

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

WRIT PETITION NO. 3768 OF 2023

**ROHAN SHARAD WANKHEDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Advocate for Petitioner : Mr. D.B. Shinde
AGP for Respondent Nos. 1 & 2 : Mr. S.G. Sangale
Advocate for Respondent No. 3 : Mr. P.V. Tapse

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 12 JULY 2023

PER COURT (PER : SHAILESH P. BRAHME, J.) :

1. Heard learned counsel for the parties and taken up this matter for final adjudication.

2. The petitioner is challenging invalidation of his tribe claim decided by judgment and order dated 10 November 2022 by the Scrutiny Committee. The petitioner has relied upon the validity certificates issued in favour of Fakira, Sachin and Nitish. They are paternal side blood relatives. Besides that, an old entry of 1913 of Shivilal Motilal Thakur, is also relied upon. He has placed on record the relevant entries, reply to the vigilance report, statement of Narayan and order dated 23 December 1983, passed by the appellate authority in favour of Fakira.

3. The Scrutiny Committee invalidated the claim of the petitioner because the school entries of the relatives were suspicious. The school record and the report of the vigilance enquiry were incompatible with the claim. It is further submitted that the blood relatives Tulshiram, Devichand, Ramchandra, Shivilal appeared to have taken admissions in the school way back in the years 1915 to 1919 which is rightly improbable. They were resident of remote hilly place and could not have taken education in the old times.

4. Learned AGP further submits that the validity certificates of Fakira and Sachin are not reliable. The genealogy is not tallying. It is further submitted that considering the startling and rank illegalities transpired from order in Fakira, it is necessary to exercise plenary powers. He would insist for taking stern action against the validly holders. He strongly opposes for issuing any validity to the petitioner, much less the conditional validity.

5. In the present case validity certificates are issued in favour of Fakira, Nitish and Sachin. The relationship is not in dispute. There is old entry of the year 1913 in respect of Shivilal Motialal.

After following due procedure the validities were issued. In view of ratio of Supreme Court in paragraph nos. 22 to 24 of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Versus State of Maharashtra and Others, 2023 SCC Online SC 326, we are inclined to rely upon validity certificates of Nilesh, Sachin and Fakira.

6. The submission of learned AGP that stern action is required to be taken or the plenary powers need to be invoked does not command us. At this juncture we are not called upon to assess matter of validity holder. We are not exercising appellate powers. Unless the Scrutiny Committee reopens the cases of the validity holders successfully, we cannot deprive of the petitioner from the benefits of social status.

7. It transpires that the validity certificate issued in favour of Fakira was challenged by the State before the appellate authority. By order dated 23 December 1983, the appeal was dismissed. Specific finding was recorded considering documentary evidence to hold in favour of Fakira. Other blood relatives Sachin and Nitish were not granted conditional validity. Therefore, this is not a fit case to impose any conditions.

8. The Scrutiny Committee committed perversity and patent illegality in rejecting the caste claim. The impugned judgment is unsustainable in law. We, therefore, pass the following order :

- i. The judgment and order dated 10 November 2022, passed by the Scrutiny Committee, is quashed and set aside.
- ii. The Scrutiny Committee shall issue tribe validity certificate to the petitioner for scheduled tribe, 'Thakur' within a period of two weeks from today.
- iii. Writ Petition is disposed of. There shall be no order as to costs.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

spc/-