



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8605 OF 2011

Tejas Dilip Thakur (Wankhede)

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through Secretary,
Department of Tribal Development,
Mantralaya, Mumbai – 32.
- 2] Scheduled Tribes Certificate
Scrutiny Committee,
Through its Member Secretary,
Nandurbar Division, Nandurbar,
Dist. Nandurbar
- 3] Ayurved Mahavidyala Va
Sanshodhan Kendra,
Sector – 25, Pradhikaran,
Nigdi, Pune – 44,
Dist. Pune
- 4] The Maharashtra University of
Health Sciences,
Through its Registrar,
Dindori Road, Mhasrul,
Nashik – 422 004

.. Respondents

WITH
CIVIL APPLICATION NO. 5790 OF 2016 IN WP/8605/2011
(Tejas Dilip Thakur (Wankhede) Vs. The State of Maharashtra and Ors.)

AND
CIVIL APPLICATION NO. 12214 OF 2015 IN WP/8605/2011
(Tejas Dilip Thakur (Wankhede) Vs. The State of Maharashtra and Ors.)

...
Advocate for petitioner : Mr. Mahesh S. Deshmukh h/f. Mr. G.S. Rane
AGP for the respondent – State : Mr. S.B. Yawalkar
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 01 SEPTEMBER 2023

ORDER (MANGESH S. PATIL, J.) :

The petitioner is challenging the order passed by the respondent – scrutiny committee confiscating and cancelling his certificate of Thakur scheduled tribe.

2. We have heard both the sides extensively and perused the record.

3. At the outset, it is necessary to note that admittedly, petitioner's father – Dilip and even his sister Swaruprani have been issued with certificates of validity. Even his brother Kaustubh possesses a certificate of validity. In spite of these three validiites in the immediate family, the committee has not extended the benefit of their validities to the petitioner on the ground that the affinity test was not applied when they were issued with the certificates of validity.

4. In the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others; (2012) 1 SCC 113**, it has been expressly laid down that the affinity test cannot be a litmus test. In the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326**, it has been expressly laid down that the affinity test will have a limited scope, if there is no sufficient and reliable evidence to substantiate the tribe or caste claim. Therefore, non application of

affinity test could not have been the reason for the committee to refuse to extend the benefit of validities in the family issued to the father, brother and sister.

5. Pertinently, the committee does not observe that no procedure as prescribed by law was followed before they were granted certificates of validities. If that be so, following the decision in the matter of ***Maharashtra Adiwasi Jamat*** (supra), the benefit of such validities in the family ought to have been extended to the petitioner.

6. Strangely, there is one more observation of the committee in the impugned order which according to us, is clearly perverse and arbitrary, as regards this very issue regarding certificates of validities possessed by the father and real sister. The committee observes that the certificates of validity of the father and the sister at the bottom expressly declare by a footnote that those certificates would be applicable in that case only. We cannot comprehend as to how any certificate of validity could bear any such endorsement and more importantly, its operation can be restricted to the individual alone, more so when the certificates of validity have to be issued strictly in Form 'G' which does not contain any such stipulation. We, therefore, expressly discard such approach of the committee in refusing to extend the benefit of the validities of the family for this unprecedented reason.

7. Again, the committee has not observed that the certificates of validities were obtained by the father, brother and sister of the petitioner by resorting to any fraud or concealment as it generally does. It has also not expressed its intention to re-open the validities. If this is so, we have no hesitation in extending the benefits of the certificates of validites in the family to the petitioner which would be in tune with the observations and the principles laid down in the matter of **Maharashtra Adiwasi Jamat** (supra).

8. Independently, even if we undertake the scrutiny of the documents produced by the petitioner in support of his claim and considered by the committee in the documents at serial number 4, 7, 17, 23 to 26, 31 and 32 which are the extracts of school record and birth record of the petitioner's father and other close relatives, the entries therein as Hindu Thakur, Thakur, Hindu Thakur scheduled tribe, Hindu Thakur Anusuchit Jamati (scheduled tribe) and Hindu Thakur Magaslela have been discarded by the committee by treating them as contrary entries by applying the area restriction. Meaning thereby that the committee discards these documents by observing that parallelly the petitioner ought to have demonstrated about his ancestors having migrated to the present place from the ares to which Thakur scheduled tribe originally belonged.

9. Firstly, we cannot see as to how the afore-mentioned entries could be recorded as contrary entries. As far as use of word 'Hindu' which is a religion and not a caste, merely because it has been used as a prefix to word 'Thakur' that would not make it a contrary entry. Rather, it would substantiate the record describing the individual as Thakur Anusuchit Jamati (scheduled tribe), Thakur Magaslela would lend support to the petitioner's claim of belonging to Thakur scheduled tribe.

10. Secondly, with the removal of area restriction by virtue of The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, as interpreted in the matter of ***Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.; (1994) 1 SCC 359*** the committee could not have legally resorted to such area restriction.

11. In view of such state-of-affairs, observations and conclusions of the committee in discarding even the pre-constitutional record indicating the petitioner's ancestors as belonging to Thakur is clearly perverse and not sustainable in law.

12. In view of above, the impugned order is liable to be set aside being perverse and arbitrary.

13. The writ petition is partly allowed.
14. The impugned order is quashed and set aside.
15. The respondent – scrutiny committee shall immediately issue certificate of validity to the petitioner of Thakur scheduled tribe in the prescribed Form.
16. Pending civil applications are disposed of.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/