



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

WRIT PETITION NO. 3923 OF 2012

Tushar Ashok Mahale

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Mukulanand R. Wagh, Advocate for the Petitioner.

Shri P. S. Patil, Addl.G.P. for the Respondent Nos. 1 and 2.

Shri Nilesh N. Desale, Advocate for the Respondent No. 4.

**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

DATE : 04TH FEBRUARY, 2025.

ORDER :

. Heard both sides finally at the admission stage.

2. The petitioner is questioning judgment and order dated 01st February, 2012 passed by the respondent No. 2/Scrutiny Committee invalidating his tribe certificate of 'Thakur' scheduled tribe.

3. The petitioner is relying on pre-constitutional record of his grandfather Paulad Sampat Thakur, Todar Ragho Thakur and Kevalsinh Ragho Thakur. Besides other school record, he is also relying on validities issued to Nitin Liladhar Thakur and Pratibha Liladhar Thakur. It is the submission of the petitioner that the Committee did not doubt the relationship of the

petitioner with the validity holders as well as the persons whose record was pressed into service to support the tribe claim. The pre-constitutional record is having more probative value and the validities issued to the paternal side relatives are clinching to corroborate the tribe claim. He would submit that the Committee has committed patent illegality in discarding the validity certificates as well as record pressed into service.

4. He has placed reliance on the judgment in the matters of Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others, reported in *(2012) 1 SCC 113* and Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others reported in *2023 SCC Online SC 326*.

5. Per contra, learned Additional Government Pleader supports the impugned judgment and order. He tenders on record original files of Vaishali, Liladhar and Pratibha. He would point out from the file of Vaishali that in the genealogy given by her, branches of Zipa and Nago are absent as against the genealogy given by the petitioner which is at page No. 29A. The validity holders are the descendants of branch of Vedu. Therefore, there is every doubt of relationship of the petitioner with the members of the branch of Vedu. The validities cannot be relied upon due to want of relationship.

6. It is further submitted that Vaishali's validity was not pressed into service and, therefore, no vigilance could be

conducted into the relationship of the petitioner with the validity holders. He would further submit that the documentary evidence would only indicate surname as Thakur, which is not sufficient to make out a case for the petitioner. He would further submit that the Hon'ble Apex Court is seized with the matter in which judgment of the Full Bench in the matter of **Shilpa Vishnu Thakur Vs. State of Maharashtra in Writ Petition No. 5028 of 2006** along with other connected writ petitions decided on 07.05.2009. Findings recorded by the Committee are based on material on record and those are plausible. He would therefore pray to dismiss the petition.

7. The petitioner has pressed into service following pre-constitutional documents, which were scrutinized during the course of vigilance enquiry :

- (i) Extract of school admission register of Paulad Sampat Thakur of 02.04.1934.
- (ii) Birth register extract of Paulad Sampat Thakur of 27.01.1928.
- (iii) School leaving certificate of Todar R Thakur of 01.09.1922
- (iv) Birth register extract of Keval Ragho Thakur of 05.02.1925.

8. In the vigilance report, the Committee did not express any reservation about genuineness of these entries. These are pre-constitutional record having greater probative value. The petitioner is therefore justified in referring the judgment of the

Apex Court in the matter of Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others (supra). These entries would enure to the benefit of the petitioner.

9. Besides, above record, we find that there is further school record of Liladhar Todarsingh Thakur of 1955. The validity certificate of Pratibha and Nitin were pressed into service. Going by the genealogy relied upon by the petitioner the persons holding validity certificates as well as the persons whose pre-constitutional record is pressed into service are figuring in it. During the vigilance no doubt is expressed regarding their relationship with the petitioner.

10. We find that Nitin and Pratibha are paternal side blood relatives. They are issued with the validity certificates after following due procedure of law. Unless those validity certificates are revoked, the petitioner cannot be denied same social status. The validity certificates pressed into service by the petitioner would enure to the benefit of the petitioner in view of the judgment of the Supreme Court in the matter of Maharashtra Adiwasli Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others (supra).

11. The learned Addl. G. P. has adverted our attention to the genealogy in the matter of Vaishali. If said genealogy is compared with the genealogy given by the petitioner, then branch of Zipa and Nago are not shown in the genealogy given by

Vaishali. This plea has been taken for the first time before the High Court. The Committee did not express any doubt regarding relationship of the petitioner with the validity holder. Though Vaishali's validity was not relied upon by the petitioner, it was within the jurisdiction of the Committee to conduct vigilance. It also appears from record that the record of the persons falling in the branch of Vedu was before the vigilance cell as well as the Committee. Those entries were neither doubted, nor relationship was doubted by the committee. We find that the committee had ample opportunity to go into the relationship, but no endeavour has been made by the Committee in that respect. The plea taken by the learned Addl. G. P. for the first time cannot be entertained in the High Court.

12. It is submitted that the judgment of the Full Bench of this Court in the matter of **Shilpa Vishnu Thakur Vs. State of Maharashtra in Writ Petition No. 5028 of 2006** is under consideration of the Apex Court. Therefore, request is made that liberty be granted to the Committee to initiate action of reverification, if the decision goes in favour of the committee. If the decision is rendered in favour of the Committee, the Committee would be at liberty to take appropriate recourse of law. No such exception can be made in the present matter in favour of the petitioner. The petitioner can not be made to wait till Supreme Court decides either way.

13. We have already recorded that there is clinching evidence

on record. There are numerous entries indicating caste as Thakur. Therefore, the submission that the indication of caste as Thakur in the record would not be sufficient to support the tribe claim cannot be accepted. We have recorded that the validities issued in the family are supporting the tribe claim. In our analysis, we find that the impugned judgment and order is unsustainable. We, therefore, pass following order.

O R D E R

- (i) The writ petition is partly allowed.
- (ii) The impugned judgment and order dated 01.02.2012 passed by the respondent No. 2/Scrutiny Committee is quashed and set aside.
- (iii) The respondent No. 2/Scrutiny Committee shall issue tribe validity certificate of 'Thakur' scheduled tribe to the petitioner immediately.
- (iv) There shall be no order as to costs.

[SHAILESH P. BRAHME J.]

[S. G. MEHARE, J.]

bsb/Feb. 25