IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10569 OF 2010
WITH
CIVIL APPLICATION NO.18478 OF 2010

Sunil S/o. Pratap Thakur, ...**PETITIONER**
Age-31 years, Occu-Service,
R/o. A/P. Betawad, Tq. Sindkheda,
Dist. Dhule

VERSUS

1. The State of Maharashtra, ...**RESPONDENTS**
   Department of Tribal Development,
   Mantralaya, Mumbai-32
   Through its Secretary

2. The Scheduled Tribe Certificate Scrutiny,
   Committee, Nandurbar Division, Nandurbar,
   Through its Member Secretary,

3. The Sub Divisional Officer,
   Shirpur Division, Shirpur,
   Dist. Dhule

4. The Additional Director General of Police
   & Director, Police Wireless, Maharashtra
   State, Pune

5. The Superintendent of Police,
   Wireless, Headquarter, Pune

Mr. S. C. Yeramwar, Advocate for the petitioner
Mr. S. B. Yawalkar, AGP for the respondents/State

CORAM : RAVINDRA V. GHUGE &
ANIL L. PANSARE, JJ.
RESERVED ON : 11th July, 2022
PRONOUNCED ON : 28th July, 2022

JUDGMENT [PER: ANIL L. PANSARE, J.]

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsels for the parties.

2. The petitioner has assailed the order dated 30-09-2010, passed by the respondent No.2-Scheduled Tribe Certificate Scrutiny Committee, Nandurbar invalidating the claim of the petitioner as belonging to 'Thakur' Scheduled Tribe. The petitioner was working as a Police Constable (Wireless Operator) with the respondent Nos.4 & 5. Pending petition, the department issued termination order on 11-11-2010. The petitioner is

seeking to quash and set aside the aforesaid termination order dated 11-11-2010 vide civil application No.18478/2010 filed in the present petition.

3. We have considered the rival submissions and with the assistance of the learned advocates for both the parties, we have gone through the record.

4. We find that there are as many as five validity certificates issued in favour of the paternal blood relatives of the petitioner. The petitioner's paternal cousin uncle namely Madhukar Thakur holds scheduled tribe validity certificate issued by the Additional Collector Nashik Division, Nashik. Another paternal cousin uncle viz. Rangrao Manik Thakur holds scheduled tribe validity certificate issued by the Scheduled Tribe

Certificates Scrutiny Committee, Nashik. Cousin brother of the petitioner namely Atul Dilip Thakur holds scheduled tribe validity certificate issued by the concerned Scrutiny Committee, Nashik. Another cousin brother of the petitioner namely Ravindrakumar Vitthal Thakur holds scheduled tribe validity certificate issued by the concerned Scrutiny Committee, Nashik. Another scheduled tribe validity certificate has been issued to the petitioner's uncle namely Girdhar Thakur. All these validity certificates have been issued as belonging to 'Thakur' Scheduled Tribe.

5. Despite above validity certificates having been placed before the respondent No.2 Caste Scrutiny Committee, it has ignored the same on the ground that each case has to be decided on it's own merits and that the petitioner failed to make out a case in the affinity test.

6. The learned AGP made an attempt to justify such stand taken by respondent No.2-Committee.

7. However, the law is well settled on this count. Once, tribe validity certificates of the relatives from the paternal side are placed on record, there is no reason to invalidate the caste claim of the applicant. If the stand taken by the respondent No. 2-Committee is to be accepted, then there would be an anomaly in the social status of the members of the family, in the sense that some members of the family will have status of 'Thakur' Scheduled Tribe and will get consequential benefits of such social status, but the others will be deprived of such benefits.

8. We may quote two paragraphs of the judgment dated 15-03-2022 in Writ Petition No.

11617 of 2017 (Bharat Bhagwant Tayade Vs The State of Maharashtra and others) passed by the Bombay High Court at the Principal Seat. The Co-ordinate Bench of this Court has held in paragraph Nos. 4 and 5 as under:-

> *"4. It may be stated here that caste or tribe validity certificate granted to any person is a conclusive proof of the social status of that person and it confirms the genuineness of the social status, whether caste or tribe, claimed by that person. A document which stands as a conclusive proof for one person would also stand as a conclusive proof of the social status of another person, if such person is a parental relative of the first person possessing the validity certificate except in a case where the validation of caste or tribe certificate is vitiated by fraud, misrepresentation of facts or suppression of facts.*
>
> *5. There is a rationale in this approach. In most parts of India, the families are organized on patriarchal basis and follow a patrilineal mode of succession. In such families, members take same caste or belong to same tribe as that of their ancestor traced patrilineally. In such a family, therefore, the relatives cannot be the members of different caste or tribes and must be considered to be in law as having same caste or tribe or*

community to which their common ancestor from paternal side belonged. It, therefore, appeals to reason that the validity certificate granted to any relative from the paternal side would equally constitute a conclusive proof for the social status of another member of the family, immediate or extended, from the paternal side except in circumstances noted above. This is the law laid down by the Hona'ble Supreme Court in the case of Raju Ramsing Vasave Vs Mahesh Deorao Bhivapurkar And Ors. (2008) 9 SCC 54, which has been followed by the Division Bench of this court in the case of Apporva D/o. Vinay Nichale Vs Divisional Caste Certificate Scrutiny Committee No. 1 and Ors. 2010 (6) Mh.L.J. 401."

9. The record indicates that the common ancestor of the petitioner and the five relatives named above is one late Shri Kamaji Thakur. In the circumstances, unless and until there is material to show that the tribe certificate was obtained by fraud, misrepresentation of facts or suppression of facts, the validity certificate granted to any relative from the paternal side would constitute conclusive proof for the social status of another

member of the family, immediate or extended from the paternal side.

10. It is nobody's case that the petitioner is not a paternal relative of the five persons named above. It is also not the case that these five relatives or any one of them have obtained the validity certificate by committing fraud or by misrepresentation or by suppression of facts. The Committee therefore, ought to have allowed the caste claim of the petitioner.

11. At this stage, learned advocate for the petitioner makes a request that civil application filed by the petitioner for quashing order of termination may be considered.

12. Having considered the record available in the light of the submissions of the learned

advocates appearing for the respective sides, it is apparent that the Department has issued the termination order to the petitioner during the pendency of this petition. The petitioner could have amended the petition for challenging the termination order. However, on a legal advice, he has preferred a civil application. We need to take a pragmatic view of the matter rather than taking recourse to a pedantic approach. We have, therefore, considered the Civil Application challenging the termination order since the said order is based on the order of invalidation passed by the competent Committee on 30.09.2010.

13. Since it is undisputed that the impugned termination order is based on the order of invalidation, which forms the basis of such action, once the order of invalidation is quashed and the petitioner is held entitled to a validity

certificate, the termination order would be rendered unsustainable. In the light of these factors, the Civil Application deserves to be allowed.

14. In the result, this petition and the civil application are allowed. The impugned order dated 30-09-2010 passed by the Committee, the impugned letter dated 30-07-2010 and the termination order dated 11-11-2010 issued by respondent No.4, are quashed and set aside. Respondent No.2-Scheduled Tribe Certificate Scrutiny Committee, Nandurbar is directed to issue validity certificate to the petitioner as belonging to 'Thakur' Scheduled Tribe, within a period of two weeks from the date of receipt of copy of this order. Consequential benefits as permissible under the law shall follow in above terms. Rule is made absolute.

15. There shall be no order as to costs.

[ANIL L. PANSARE, J.] **[RAVINDRA V. GHUGE, J.]**

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