



3608.07wp

(1)

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

## WRIT PETITION NO.3608 OF 2007

Amol s/o Arun Thakur, Age:\_\_\_\_ years, Occu: Student, R/o Deepnagar, New E Type 61/2, Bhusawal, Tq. Bhusawal, Dist. Jalgaon

....PETITIONER

## **VERSUS**

- The State of Maharashtra,Through its Secretary,Tribal Development Department,Mantralaya, Mumbai-32
- 2) The Member Secretary, Scheduled Tribe Certificate Scrutiny Committee, Nashik Division, Nashik

....RESPONDENTS

Mr Madhur A. Golegaonkar, Advocate h/f Mr Anil S. Golegaonkar, Advocate for petitioner Ms S. S. Joshi, A.G.P. for respondents

CORAM : MANGESH S. PATIL

AND

PRAFULLA S. KHUBALKAR, JJ.

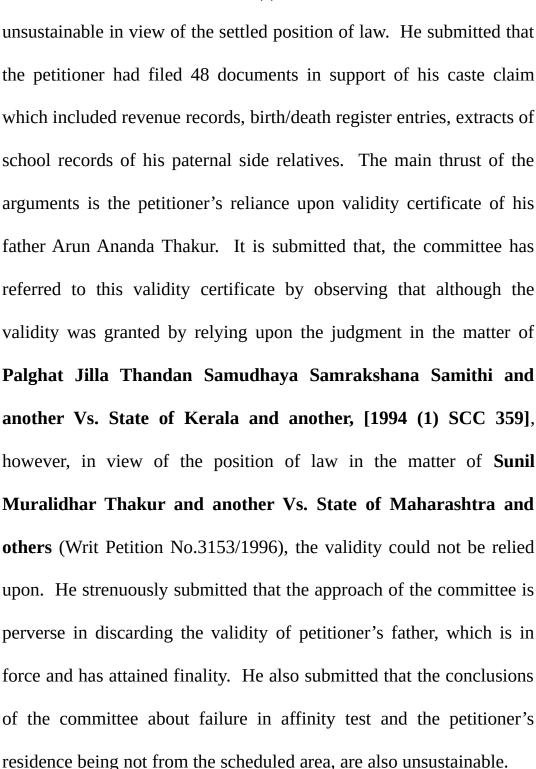
DATE: 5th February, 2025

## JUDGMENT (PER: PRAFULLA S. KHUBALKAR, J.)

1. Heard advocate Mr Madhur Golegaonkar, holding for advocate Mr A. S. Golegaonkar for the petitioner and advocate Ms S. S. Joshi, learned A.G.P. for respondents.



- 2. This writ petition was admitted by order dated 29/03/2010 with interim relief in favour of the petitioner. The matter is taken up for final hearing.
- 3. The petitioner takes exception to the order dated 06/10/2006, passed by respondent No.2/Scheduled Tribe Certificate Scrutiny Committee, Nashik, invalidating his claim for 'Thakur' Scheduled Tribe in a proceeding under Section 7 of the Maharashtra Scheduled Castes, 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. Respondent No.2/scrutiny committee has observed that the petitioner failed to establish his claim on account of documentary evidence, as well as failed to prove affinity with 'Thakur' scheduled tribe. While dealing with the validity certificate relied upon by him, the committee has observed that, in view of the position of law prevailing at the relevant time, the petitioner could not be given benefit of validity certificate.
- 5. Advocate Mr Madhur Golegaonkar for the petitioner vehemently submitted that the impugned order is absolutely

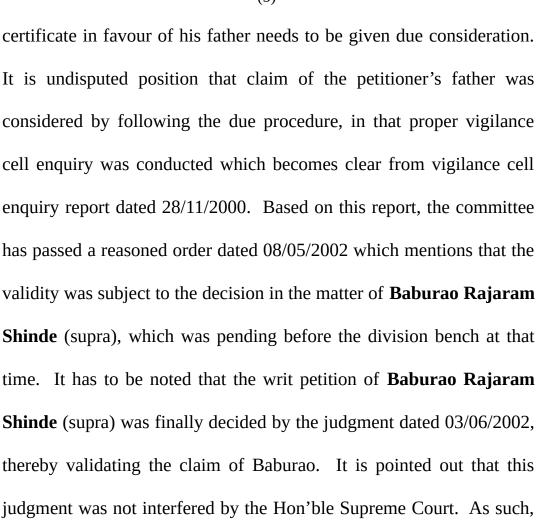


6. Per contra, advocate Ms Joshi, learned A.G.P. for respondents opposes the petition and justifies the impugned order. She submits that the validity of the petitioner's father was a conditional



validity and it was made subject to decision in the matter of **Baburao** s/o Rajaram Shinde Vs. State of Maharashtra and others [2002 (4) Mh.L.J. 310] in Writ Petition No.4123/1999, which was pending before the division bench at that time, and therefore, the petitioner cannot completely rely on such conditional validity. She also submits that, in view of the position of law as laid down in **Kumari Madhuri** Patil and anr. Vs. Addl. Commissioner, Tribal Development and others, [(1994) 6 Supreme Court Cases 241], each case needs to be decided on its own merits, and therefore, the petitioner's claim was rightly considered independently.

- 7. During the course of arguments, the learned counsel for the petitioner produces a copy of the vigilance cell enquiry report dated 28/11/2000 in the matter of his father, alongwith a copy of the order dated 08/05/2002 passed by the Scrutiny Committee, Nashik granting validity to his father.
- 8. We have considered the rival submissions and perused the papers. It has to be noted that the documents submitted by the petitioner including the pre-presidential order era consistently show the caste as 'Thakur'. There is no document with contrary entry. Apart from the documents submitted by the petitioner, the validity



9. In view of the fact that the claim of petitioner's father was decided by following due procedure after vigilance cell enquiry, reliance can be placed upon this validity in view of the law laid down in Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others, [AIR 2023 Supreme Court 1657]. Further, in view of the validity in favour of the petitioner's

validity of petitioner's father Arun Ananda Thakur can no more be

considered to be a conditional validity.



father, it will be anomalous situation if the petitioner's claim is invalidated. We are, therefore, of the view that on the basis of validity of his father, the petitioner is also entitled to have validity in his favour.

- 10. As regards affinity test, the position of law is no more *res-integra* that affinity test is not a litmus test and failure to establish ethnic linkage, as observed by the respondent/committee, cannot be therefore considered as a factor to deny validity.
- 11. On the basis of settled position of law in the matter of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra) and Apoorva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others, [2010 (6) Mh. L.J. 401], in view of validity in favour of petitioner's father, the instant writ petition needs to be allowed. Hence, we pass the following order:-
  - (a) The impugned order dated 06/10/2006, passed by respondent No.2/scrutiny committee is quashed and set aside.
  - (b) Respondent No.2/committee is directed to issue validity certificate in favour of the petitioner in the prescribed proforma.



(7)

12. Rule is made absolute in above terms.

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