

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

**WRIT PETITION NO.3269 OF 2021**

Rushikesh Madhukar Chavan,  
aged 17 years, minor, occ. Student,  
r/o Warajahangir, Tq. District Washim,  
though natural guardian father Shri  
Madhukar Ramchandra Chavan

**.... Petitioner**

**// VERSUS //**

The Scheduled Tribes Caste Certificate  
Scrutiny Committee, Amravati,  
through its Member Secretary,  
Chaprasipura, Amravati.

**... Respondent**

**WITH  
WRIT PETITION NO.3741 OF 2020**

Ms Anita Sanjay Chavan,  
aged 18 years, Occ. Student,  
r/o Wara Jahangir,  
Tq. District Washim.

**.... Petitioner**

**// VERSUS //**

The Scheduled Tribes Caste Certificate  
Scrutiny Committee, Amravati,  
through its Member Secretary,  
Chaprasipura, Amravati.

**... Respondent**

Mr R.S. Parsodkar, Advocate for both the Petitioners  
Ms N.P. Mehta, AGP for the Respondent - State

**CORAM : A.S. CHANDURKAR AND ANUJA PRABHUDESSAI, JJ**  
**DATE : 12<sup>th</sup> JANUARY, 2022.**

**ORAL JUDGMENT : (PER: ANUJA PRABHUDESSAI, J.)**

Heard. **Rule.** Rule made returnable forthwith, heard finally with the consent of learned counsel for the respective parties.

2. The Petitioners have challenged orders dated 30.12.2020 and 18.11.2020 passed by the Respondent- Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati, invalidating the caste certificate that they belong to Thakur-Scheduled Tribe, which is an entry at Serial No.44 in the Constitution (Scheduled Tribe) Order, 1950.

3. The Petitioners were issued caste certificates of Thakur-scheduled tribe by the Sub-Divisional Officer, Washim. The caste claim of the Petitioners was referred to the Scrutiny Committee. The Petitioners relied upon several pre-constitutional documents as well as the decisions of this Court validating the caste claim of the close family members. The Scrutiny Committee discarded the documents by observing that apart from the Thakur-Scheduled Tribes, there are 'Thakur' in other communities and hence, it was necessary for the Petitioners to establish socio-cultural affinity test. It is held that the Petitioner have failed to establish ethnic and racial linkage by way of the social cultural affinity test with existing Thakur-Scheduled tribes in Maharashtra. The committee did not rely upon the previous decisions wherein this Court had validated caste claim of the close family members of the Petitioners on the ground

of suppression of material fact that the caste claim of their paternal uncle Vijay was invalidated by the Scrutiny Committee and the challenge to this order was dismissed by the Division Bench of this Court in Writ Petition No.447 of 2002.

4. Mr. Parsodkar, learned counsel for the Petitioners submits that the pre-independence documents furnish a high degree of probative value to prove the caste claim of the Petitioners. He further submits that the caste claim of the close relatives of the Petitioners has been validated by this Court. Hence, the Scrutiny Committee was not justified in discarding the documents and rejecting the claim of the Petitioners.

5. Ms Mehta, learned AGP submits that in the case of *Vijay s/o Ramchandra Chavhan (supra)*, this Court has upheld the decision of the Scrutiny Committee and rejected the Thakur tribe claim of Vijay, the paternal uncle of the Petitioners. This decision was not brought to the notice of this Court and as such the order of validating caste claim was obtained by fraud. She therefore asserts that the said decisions cannot be relied upon to decide the caste claim of the Petitioners.

6. We have perused the record and considered the submissions advanced by the learned counsel for the respective parties.

7. The records reveal that the Petitioners had produced School Leaving Certificates of their respective fathers, Madhukar Ramchandra Chavhan and Sanjay Ramchandra Chavhan, wherein their caste is recorded as 'Thakur'. The Petitioners had also tendered the extract of School Register of their grandfather Ramchandra of the year 1943,

wherein his caste is recorded as 'Thakur'. The extract of the School Register and School Leaving Certificate of their great grandfather Narayan also records his caste as 'Thakur'. The entry dated 23.07.1943 in the birth register shows the caste of Narayan Dajiba as 'Thakur'. Similarly, the extract of the Birth Register of the year 1937 records the birth entry of Narayan, the great grandfather of the Petitioners, wherein his caste is recorded as 'Thakur'. The Petitioners have also tendered birth and death entry in the birth and death register wherein the caste of Dajiba, the father of Narayan, is shown as 'Thakur'.

8. The genuineness of these pre-independence documents was not in dispute. These documents, which have high degree of probative value with a declaration of status of the caste, have been discarded by the committee on the ground that apart from Thakur-Scheduled Tribes, Thakur caste is also found in other communities. The Scrutiny Committee has also observed that the Petitioners are residents of Washim, which is not a habitat area of Thakur-scheduled tribes. It is held that the surnames of the relatives within the caste such as More, Ingle, Pawar etc. are the common surnames of upper caste Thakur community. The committee has also observed that the traditional occupations of the applicants is agriculture and that the deity, marriage rituals, birth rituals, death rituals etc. are different from those of Thakur-scheduled tribes. The committee has also observed that unlike Thakur-scheduled tribes, 'Thakur' caste is a developed caste. The documents produced by the Petitioners show that their ancestors were educated and not a single persons of the applicants' family, has taken an education in Ashram School opened by the Tribal Development Department. The Committee

has observed that on the basis of ‘Thakur’ caste entries, the Petitioners are trying to grab reservation of scheduled tribes in service and in higher education and professional courses etc.

9. It may be mentioned that in the case of *Monika Sunil Shinde Vs. State of Maharashtra and others* in Writ Petition No.8307 of 2018, decided on 01/08/2018 and *Prakash s/o Shrawan Deore Vs. Scheduled Tribe Certificate Scrutiny Committee, Nashik and others*, reported in 2019 (5) Mh.L.J. 228, the Division Bench of this Court has held that such observations are contrary to the settled law laid down by the Apex Court in the case of *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another Vs. State of Kerala and another*, reported in (1994) 1 Supreme Court Cases 359. In the case of *Monika Shinde (supra)*, this Court has reiterated that since the scheduled tribe order has come into effect in the year 1950, the documents in existence prior to the inclusion of the caste ‘Thakur’ in the scheduled tribe order have attained great significance to establish the genuineness, with a specific object that the claimant has not manipulated the entries intentionally so as to avail benefit of being a ‘Thakur’. It is for this reason that the pre-constitutional documents are given weightage.

10. While deprecating the course adopted by the committee in verifying whether the Petitioners hail from a region or area where the caste or tribe is predominately found, even after area restriction is removed, this Court has observed that the tribes or tribal communities specified by the President, in consultation with the Governor of the State, are deemed to be scheduled tribes in relation to the State. Once, such

tribe or group of tribes is enlisted in the scheduled tribe order, the said particular tribe or group of tribes is deemed to be 'Scheduled Tribe' for that entire State since the scheduled tribe order notified by the President of India is 'in relation to that State'; there is no intention to subdivide, classify or discriminate these tribes based on their place of residence or place of their origin.

11. Referring to the decision of the Apex Court in *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims*, reported in 2011 (6) Mh. L.J. (S.C.) 919, the Division Bench of this Court in Prakesh Deore (*supra*) has held as under:

“ 11...

*It could, thus, be clearly seen that the Hon'ble Apex Court has in unequivocal words held that, with the migrations, modernisation and contact with other communities, the tribal tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. It has been observed that the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. It has been held that the claim of belonging to Scheduled Tribe cannot 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, method death ceremonies, method of burial of dead bodies, etc. It has been held in clear terms that the pre-independence documents showing the applicant's forefathers belonging to the particular Scheduled Tribe have more probative value regarding his claim. It would further reveal that when there is doubt regarding the credibility of the document, its veracity has to be tested on the basis of the oral evidence, for which an opportunity has to be afforded to the applicant. It has*

*been held that the affinity test cannot be a sole criteria to reject a claim.”*

12. In the instant case, the Petitioners had placed before the Scrutiny Committee the pre-constitutional documents wherein the caste of their forefathers is shown as ‘Thakur’. Even though the Petitioners had produced the complete genealogical tree, the Committee has discarded the documents with a cursory observation that the Petitioners have not established that the record holders are from the same family with further observation that the said caste is also found in other communities.

13. It is pertinent to note that the caste claims of Aditya, Manjit and Jagdish, the close family members of the Petitioners have been validated by this Court in Writ Petition Nos.5104 of 2019, 2131 of 2018 and 5105 of 2019. In the case of *Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others*, reported in 2010 (6) MLJ 401, the Division Bench of this Court has held that where a committee has given a finding about the validity of the caste of a candidate, another committee ought not to refuse the same status to a blood relative who applies for such caste certificate. A merely different view on the same facts would not entitle the Committee dealing with the subsequent caste claim to reject it, unless the Committee is of the view that the earlier certificate is obtained by fraud.

14. In the instant case, the Committee has not relied upon the decisions in these writ petitions on the ground of suppression of the fact that caste claim of Vijay was rejected and the challenge to the said order was

dismissed in Writ Petition No.447 of 2002. It is true that in subsequent petitions, there is no reference to rejection of caste claim of Vijay or dismissal of the Writ Petition No.447 of 2002. In our view, suppression of these facts would be material only if the caste claim of Vijay and of the Petitioners in Writ Petition Nos.5104 of 2019, 2131 of 2018 and 5105 of 2019 was based on the same documents. The impugned order does not indicate that the caste claim of the Petitioners in the aforesaid writ petitions was based on the very same documents relied upon by Vijay, which were considered and rejected by the Committee. By judgment dated 01.08.2018, the Division Bench of this Court had dismissed a group of petitions including the Writ Petition No.447 of 2002. The judgment does not mention the documents or the other material relied by said Vijay in support of the caste claim. In fact, a perusal of the said judgment reveals that this Court had not adjudicated the caste claim of Vijay independently and had not recorded reasons for invalidating his claim. Moreover, it is on record that the decision of this Court in the case of *Vijay Chavhan* in Writ Petition No.447 of 2002 is challenged before the Hon'ble Supreme Court and the Apex Court has continued the interim relief granted by this Court in favour of the Petitioner-Vijay Chavhan. Furthermore, the caste certificates issued in favour of the blood relatives of the Petitioners have not been cancelled on the ground of fraud. In the absence of proof of fraud or suppression of material facts, the Committee was not justified in discarding the previous judgments or in rejecting the caste claim of the Petitioners only because the claim of their paternal uncle Vijay was discarded.



15. The Committee has relied upon the decision in the case of *Raju Ramsing Wasave Vs. Mahesh Deorao Bhiwapurkar*, (2008) 9 SCC 54, wherein the Apex Court has observed that only because by mistake or otherwise a member of the family had been declared to be belonging to member of scheduled tribe, the same by itself would not be conclusive in nature so as to bind another committee while examining the case of the other members of the family in some details. If it is found that in granting a certificate in favour of a member of a family, vital evidences had been ignored, it would be open to the committee to arrive at a different finding. Following the same principles it can be held that rejection of the caste claim of a member of the family would not be conclusive in nature so as to bind another Committee while examining the case of the other members of the family, if it is found that in rejecting a certificate vital evidences were ignored. In such circumstances, it would be open to the Committee to arrive at a different finding.

16. In this regard, it is pertinent to note that the Petitioners had produced documentary evidence in support of their claim. Hence, it was incumbent upon the Scrutiny Committee to hold an independent inquiry and decide upon the genuineness and the *bona fide* of the case on the basis of material placed before it. Strangely, the Scrutiny Committee did not examine the documents and other materials produced by the Petitioner but rejected the caste claim on stereotype findings that the Petitioners have failed to prove their ethnic linkages towards Thakur-Scheduled Tribes. As noted above with migration, modernization and contact with other communities, the tribals tend to develop and adopt new traits which may not essentially match with the traditional

characteristic of a tribes. As it has been held by the Hon'ble Apex Court, the Petitioners could not have been denied benefit of being belonging to scheduled tribes on the ground that their present traits do not match with that of their tribes peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage and death ceremony etc. The Committee was also not justified in rejecting the claim of the Petitioners for not having taken education in Ashram School. It is to be noted that the Ashram Schools have been set up with an object of increasing the literacy rate among scheduled tribes, a disadvantage section of the society. There is no embargo for a member of scheduled tribe in taking education in Private Schools. Hence, the fact that the Petitioners had not taken education in Ashram Schools cannot disqualify them from being a member of a scheduled tribe. The reasons given by the Committee for rejecting the claim of the Petitioners are absurd and are untenable and contrary to the law laid down by the Hon'ble Apex Court as well as by this Court.

17. In the case of Prakesh (*supra*), this Court had taken a judicial note of the fact that the Scrutiny Committees have a tendency of rejecting the claims in spite of various genuine documents being placed on record and in spite of the legal position explicitly clarified by the judgment of the Hon'ble Apex Court as well as the Division Benches of this Court. It may be mentioned that the Scrutiny Committee, a quasi judicial authority, is expected to conform to the law laid down by the Court. It is however seen that instead of following the binding precedent, the Committees continue to reiterate the same reasons which are held to be contrary to the law even after such attitude and approach is deprecated by the Court. It

need not be emphasized that ignoring or refusing to follow binding precedents repeatedly not only runs contrary to the judicial discipline but undermines the respect for law laid down by the Court and such conduct falls within the purview of law of contempt. We expect the Committee to take note of this fact and follow the binding precedents of the Court.

18. Having gone through the records, in our view, the reasons recorded by the Committee for rejecting the caste claim of the Petitioners are *ex-facie* untenable. Under the circumstances and in view of discussion *supra*, we pass the following order:

- i) The impugned orders dated 30.12.2020 and 18.11.2020 passed by the Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati, are quashed and set aside.
- ii) The claim of the Petitioners for Thakur-Scheduled Tribes is held to be validated. Accordingly, the Respondent-Scheduled Tribes Caste Certificate Scrutiny Committee, Amravati is directed to issue Caste Validity Certificate of Thakur-Scheduled Tribes in favour of the respective Petitioners on or before 30.01.2022.
- iii) Since the Petitioners are pursuing their studies they are at liberty to produce copy of this judgment before the Competent Authority to indicate that a direction to issue validity certificate in their favour has been issued by the Court.

The Scrutiny Committee may take appropriate action, if so advised, consequent to the decision of the Hon'ble Supreme Court of India in the case of *Vijay Ramchadra Chavhan* (supra).

Rule is made absolute in above terms. No order as to costs.

[ANUJA PRABHUDESSAI, J]

[A.S. CHANDURKAR, J]