regarded as litmus test for establishing the link of the applicant with a scheduled tribe. Thus, it is clear that 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 caste claim. Thus the said contention advanced by the learned AGP is not relevant, for rejecting the claim of the Petitioner.

13. The most important aspect of this case is whether the Petitioner is related to the persons whose names are mentioned in the aforesaid chart as their surname is "Thakar", whereas the Petitioner's surname is "Bhat". The Petitioner has relied on affidavit dated 22/10/2002 of his father i.e. Dinkar @ Devrao wherein he has stated that Devrao Balbhim Thakar and Dinkar Balbhim Bhat are names of the same person i.e. himself. However, the Committee has discarded the said affidavit on the ground that there is no

record to substantiate the said claim that the person, who was born on 22/11/1921, namely, Devrao Balbhim Sakharam Thakar is the same person as Dinkar Balbhim Bhat. The Petitioner has also relied on his own affidavit dated 28/01/2020. The record shows that the Petitioner has submitted detailed statement on 04/09/2019 before the Committee inter alia explaining this aspect. However the same is not considered by the Committee.

14. The Committee has also relied on the observations in the earlier order of the Committee which records with approval the finding of Vigilance Committee reports dated 06/08/2001, 29/08/2002 and 08/10/2002. However, when the Supreme Court has set aside earlier order of the committee it is totally impermissible for the Committee to rely on the observations made in the earlier order. Therefore, it is clear that the approach of the committee is totally illegal and perverse.

15. In view of above, we set aside the order dated 30/01/2020 passed by the Scheduled Tribe Scrutiny Committee, Pune Division, Pune and remand back the matter to the Scheduled Tribe Scrutiny Committee, Pune Division, Pune. The Petitioner is also at liberty to produce additional documentary or oral evidence in support of his claim. The Scheduled Tribe Scrutiny Committee, Pune Division, Pune is directed to decide the claim of the Petitioner by giving adequate opportunity within a period of six months from today.

[MADHAV J, JAMDAR J.]

[S.C. GUPTE, J.]