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**(2022) 12 BOM CK 0020**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 6670 Of 2022**

Anurag And Others

APPELLANT

Vs

Scheduled Tribe Caste Certificate Scrutiny Committee, Sai  
Uttam Vila And Others

RESPONDENT

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**Date of Decision :** 01-12-2022

**Acts Referred:**

**Citation :** (2022) 12 BOM CK 0020

**Hon'ble Judges :** A. S. Chandurkar, J; Anil L. Pansare, J

**Bench :** Division Bench

**Advocate :** R. S. Parsodkar, A. A. Madiwale

**Final Decision :** Dismissed

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## Judgement

Anil L. Pansare, J

1. Heard Mr. Parsodkar, learned Counsel for the Petitioners and Mr. Madiwale, learned Assistant Government Pleader for the Respondent No.1/State.
2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.
3. The Petitioners' claim as belonging to 'Thakur' Scheduled Tribe has been rejected by the Respondent No.1 – Scrutiny Committee vide order dated 7th October, 2022. The Petitioners have filed twenty-seven documents in support of their claim, of which nine documents were pre-constitutional. According to the Petitioners, Ramji Sambhaji Thakur is their common ancestor. Ramji Thakur is great grandfather of the Petitioners.
4. Mr. Parsodkar, learned Counsel for the Petitioners has drawn our attention to the entries recorded in the Birth and Death Certificate in respect of children born to Ramji Thakur. The first document is dated 2/9/1912. It shows that a daughter was born to Ramji Thakur. The second document is dated 17/4/1920. It shows that a son was born to Ramji Thakur. The third document is dated 4/11/1925

showing that a daughter was born to Ramji Thakur, and the fourth document is dated 7/8/1929 showing that a daughter, namely Godi was born to Ramji Thakur. He has then referred to the School Certificate issued in the name of Namdeo Ramji Pawar showing caste 'Thakur' and the date of entry in the school as 31st March, 1942 and further showing the date of birth of Namdeo Ramji Pawar as 22/7/1935. There are other documents, as well, showing the caste of ancestors of the Petitioners to be 'Thakur'. However, the Respondent No.1 – Scrutiny Committee has ignored these documents and rejected the tribe claim of the Petitioners on the ground of affinity test and the area restriction.

5. The learned AGP has supported the impugned order on the point that affinity test is an integral part of the determination of the correctness of the tribe claim of the Petitioners and that the Petitioners have failed to prove the same.

6. We have gone through the impugned order dated 7/10/2022 passed by the Respondent No.1 – Scrutiny Committee. The Scrutiny Committee has not really disputed the existence of the documents. However, the Scrutiny Committee has rejected the tribe claim of the Petitioners on the ground of affinity test and the area restriction. The Scrutiny Committee has further observed that none of the relatives of the Petitioners have obtained Tribe Validity Certificate and that the tribe claim of the real uncle namely, Shri Rajendra Namdeo Pawar and cousin uncle namely, Shri Ganesh Prabhakar Pawar has been invalidated by the concerned Scrutiny Committee.

7. Mr. Parsodkar has submitted that the said orders have been challenged before this Court and the Petitions are pending. Thus, it is argued that the orders of the Scrutiny Committee on invalidation have not attained finality.

8. The Scrutiny Committee has further observed by referring to the entries dated 2/9/1912, 4/11/1925 and 7/8/1929 and opined that though these documents indicate that daughters were born to Ramji Thakur, however, the school certificates or revenue documents in their names have not been furnished by the Petitioners and that the Petitioners' father admitted that such documents do not exist. The Scrutiny Committee has then held that the discrepancy in the year of birth is unusual and accordingly ignored these documents.

9. We find that the Scrutiny Committee has failed to give due weightage to the above mentioned documents. The reasons assigned by the Scrutiny Committee appear to be erroneous. There is nothing unusual, in context with the then existing customs to have 5-6 children, nor is there anything unusual if the children are born in the gap of 4 to 8 years. In any case, in absence of any material before the Scrutiny Committee, the opinion expressed by it that there is unusual discrepancy in the year of birth of the children of Ramji Thakur is completely illogical. Similarly, the rejection of claim of the Petitioners on the ground that the Petitioners failed to establish their affinity and ethnic linkage towards 'Thakur' Scheduled Tribe, ignoring pre-constitutional documents is also not acceptable.

10. The Hon'ble Apex Court in the Special Leave to Appeal (C) No. 24894/2009 was testing the correctness of the judgment of Full Bench of the Bombay High Court in Writ Petition No. 5028/2006 in Shilpa Vishnu Thakur V/s State of Maharashtra & Ors. The Full Bench has held that the affinity test is an integral part of the determination of the correctness of the claim of the caste certificate. The said Judgment was referred by the Hon'ble Apex Court in a judgment reported as (2010) 14 SCC 489 Vijaykumar V/s State of Maharashtra & Ors., wherein, a certificate issued to the uncle of the appellant was found to be of no use as such certificate is/was not found to be validated by the Scrutiny Committee. However, in another judgment reported as (2012) 1 SCC 113, Anand V/s Committee for Scrutiny and Verification of Tribe Claims and Ors., the judgment of Full Bench of Bombay High Court was referred to. In the later, the Hon'ble Apex Court has held that the affinity test is not a litmus test and that the document of pre-constitutional era is of highest probative value in the eyes of law. In the circumstances, the Hon'ble Apex Court has framed the question as to what should be the parameters available to the Scrutiny Committee for verification of caste certificate, and referred the same to the larger Bench of three Judges for authoritative decision.

11. In the light of above, when the question as to whether affinity test is an integral part of the determination of the correctness of the claim of the caste certificate is pending consideration before the larger Bench of the Hon'ble Apex Court; and when the Petitioners have submitted number of documents, which were pre-constitutional documents, having high probative value showing caste of the ancestors of the Petitioners as 'Thakur'; and when the caste 'Thakur' has been included in the Presidential Order, 1950 as Scheduled Tribe; and when the Petitioners' education is at stake for want of Tribe Certificate, we are of the considered view that the tribe claim of the Petitioners could have been and ought to have been considered by the Scrutiny Committee, giving appropriate weightage to the pre-constitutional documents.

12. Of course, we do not intend to convey that the affinity test does not carry any significance, but when the question to that effect is pending consideration before the Hon'ble Apex Court, it cannot be said to be the only test to issue validity certificate of tribe claim or caste claim. The appropriate approach, according to us, where the pre-constitutional documents of the persons like Petitioners show that their caste is recorded as 'Thakur', is to consider the documents along with other evidence and to issue validity certificate, subject to outcome of the final decision of the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 24894/2009 (Mah. Adiwasi Thakur Jamat Swarakshan Samiti v/s The State of Maharashtra and Ors.). The Scrutiny Committee, therefore, committed error which according to us requires correction.

13. We are conscious of the fact that 'Thakur' community also belongs to upper caste and that 'Thakur' is also a title of the upper caste community, but, when the caste 'Thakur' is mentioned in the pre-constitutional document and when the

said caste had been included in the Scheduled Tribe category, the documents ought to have been considered by the Scrutiny Committee. Having failed to do so, we find the approach of the Scrutiny Committee to be unreasonable.

14. So far as area restriction is concerned, it has been held in catena of judgments that the significance of the same has been scaled down because of migration of the tribe families for their livelihood. Thus, the tribe claim of the Petitioners could not have been rejected on this count as well, ignoring pre-constitutional documents.

15. Accordingly and since the Petitioners are students and are aspiring to get admission in various colleges, we deem it appropriate to direct the Respondent No.1 – Scrutiny Committee to issue 'Thakur' Scheduled Tribe validity certificate to the Petitioners, subject to the outcome of the Special Leave to Appeal (C) No. 24894/2009 (Mah. Adiwasi Thakur Jamat Swarakshan Samiti V/s The State of Maharashtra & Ors.) pending before the Hon'ble Supreme Court. We, accordingly, proceed to pass the order as follows :

(i) The order dated 7/10/2022 passed by the Respondent No.1 – Scrutiny Committee is quashed and set aside.

(ii) It is declared that the Petitioners have proved that they belong to 'Thakur' Scheduled Tribe. The Respondent No.1 – Scrutiny Committee shall within a period of 10 days from receipt of copy of this order issue validity certificates to the Petitioners accordingly.

(iii) It is, however, made clear that issuance of validity certificates is subject to the final decision of the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 24894/2009, that has been referred to the larger Bench.

(iv) Till the Petitioners receive validity certificates, they are free to refer to the copy of this order to indicate that they have been held entitled to receive validity certificates.

16. Rule is made absolute in the aforesaid terms. No costs.

17. Parties to act upon the authenticated copy of this order.