

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

47 WRIT PETITION NO. 10982 OF 2019

Prajit s/o Bhagwan Thakur,
Age 38 years, Occ. Service as Police
Constable, Presently residing at
Room No. 631, Dashak Plot No. 10,
Raghunandan Bunglow, Trimurti Nagar,
Saykheda Road, Jail Road, Nashik,
Tq. & Dist. Nashik.

... Petitioner

VERSUS

- 1) The State of Maharashtra,
Department of Tribal Development,
Through its Secretary,
Mantralaya, Mumbai-32.
- 2) The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division,
Nandurbar, Through its Member Secretary.
- 3) Commissioner of Police, Nashik City,
Police Head Office, in front of K.T.H.M.
College, Near Sarkarwada Police Station,
Nashik Tq. & Dist. Nashik.

... Respondents

Advocate for Petitioner : Mr. Deepak D. Choudhari h/f Mr. Yeramwar S.C.
A.G.P. for Respondent nos. 1 to 3 : Mr. M.K. Goyanka

...

...

WITH
WRIT PETITION NO. 11001 OF 2019

Sujit s/o Bhagwan Thakur,
Age 41 years, Occ. Service as
Police Inspector
Presently residing at
Room No. 631, Dashak Plot No. 10,
Raghunandan Bunglow, Trimurti Nagar,
Saykheda Road, Jail Road, Nashik,
Tq. & Dist. Nashik.

... Petitioner

VERSUS

- 1) The State of Maharashtra,
Department of Tribal Development,
Through its Secretary,
Mantralaya, Mumbai-32.
- 2) The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division,
Nandurbar, Through its Member Secretary.
- 3) Director General of Police,
Shahid Bhagatsing Marg,
Colaba, Mumbai-400005.

... Respondents

Advocate for Petitioner : Mr. Deepak D. Choudhari h/f Mr. Yeramwar S.C.
A.G.P for Respondent nos. 1 to 3 : Mr. M.K. Goyanka

CORAM

... : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.

DATE

... : 02.12.2024

PER COURT :

The petitioners are challenging the common order dated 22.08.2019 passed by the scrutiny committee in a proceeding under Section 7 of the Maharashtra Act XXIII of 2001, refusing to validate their 'Thakur' scheduled tribe certificates.

2. We have heard both the sides finally at the stage of admission.

3. The learned advocate for the petitioners submits that in spite of a pre-constitutional record, referred to by the committee, indicating that the petitioners' ancestors from the paternal side were admitted to the schools by expressly mentioning that they belonged to 'Thakur' scheduled caste, the committee has discarded it by referring to one contrary entry of the petitioners father of a post-constitutional period. He would submit that this is perversity and arbitrariness in appreciating the evidence. A pre-constitutional record will have greater probative value and ought to have

been considered and relied upon.

4. The learned advocate would further submit that contrary to law, the committee has resorted to and has applied the affinity test as also the area restriction. The petitioners may not have been able to prove the blood relationship with the validity holder but the evidence led by them of a pre-constitutional period was sufficient to discharge the burden under Section 8.

5. The learned A.G.P. would take us through the judgment and would submit that the committee has assigned cogent and convincing reasons for discarding the pre-constitutional record. It has meticulously given the list of the individuals, claiming to be 'Thakur' and belonging to forward castes from the same district. It has also pointed out as to how triables belonging to 'Thakur' scheduled tribe were never found anywhere in the district to which the petitioners belong. Even one of the pre-constitutional school record of the year 1921 was not traceable. In the circumstances, the committee has appropriately applied the affinity test and the petitioners could not withstand it.

6. We have considered the rival submissions and perused the papers. As is mentioned in the impugned order itself, the petitioners have been heavily relying upon the school record of their cousin grandfather Shankar Dayaram Thakur of the year 1920 of grandfather Raghunath Dayaram Thakur of the year 1921, that of uncle Ramchandra Raghunath Dayaram of 1952 and another uncle Kashinath Raghunath Thakur of 1936, who have been described as 'Thakur' in the caste column of the school registers. The stand of the committee to discard these entries by applying the principle of area restriction in spite of being aware about the Amendment Act of 1976, is objectionable. When the legislature in its wisdom has expressly removed such area restriction, conduct of the committee in resorting to it would be in clear violation of the observations of the Supreme Court in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of**

Kerala and Anr.; (1994) 1 SCC 359 and Jaywant Dilip Pawar Vs. State of Maharashtra and others; 2018 (5) All M.R. 975.

7. True it is that the entry in respect of Raghunath Dayaram Thakur of 1921, seems to be dubious one rather cannot be relied upon as it could not be verified from the school record. However, still, there would be the entries in the school record right from the year 1920 to 1936, wherein the petitioners' ancestors were recorded/described as 'Thakur'.

8. In light of the decision in the matter of *Anand V. Committee for Scrutiny and Verification of Tribe Claims and others; (2012) 1 SCC 113*, pre-constitutional entries in the school record would carry greater probative value and could not have been discarded on the basis of isolated post-independence school record of petitioners' father wherein he was described as 'Hindu Maratha' in the year 1958. The observation and conclusion of the committee in discarding such pre-constitutional record, genuineness of which is not in doubt except one entry, the conclusion of the committee is clearly perverse and arbitrary. It has attempted to refer to the statistics and demonstrate that persons belonging to 'Thakur' scheduled tribe were never found in Jalgaon district and the 'Thakurs' from Jalgaon district belong to forward communities. It clearly demonstrates that the inference drawn by the committee is based on surmises and conjectures.

9. Admitting such being the state of affairs, that would not disprove the petitioners claim, more so when a favourable record, as discussed herein above, is available.

10. Once having seen that the petitioners were relying upon pre-constitutional favourable record, even the committee could not have resorted to affinity test in light of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326*.

11. Under these circumstances, the impugned judgment and order, in our considered view, is unsustainable in law.

12. The writ petitions are allowed. The impugned order is quashed and set aside. The petitioners shall be issued with certificates of validity of 'Thakur' scheduled tribe.

(PRAFULLA S. KHUBALKAR J.)

(MANGESH S. PATIL, J.)

mkd/-