

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2814 OF 2024

- 1) Vaibhav Rajendra Thakur
 - 2) Shashank Rajendra Thakur
- Both residing at Gajanan Heights,
Pakhhal Road, Ashoka Marg,
Nashik, Dist. Nashik

... Petitioners

VERSUS

- 1) The State of Maharashtra
- 2) Scheduled Tribe Certificate Scrutiny
Committee, Dhule Division, Dhule,
Through its member Secretary,
having its office at Dhule, Dist. Dhule.

... Respondent

...

Advocates for Petitioners : Mr. R.K. Mendadkar a/w Mr. Vijay G. Gangalwad,
i/b Mr. Bayas Anandsingh Sangramsingh
A.G.P. for Respondent nos. 1 & 2 : Mr. P.J. Bharad

CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.
DATE : 09.08.2024

ORDER : (MANGESH S. PATIL, J.)

The petitioners, who are brothers *inter se* are challenging the common order of the respondent no. 2-scrutiny committee passed in a proceeding under Section 7 of the Maharashtra Act XXIII of 2001, refusing to valid their 'Thakur' scheduled tribe certificates.

2. In the light of the exigency, the matter is heard finally at the stage of admission.

3. The learned advocate for the petitioner would advert our attention to the genealogy and would submit that there are several validities in the family, one of which namely Bhuvaneshwari Hitendra Thakur was held

entitled to have a certificate of validity by the order of this Court. There has been no dispute about the blood relationship between the petitioners and the validity holders. They were issued with certificates of validity by following due process of law. Following the law laid down in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326***, the committee ought to have extended the benefit of these validities to the petitioners.

4. The learned advocate would further point out that the committee has lightly brushed aside oldest favourable record wherein petitioners' grandfather was described in the school record dated 17.12.1929, as 'Thakur'. Similarly, even the committee has overlooked birth record of Mandi Ramsing Dayaram, who is second degree cousin of petitioners' grand father Daulat Fakira Thakur of 21.06.1930. Even if there is some contrary record of latter period, the oldest record would prevail. The committee has not doubted genuineness of aforementioned oldest record. It could not have resorted to area restriction in the light of decision in the matter of ***Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.; (1994) 1 SCC 359***. There was no sound reason for the committee to refuse to extend the benefit of the validities in the family. Even affinity test could not have been applied and the order be set aside and the petitioners be issued with certificates of validity.

5. Per contra, the learned A.G.P would oppose the petition. He would submit that the committee has taken a plausible decision on correct appreciation of the contrary record. No proper explanation was coming forth for the contrary record. Even the petitioners could not get through the affinity test. It transpired that the validity holders were able to obtain the certificates of validity by suppressing contrary record. Merely because the school or the birth record mentions the petitioners' ancestors as 'Thakur' that in itself would not be sufficient to draw any inference that what was meant was 'Thakur' scheduled tribe. The committee has decided to undertake

reverification of the validities issued. Bhuvaneshwari was also granted conditional validity subject to the final outcome of the matters in respect of her father Hitendra and uncle Milind, which the committee had decided to reopen.

6. We have considered the rival submissions and perused the papers.

7. It is a matter of record that irrespective of any doubt regarding the genealogy, the committee has not entertained any doubt about the school record of the petitioners grandfather Daulat Fakira Thakur of 17.12.1929, and the birth record of second degree cousin of Daulat; Mandi, mentioning her caste as 'Thakur' and date of birth as 21.06.1930.

8. As can be seen from the chart reproduced in the impugned order, the contrary entries of 'Bhat' of the individuals stated to be related to the petitioners by blood are of the subsequent period, from 04.01.1935 onwards. As laid down in the matter of *Anand V Committee for Scrutiny and Verification of Tribe Claims and others; (2012) 1 SCC 113*, the oldest record would have greater probative value. If this be so, the committee ought to have assigned sufficient and cogent reasons for relying upon the contrary evidence of lesser probative value than the old favourable record.

9. The committee has apparently refused to consider the validities by applying the principle of area restriction in spite of the fact that by removal of area restriction by Act of 1976, in the light of **Palaghat (supra)** this test could not have been legally applied.

10. This being the only reason assigned by the committee for discarding the oldest favourable entries, the order is clearly perverse, arbitrary and illegal.

11. Even the stand of the committee of applying affinity test in spite of its worth being limited, in the circumstances, was not justified.

12. Admittedly, as mentioned in the impugned order Bhuvaneshwari, who

is related to the petitioners by blood, was directed to be issued with a certificate of validity by the order in Writ Petition No. 10438/2023, expressly making it vulnerable and dependent on the decision to be taken by the committee in the matter of validity holders, whose cases it had decided to reopen. Incidentally, similar were the reasons noted by us while deciding her petition pointing out that the favourable oldest record was discarded and the latter contrary record was resorted to, to reject her claim.

13. Incidentally, some old record could have been traced by the committee even in her file, which was also favourable record of the period prior to 1924.

14. Be that as it may, the impugned order being perverse and arbitrary, is liable to be reversed. The petitioners cannot be denied benefit of having certificates of validity.

15. The Writ Petition is allowed partly. The impugned order is quashed and set aside. The respondent no. 2-committee shall immediately issue certificates of validity to the petitioners as belonging to 'Thakur' scheduled tribe. The validities shall be subject to the final outcome of the matters which the committee has decided to re-open.

16. The petitioners shall not be entitled to claim equities.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

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