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

**WRIT PETITION NO.5321 OF 2009
WITH
CIVIL APPLICATION NO.9690 OF 2015
IN
WRIT PETITION NO.5321 OF 2009**

Bhalchandra s/o Nathu Thakur,
Age: 59 years, Occu: Pensioner,
R/o. Plot No.2/1, Mayur Housing Society,
Nimkhedi Shivar, Dhule Road, Jalgaon,
Tq. & Dist. Jalgaon

....PETITIONER

VERSUS

1. The State of Maharashtra,
Through Police Commissioner,
Pune
2. Schedule Tribes Certificate
Security Committee,
Nandurbar, Through its
Member Secretary
3. The Executive Magistrate,
Dhule, Tq. & Dist. Dhule
4. The Account General-1,
Maharashtra State,
Near Church Gate Railway Station,
Madam Kama Road, Mumbai
5. The Director General of Police
Maharashtra State, State Police
Head Quarter, Mumbai

....RESPONDENTS

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Mr S. R. Barlinge, Advocate for petitioner
Mr V. M. Kagne, A.G.P. for respondents/State

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**CORAM : MANGESH S. PATIL
AND
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 6th January, 2025

JUDGMENT (Per : Prafulla S. Khubalkar, J.)

1. Heard.

2. Rule. Rule made returnable forthwith. By consent, heard the parties for final hearing.

3. The petitioner is taking exception to the judgment and order dated 06/05/2009, passed by respondent No.2/scrutiny committee invalidating the petitioner's claim for 'Thakur' Scheduled Tribe and instead issuing direction to initiate action against the petitioner under Section 10(1)(2) of the Maharashtra Scheduled Castes, and Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No.XXIII of 2001).

4. The committee has invalidated the petitioner's claim observing that the petitioner has failed to establish his claim on the basis of the documents as well as on account of failure in affinity test.

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The committee has, although considered the validity certificates in favour of sons of the petitioner, has opined that the petitioner's claim cannot be conclusively decided on the basis of those validity certificates since each and every case needs to be considered independently and in view of the legal position existing on the date of passing of the impugned order, the claim of the petitioner needs to be considered independently. The committee has thus refused to rely on the validity certificates of the children of the petitioner. As regards the documents of pre-independence era, relied upon by the petitioner, the committee has discarded the documents by observing that, since the forefathers of the petitioner were residing in a place at Taluka Sindkheda, District Dhule, which is not in the scheduled area for the 'Thakur' Scheduled Tribe community, the documents cannot be of any assistance in proving the petitioner's tribe claim. Apart from giving its finding on the documents, the committee independently observed that the petitioner has failed in affinity test and with these observations, the petitioner's claim is invalidated.

5. Assailing the order of the committee, Advocate S. R. Barlinge, the learned counsel for the petitioner invited our attention to the certificate of validity granted in favour of the petitioner's son

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Mahesh Bhalchandra Thakur, dated 14/10/1999 and certificate of validity dated 20/04/2004 in favour of his another son Mukesh Bhalchandra Thakur. Apart from the reliance on validity certificates of the children of the petitioner, it is argued that, in support of the petitioner's tribe claim, pre-independence era documents in the nature of School Leaving Certificates of the year 1935, 1938 and 1941, so also the extracts of birth and death registers of the year 1924, 1930 and 1939 were relied upon, which mentioned the caste of the forefathers of the petitioner as 'Thakur'. By referring to these documents, it is submitted that, in view of these documents of pre-independence era, which have high probative value and in absence of any contra entry in any other document, the petitioner's claim ought to have been validated on the strength of the documentary evidence.

6. Per contra, Advocate V. M. Kagne, the learned A.G.P. for respondent Nos.1 to 5 has opposed the petition and justified the impugned order by contending that the validity certificates in favour of the children of the petitioner, cannot be made the sole basis. It is submitted that, although the validity to the sons of the petitioner was granted on the basis of the orders passed by this Court in Writ Petition Nos.2746/1998 and 5454/1998, the legal position on the basis of which

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these writ petitions were decided was not subsequently maintained. It is argued that the validity certificates of sons of the petitioner cannot be sole basis to decide petitioner's claim. It is submitted that the other documents relied upon by the petitioner are rightly discarded in view of the residence of the petitioner's forefathers being not from the scheduled area.

7. We have heard the parties, considered the rival contentions and perused the papers.

8. It is to be noted that there is no challenge to the certificates of validity in favour of the petitioner's son Mahesh and Mukesh. In view of the fact that the validities of the children of the petitioner are granted by the competent authority and the same are not being questioned, the petitioner's claim will have to be decided by giving due weightage to these validity certificates. The reasoning of the committee while discarding these validity certificates is not at all appealing and the same demonstrates erroneous approach on the part of the caste scrutiny committee. Although the judgment in the matter of **Kumari Madhuri Patil and anr. Vs. Addl. Commissioner, Tribal Development and others, [(1994) 6 Supreme Court Cases 241]**, lays down that each and every case needs to be considered in the

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backdrop of its facts, it will be an anomalous situation to hold that the children and father belong to different castes. Apart from these validity certificates, the other documentary evidence relied upon by the petitioner being of pre-independence era, as referred above, cannot be discarded only for the reason of area restriction. In view of undisputed position about removal of area restriction, the reasons stated by the scrutiny committee for discarding the pre-independence documents are not sustainable.

9. In view of the position of law as laid down in the matter of **Jaywant Dilip Pawar vs. State of Maharashtra and others, [2018 (5) ALL MR 975]** and **Palghat Jilla Thandan Samudhaya Samrakshana Samithi and another Vs. State of Kerala and another, [1994 (1) SCC 359]**, the rejection of caste claim by discarding documents only on account of residence of the candidate not from scheduled area, cannot be sustained.

10. Further, in view of the validity certificates in favour of the children of the petitioner, the petitioner is entitled to take benefit of the law laid down in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others, [AIR 2023 Supreme Court 1657]** and **Apoorva Vinay Nichale Vs.**

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**Divisional Caste Certificate Scrutiny Committee No.1 and others;
[2010 (6) Mh. L.J. 401].**

11. In view of the entire conspectus of the matter, the petitioner is entitled for grant of validity certificate and the petition needs to be allowed. Hence, the following order :-

- (a) The writ petition is allowed.
- (b) The impugned order dated 06/05/2009, passed by respondent No.2/caste scrutiny committee is quashed and set aside.
- (c) Respondent No.2/committee is directed to immediately issue the tribe validity certificate of 'Thakur' Scheduled Tribe to the petitioner in the prescribed format.
- (d) Pending civil application also stands disposed of.
- (e) Rule is made absolute.
- (f) No order as to costs.

(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.)

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