

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4017 OF 2018

Sandeep s/o Naryan Pawar
Age : 26 years, occ : service
R/o Jakhmathwadi,
Taluka Gangapur,
District Aurangabad.

Petitioner.

Versus

1. The State of Maharashtra
Department of Tribe Development
Mantralaya, Mumbai - 32.
Through its Secretary.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Division, Aurangabad
Through its Member Secretary.
3. The Executive Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Power House, Jubilee Park,
Aurangabad.
4. The Superintending Engineer
Maharashtra State Electricity
Distribution Company Ltd.,
Power, Jubilee Park, Aurangabad

Respondents.

Mr. S.C. Yeramwar, Advocate for petitioner.

Mr. P.N. Kutti, A.G.P. for respondents No.1 and 2.

Mr. A.R. Salve, Advocate for respondents No.3 and 4.

**CORAM : SUNIL P. DESHMUKH &
ABHAY AHUJA, JJ.**

Date : 10th March 2021.

JUDGMENT (Per Abhay Ahuja, J.)-

1. Heard. Rule. Rule made returnable forthwith. With the consent of the learned Counsel appearing for the parties, the petition is heard finally.

2. By this petition under Article 226 of the Constitution of India, Petitioner is challenging the decision dated 11.04.2018 of the Respondent No. 2- Scheduled Tribe Certificate Scrutiny Committee, Aurangabad invalidating the tribe claim of the petitioner belonging to “Thakur - Scheduled Tribe” community.

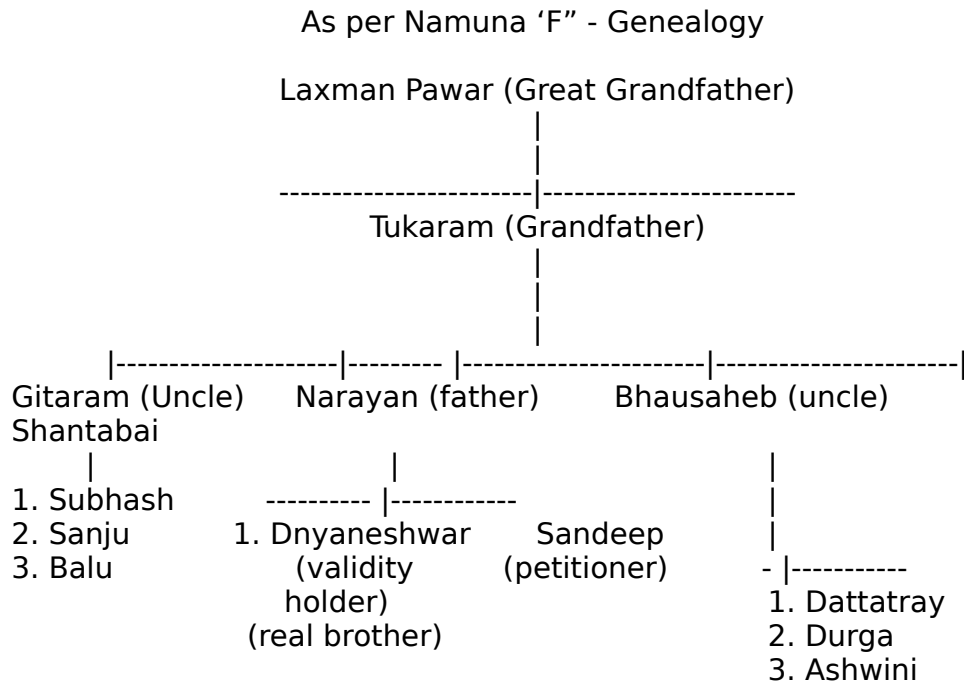
3. Petitioner is a resident of Jakhmathawadi, Taluka Gangapur, District Aurangabad and has been issued caste certificate dated 03.08.2006 by the Sub-Divisional Officer, Vaijapur. Petitioner’s tribe claim was forwarded to the Respondent - Committee for verification on 21.02.2011 through the Principal, Shishu Vikas Teachers’ Training College, Aurangabad while he was studying in the said college. Thereafter, petitioner was appointed as Electrical

Assistant on 03.06.2013 with the Maharashtra State Electricity Distribution Company Limited for a period of three years against the post reserved for scheduled tribe category on the condition to submit caste validity certificate during the contract period. Thereafter, by an order dated 27.06.2016 the services of the petitioner have been continued and he has been absorbed on the post of Technician w.e.f. 04.06.2016, immediately after the completion of three years' contract period.

4. It is submitted that though the petitioner's services were confirmed as Technician, however, since his appointment was from reserved category, he was issued a show-cause notice dated 30.09.2016 to submit caste validity certificate, failing which his services would be terminated. Against the said show-cause notice, the petitioner had filed writ petition, pursuant to which respondent No.2 Committee was directed to decide the tribe claim of the petitioner within a period of one year and the petitioner was protected against coercive action by the employer till then.

5. Petitioner submits that he is part of the family of Laxman Pawar, who is his great grand-father and has

submitted genealogy of family which is reproduced as under :



6. It is submitted that the petitioner's father was illiterate. However, his real brother Dnyaneshwar has been issued a caste validity certificate on 10.02.2011 after following due procedure including conduct of vigilance inquiry and personal hearing which is not disputed by the respondents. It is submitted that the vigilance report of Dnyaneshwar as well as letter dated 15.09.2010 submitted by the Vigilance Officer in respect of the record of 1955 along with re-enquiry which was conducted, the Research Officer and Deputy Superintendent of Police have given remarks that they are fully in agreement with the

observations made by the Vigilance Officer which according to the petitioner ought to have been considered by the Committee while deciding the petitioner's tribe claim. He, therefore, submits that in view of the decision of this Court in the case of ***Apoorva Vinay Nichale vs Divisional Caste Certificate Scrutiny Committee No.1 and others [2010 (6) Mh.L.J. 401]***, firstly if the caste claim of a blood relative, such as father, son, daughter, brother and sister has been scrutinized and accepted, the caste claim of the petitioner should be allowed without insisting on any other proof and secondly if the relationship by blood is established or not doubted and one such relative has been confirmed as belonging to a particular caste, then there is no reason why public time or money should be spent in the Committee testing the same evidence and coming to the same conclusion unless there is a finding on evidence that the validity of the certificate of such relation has been obtained by fraud.

7. Learned counsel for the petitioner submits that the Committee has not disputed the relationship of the brother or the existence of validity certificate nor there is any finding as yet on evidence that the brother's certificate

has been obtained by fraud. In all fairness in this context, he submits that vide letter dated 11.04.2018, the Scrutiny Committee has issued a show-cause notice to his real brother Dnyaneshwar Narayan Pawar to show-cause in view of a document that has been brought to its notice adverting to that in respect of one of the blood relatives the document refers to Maratha. He, however, submits that no order or finding cancelling the real brother's caste validity certificate has been passed nor has there been any finding that such certificate has been obtained by fraud. Therefore, in view of the ratio in the case of Apoorva Nichale (supra), once the claim of a blood relative is existing, the caste claim of the applicant / petitioner should have been allowed without insisting on any other proof. He further submits that the school record of the petitioner, his brother and validity holder Dnyaneshwar, cousins Durga, Ashwini, Dattatraya as well as cousin Sanju / Sanjay, Balu show their caste as "Thakur / Hindu Thakur", to which there has hardly been any serious objection by the Committee. He submits that even the land document viz; Khasra Pahani Patrak in respect of his grand-father viz. Tukaram Laxman Pawar states that the land is allotted to a "tribal" by Hyderabad

Bhudan Yagya Samiti on 25.09.1955 along with other tribals like “Bhill”. He further submits that even the extract of the death register of his grand-father Tukaram which indicates date of death as 17.02.1981, shows the caste as “Hindu Thakur”.

8. Learned counsel further submits that all the aforesaid overwhelming evidence in favour of petitioner while granting caste validity certificate has been unreasonably ignored by the Committee even though there has been no overwriting or interpolation in the documents submitted. He would submit that all the documents submitted by the petitioner annexed to the petition contain the caste as “Thakur / Hindu Thakur”.

9. According to him, the only objection that has been raised is in respect of the cousin brothers vis; Sanju/Sanjay and Balu which is contained in page 80 / 81 (internal page 6/7 of the impugned order) where it is stated that in the column with respect to caste of Balu as being “Marathi” pursuant to document of 1990, whereas pursuant to document of 1988 he is being referred to as “Thakur” and in respect of son Sanju as “Maratha” in one place and Thakur in another place pursuant to document of 1986,

although in the subsequent rows Sanju is referred to as Sanjay has been shown as “Hindu” pursuant to the document of 1984 and pursuant to a document of 1987 he is again shown as “Thakur”, whereas all the other relatives viz; Komal Subhash, Dattatraya, Jayashree Subhash, Nilesh Balu are being referred to as “Thakur”. It is submitted that with respect to school record of Subhash, the caste is mentioned as ‘Hindu Thakur’; whereas the word “Thakhur” is struck down and Thakur has been written. Also it is submitted that the petitioner has stated regarding School Record of Balu Gitaram Pawar and explained that Balu Gitaram Pawar was admitted in 1st standard on 01.06.1988 wherein his caste is recorded as ‘Hindu Thakar’. So far as Sanju Gitaram Pawar is concerned, the School Record pertaining to Sanjay @ Sanju which seems that he had taken admission in 2nd standard in Zilla Parishad Primary School, Jakhmatha on 18.08.1986 wherein the caste is recorded as Thakar, whereas in the School Admission Register of Shri Gadge Maharaj Prathmik Ashram Shala, Bhanashivre, the caste is recorded as ‘Hindu Thakur’ on 01.08.1987 whereas in School Record of Zilla Parishad primary School, Malwadgaon, his caste is mentioned as

Thakur on 03.07.1987. The Petitioner submits that, though the Vigilance Officer has observed regarding Balu Gitaram Pawar that School admission dated 02.07.1990 shows the caste as Marathi, but earlier to that in 1st standard, he has taken education from Shri Gadge Maharaj Prathmik Ashram Shala, Bhanashivre, wherein caste is shown to be recorded as Hindu Thakar in the year 1988 and hence the subsequent entry as Marathi cannot be considered as contra evidence and not only that, Marathi is not at all a caste, but the language being spoken by Maharashtrian people. It is submitted that due to taking admissions in three Schools in the same year, being a tribal, the entries have been conflicted and might have been written by the then School authority; hence those entries cannot be considered as contra evidence. However, the petitioner has collected Admission Form of Subhash Gitaram Pawar of the year 1983, wherein there is no scoring or manipulation and the caste is clearly written as Thakur. The entry application of July 1983 in Subhash's case where his mother tongue is referred to as "Marathi", is surprisingly being referred to as a contra document.

10. Learned counsel for the petitioner further

submits that pursuant to a vigilance inquiry where the aforesaid contra issues have been harped upon, the petitioner has given detailed reply dated 08.03.2018 to the vigilance cell report, stating that Sanjay and Sanju are one and the same person and the school record also indicates him to be Hindu Thakur / Thakur and that the entry of being Marathi being subsequent, cannot be considered as contra evidence. He would submit that as can be seen from the record, Thakur and Thakar are being used in the record and the same is nothing but Thakur scheduled tribe as has been settled by a number of judgments hitherto.

11. In reply to the vigilance cell with respect to the document of grand-mother where her name is shown as Sitabai Tukaram Thakur as relied upon by the petitioner, it is submitted that though the surname of the petitioner is Pawar, the surname of grand-mother is shown as Thakur by considering that the family of the petitioner belongs to Thakur scheduled tribe community. Therefore, grand-mother being the close relative, as per the settled law, the same should also have been considered in favour of the petitioner and the same could not have been discarded as settled by the Supreme Court in the case of **Amruta Vijay**

More Vs State of Maharashtra and others (decided in IA No. 3 of 2011 in Civil Appeal No. 7230 of 2011) and in the case of ***Anita Atmaram Gaikwad vs State of Maharashtra and others in Special Leave to Appeal (Civil) No. 23081 / 2010 (Civil Appeal No. 3881/2013)*** ***decided on 16.04.2013.***

12. Learned counsel for the petitioner submits that without considering and correctly appreciating the documentary evidence including certificate of validity of petitioner's real brother, allotment letter issued by Hyderabad Bhudan Yagya Samiti on 25.09.1955 in favour of the grand-father and school record of close blood relatives of the petitioner submitted before the Committee as well as the submissions made on behalf of petitioner, the Committee has invalidated the tribe claim of the petitioner necessitating this writ petition.

13. He submits that the Committee has with respect to the affinity test relied upon the remarks of the Research Officer when he states that information seems to be bookish knowledge when after visiting the residence of the petitioner and recording the statement of petitioner's real brother Dnyaneshwar regarding primitive traits,

characteristics, surnames of close blood relatives of petitioner, god-goddesses, marriage system, types of dances performed in the community, mother tongue, festivals of the community, delivery system, dress system in the community, even though same were answered in detail correctly. Learned counsel submits that it has also been held by the Supreme Court that the affinity test is not a litmus test. He cites the decision of the Supreme Court in the case of **Anand Katole vs the Committee for Scrutiny and Verification of tribe claim [2011 (6) Mh.L.J. (SC) 919]**. The Committee also appears to have raised usual objection of area restriction which can easily be met by the decision in the case of Jaywant Dilip Pawar vs State of Maharashtra and others in Civil Appeal No. 2336/2011, decided on 08.03.2017 as the same has been removed pursuant to the Presidential Order of Scheduled Tribes (Amendment) Act, 1976.

14. Learned A.G.P. submits that the contra evidence referred in the impugned decision, that in respect of Sanju / Sanjay and Balu as well as Subhash as referred to above as well as show-cause notice issued to the real brother Dnyaneshwar in respect of his caste validity certificate do

not entitle the petitioner to the reliefs sought for in the petition. Learned AGP purports to refer to that a show cause notice has been issued to the real brother and has also placed reliance upon the decision of the Scrutiny Committee impugned in this petition. He submits that therefore, the petition ought to be dismissed in view of the Scrutiny Committee's order dated 11.04.2018.

15. We have heard learned counsel for the parties and with their assistance also perused the papers and proceedings as well as various documents discussed above.

16. We note that the facts are largely undisputed. However, it is the appreciation of those facts without having regard to settled law which has brought the petitioner to this Court. In the case of Apoorva Nichale (supra), it has been observed to the effect that once there is a validity certificate in favour of a blood relative, no further inquiry is required unless there is evidence of fraud that has been established in relation to the certificate that has been obtained. Going by the said decision, it would not be inappropriate to set aside the Committee decision dated 11.04.2018.

17. We also observe that all the other issues raised

appear to be covered by various decisions of this Court including the recent decision of this Court in the case of ***Nikhil Anil Thakur Vs State of Maharashtra and others (Writ Petition No. 11344 of 2019)*** dated 12th January 2021, wherein after summarising the entire law on the subject in respect of Thakur scheduled tribe, this Court has set aside the decision of the Scrutiny Committee.

18. In view of the elucidation in the case of Nikhil Anil Thakur (supra), we deem it appropriate to exercise our writ jurisdiction in the matter. The impugned order dated 11th April 2018 is unsustainable and deserves to be set aside. Rule is made absolute in terms of prayer clause “B”.

19. Impugned order dated 11th April, 2018 passed by Respondent No.2 - Scheduled Tribe Certificate Scrutiny Committee, Aurangabad is set aside. Respondent No.2 - Committee shall forthwith issue validity certificate to the petitioner as belonging to “Thakur” scheduled tribe. The certificate would be subject to decision that would be taken by the committee in the proceeding stated to have been reopened of the validity holder relied upon by the petitioner. In case, said certificate is cancelled, then the petitioner may not be in a position to claim any equities and it would

be open for the Committee, if the Committee is of the view that validity certificate obtained by the validity holder is by playing fraud, then the Committee may resort to action against the petitioner as would be available in law.

(ABHAY AHUJA, J.)

(SUNIL P. DESHMUKH, J.)

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