



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**WRIT PETITION NO. 9565 OF 2021
AND
CIVIL APPLICATION NO. 8979 OF 2021**

Gopal S/o Namdeo Garud
Age major, Occ. Student
R/o Village Karegaon,
PO Sapadgaon, Tq. Sengaoon
District - Hingoli

.. Petitioner

Versus

- 1] The State of Maharashtra
Through Secretary
Tribal Development Department
Mantralaya, Mumbai
- 2] The Scheduled Tribe Certificate
Scrutiny Committee
Aurangabad Division
Plot No.10, Sector E-1,
Near Saint Lawrence High School,
Opp. CIDCO Bus Stand, Aurangabad
- 3] The Sub Divisional Officer
Office of SDO, Hingoli
Dist. Hingoli
- 4] The Senior Director
NEET (UG) – 2019
West Block-1, Wing No.6,
2nd Floor, R.K. Puram
New Delhi – 110 066
- 5] The Director,
Directorate of Medical Education & Research
St. George's Hospital, Near CSMT,
Mumbai

.. Respondents

...
Advocate for petitioner : Mr. A.S. Golegaonkar
AGP for the respondent – State : Mr. S.G. Sangle
...

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

**RESERVED ON : 25 JULY 2023
PRONOUNCED ON : 04 AUGUST 2023**

ORDER (MANGESH S. PATIL, J.) :

The petitioner is challenging the order of the respondent – scrutiny committee passed in a proceeding under section 6 of the Maharashtra Act No. XXIII of 2001 (**Act**), thereby confiscating and cancelling the petitioner's tribe certificate of Thakur scheduled tribe by resorting to the provisions of section 7(1) of that Act.

2. We have heard both the sides finally at the stage of admission.

3. The learned advocate for the petitioner would submit that the whole approach of the committee is cynical and pedantic. It has started with the assumption that the petitioner's claim is false and bogus. In the process, it has conveniently discarded the validity certificate of one Bhagwat Pandharinath Garud even though it was issued in the year 2001 and he has filed a specific affidavit corroborating the petitioner's version when he produced his validity certificate in support of the claim describing Bhagwat as his second degree cousin parental uncle. Bhagwat in his affidavit expressly stated on oath about petitioner being his second degree nephew. There was nothing before the committee to discard his validity merely by

entertaining the suspicion that the genealogy furnished by the petitioner did not demonstrate Bhagwat.

4. The learned advocate would further submit that the committee has also, without any reason, discarded a vital document in the form of revenue record called *Khasra Pahani Patrak* of his cousin grandfather wherein he has been described as Thakur. This revenue record is of the year 1953-54. Even if it was a post-constitutional era, it is of the year soon after coming into force of the presidential order and the entry having been made in the ordinary course of official business of maintaining the revenue record, it could not have been discarded by the committee.

5. The learned advocate would submit that in spite of removal of area restriction and the limited scope for affinity test, in the teeth of the documentary evidence, the committee has resorted to both while discarding the petitioner's claim. The order is perverse, arbitrary and capricious and is liable to be reversed.

6. The learned AGP would submit that merely because the petitioner's family members are being described as *Thakur*, that would not *ipso facto* bring them in the category of *Thakur* scheduled tribe which is essentially a tribe having a place of abode in remote areas. They would not have lands and would follow specific traits unlike the

Thakurs from the upper caste. The committee has therefore rightly applied the anthropological test and even observed that petitioner's family does not seem to have been migrated from such tribal are. He would then submit that even no fault can be found with the committee when it discarded the validity certificate of Bhagwat who is conspicuously absent from the genealogy furnished by the petitioner.

7. We have carefully considered the rival submissions and perused the record.

8. At the outset, it is necessary to bear in mind that as has been in the matter of ***Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Another;*(1994) 1 SCC 359**, the concept of area restriction has been removed in the light of the provisions of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. We, therefore, out-rightly disapprove the approach of the committee in resorting to this test.

9. Again, in view of the judgment in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326*** though the affinity test has not been out-rightly discarded, it has been emphasized that it has very limited scope and can be resorted to only if the

documents in support of the case or tribe claim are either absent or not reliable.

10. Bearing in mind this state-of-affair, if one examines the material before the scrutiny committee, admittedly, rather the committee has not disputed that the petitioner's cousin grandfather by name Sakharam Narayan Thakur has been referred to in the *Khasra Pahani Patrak* of the year 1953-54 as *Thakur*. This is the oldest document produced by the petitioner in support of his claim. Though it is of a period after the presidential order passed in the year 1950, it is immediately thereafter and would carry greater probative value. There is nothing before us to doubt about its genuineness.

11. The committee has proceeded to discard this piece of evidence by applying the area restriction and affinity test. We are afraid the approach is unsustainable in law in the light of the decisions in the matter of ***Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr.*** (supra) and ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti*** (supra).

12. True it is that merely by referring to word "*Thakur*", it cannot be readily inferred that it has been used to describe the scheduled tribe. However, it is to be noted that coupled with this *Khasra Pahani Patrak* and description of cousin grandfather as

“*Thakur*” of the year 1953-54, the petitioner has also been relying upon the validity of Bhagwat and it is not that it is a lopsided claim of the petitioner. Bhagwat himself has filed affidavit expressly mentioning the exact relationship with the petitioner. If the two of them are distant cousins from the paternal side, obviously, the petitioner will have to be extended its benefit. Merely because of the remoteness, the genealogy furnished by him does not indicate Bhagwat, in our considered view, that itself cannot be a ground to discard this validity certificate.

13. It is to be borne in mind that the claim of belonging to a scheduled tribe or scheduled caste under the Act and the burden to be discharged by the claimant pursuant to section 8 of that Act can be discharged on preponderance of probabilities and a strict proof is not required.

14. We are, therefore, of the considered view that the petitioner’s claim of belonging to “*Thakur*” scheduled tribe has been duly established by discharging the onus on the basis of the revenue record and the validity certificate.

15. The observations and the conclusions of the committee are perverse and arbitrary and are liable to be quashed and set aside.

16. The writ petition is allowed.

17. The impugned order is quashed and set aside.
18. The committee shall immediately issue the tribe validity certificate to the petitioner as belonging to the "Thakur" scheduled tribe.
19. Pending civil application is disposed of.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/