



{1}

wp 10439.21R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10439 OF 2021

Reena d/o. Shivsing Thakur,
Age 30 years, Occ. Education,
R/o. N-12, HUDCO, Aurangabad
Tq. & Dist. Aurangabad.

.. Petitioner.

VERSUS

1. Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad,
through its Member Secretary.
2. Government Adhyapak Vidyalaya,
Aurangabad, Dist. Aurangabad.
Through its Principal.

..Respondents.

Mr. Sagar S. Phatale, Advocate for the petitioner
Mr. P.S. Patil, AGP for respondents.

CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 13TH MARCH, 2024.
PRONOUNCED ON : 21st MARCH, 2024.

JUDGMENT [PER S.G. CHAPALGAONKAR, J.] :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned advocate for the parties.

The petitioner approaches this Court under Article 226 of the Constitution of India impugning the order dated 18.12.2020 passed by the respondent No.1 Scheduled Tribe Certificate Scrutiny committee, Aurangabad, by which the petitioner's claim for "Thakur" Scheduled Tribe has been invalidated. The petitioner further seeks to issue writ of Mandamus against the Committee to forthwith issue her certificate of validity. The petitioner contends that she belongs to "Thakur" Scheduled Tribe. The certificate to that effect is issued by the competent authority on 31st August, 2004. While she was pursuing her education, her tribe claim has been forwarded to the Committee, which was supported by voluminous evidence in form of copy of school admission extract of Dagdu Bhura, Bharat Bhura, Bhimsing Devilal Shire, Premsing Shankarro, Gopal Devilal Shire, Shivsingh Devilal Shire (father) alongwith his service record. In all these documents, caste is mentioned as "Thakur" at the time of school admission from 1953 onwards. The petitioner has further relied upon the revenue record in the name of Shankar Kaniram, depicting his caste as "Inam Thakur" in year 1955-56. The petitioner has further relied upon the validity certificate issued to Nitesh Bhimsingh Shire dated 16.9.2005. He is cousin of the petitioner. The said validity has been issued to him after procuring Vigilance Inquiry Report. However, the Committee, relying upon some contra entries in the name of Gopal Devilal Shire, showing his caste as "Pardeshi" and few other contra entries of blood relatives during the period from 1960 to 1973 as "Pardeshi" "Pardeshi Thakur" discarded petitioner's tribe claim.

2. Mr. S.S. Phatale, learned counsel for the petitioner vehemently submits that impeccable school admission entries in the name of blood relations of the petitioner depicts caste entry as "Thakur".

The committee has already issued validity certificates to paternal blood relatives namely Nitesh Bhimsingh Shire dated 16.9.2005, Swapnil Dhansingh Shire dated 5.10.2011 and Mukesh Bhimsingh Shire dated 28.5.2010, for “Thakur” Scheduled Tribe. He would further invite attention of this Court to the order passed by this court in ***W.P No. 10615 of 2023 (Vyankatesh Vijaysingh Thakur vs. State of Maharashtra dated 8.9.2023)***, wherein, relying upon the caste validities granted in favour of Nitesh, Mukesh and Swapnil, this Court allowed the writ petition and directed issuance of validity certificate to those petitioners, who are distant blood relative from the paternal side. Mr. Phatale would, therefore, submit that the Committee adopted a hyper-technical approach and invalidated the tribe claim of the petitioner.

3. Mr. P.S. Patil, Additional GP, vehemently submits that the Committee has issued show cause notices to validity holders i.e. Swapnil Dhansingh Shire, Mukesh Bhimsingh Shire and Nitesh Bhimsingh Shire, as to why tribe validities issued in their favour should not be cancelled. He would submit that the Committee has recorded elaborate reasons for declining reliance on the validity certificate issued them. As such, the petitioner cannot be benefited on the basis of those validities.

4. Mr. Patil upon inviting our attention to the observations of the Committee submits that the school admission entries of petitioner’s uncle from 1960 to 1973 records their caste as “Pardeshi Thakur.” The revenue record shows that grand-father or consin grandfather of the petitioner holds Inam lands. The family of the petitioner has not migrated from original geographical area of Thakur Scheduled Tribe. Mere entry of “Thakur” in the revenue record or school record is not

sufficient to conclude that the petitioner belongs to “Thakur” scheduled tribe. Similar entries can be found in respect of non-tribal communities in the State of Maharashtra. In support of his submissions, he relied upon the judgment of the Supreme Court of India in the matter of ***“Pournima Pawar Vs. State of Maharashtra” (2013)3 SCC 690*** and the judgment of ***this Court in the case of Prasad Paratwad Vs. State of Maharashtra and others in W.P. No. 653 of 2023 dated 28.6.2023.***

5. We have considered the submissions advanced on behalf of respective parties. We have perused the original record of the committee alongwith documents tendered into service on behalf of the petitioner . Admittedly, the petitioner is placing her reliance on the validity certificate issued in favour of Nitesh Bhimsingh Shire, Swapnil Dhansing Shire and Mukesh Bhimsingh Shire, who are cousins of the petitioner. Nitesh Bhimsingh Shire is possessing validity certificate since year 2005, whereas, Swapnil Dhansingh Shire and Mukesh Bhimsingh Shire have been granted validities subsequently based on validity issued in favour of Nitesh. There is no dispute as regards the relationship of the petitioner with the validity holders. The undisputed genealogy on record depicts such relationship.

6. The reasoning part of the impugned order shows that the school admission entries of petitioner’s cousin grandfather, cousin uncle and cousin aunts, during the period from 1953 to 1957 clearly depicts their caste as “Thakur”. It is not disputed before us that as per this court’s order passed in W.P. No. 10615 of 2023, validity has been granted to Vyankatesh Vijaysing Thakur and Yogini d/o. Vijaysing Thakur, relying upon the validities issued in favour of Nitesh Bhimsingh Shire, Mukesh

Bhimsingh Shire and Swapnil Dhansingh Shire, who are blood relatives inter-se.

7. Record indicates that the Committee while invalidating the petitioner's tribe claim issued show cause notices to Swapnil Dhansing Shire and Mukesh Bhimsing Shire, as to why validities granted to them shall not be cancelled. Although the Committee has relied upon some contra entries in the school record of blood relatives of the petitioner, wherein, caste is recorded either as "Hindu Thakur" "Pardeshi Thakur" or "Inami Thakur", the oldest entry available on record is of the year 1953 in the name of consin uncle of the petitioner, wherein, caste is recorded as "Thakur". Most of the school admission entries of petitioners blood relatives, as referred by the Committee for period from 1953 to 1970, depicts caste as "Thakur" or "Hindu Thakur"; barring the 3 entries recording caste as "Pardeshi Thakur". It appears from the record that such contra entries were also before the committee when aforesaid validities are granted by committee. The order in case of Mukesh indicates that vigilance report as well as affinity test report was obtained. Till this date, the certificates of validity granted by the Committee in favour of cousins of the petitioner are intact. The Committee while discarding validities granted in favour of Nitesh, Mukesh and Swapnil observed that contra entries were suppressed and accordingly, show cause notices have been issued to them, calling their explanation.

8. In W.P. No. 10615 of 2023, this Court relying upon the previous validities granted in favour of Nitesh, Mukesh and Swapnil Shire and even after considering the contra entries in the school record, observed as under :-

“We are merely concerned with the fact that the committee has not made any observation that the certificates of validity were issued to these three persons without following due process or contrary to the rules. These being the parameters laid down in the matter of Maharashtra Adiwasī Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others, 2023 SCC Online SC 326 the petitioners cannot be denied the benefit of having similar validities based on these validity holders. Pertinently, the committee has not made any observation doubting the genealogy being relied upon by the petitioners to show as to how they are related to these validity holders. Consequently, the order is not sustainable in law, being perverse and arbitrary and is liable to be quashed and set aside.”

9. In that view of the matter, we have no hesitation to follow the same course of action. Resultantly, we proceed to pass the following order :

ORDER

[a] The writ petition is partly allowed;

[b] The impugned order dated 18.12.2020 passed by the respondent No.1 – Scheduled Tribe Certificates Scrutiny Committee, Aurangabad is hereby quashed and set aside;

[c] The respondent No.1 Committee shall issue Tribe validity certificate to the petitioner as belonging to “Thakur Scheduled Tribe” in prescribed format without adding anything.

[d] It is made clear that the validity issued in favour of the petitioner shall be subject to the final outcome of the matters, which the committee has decided to re-open.

[e] In case of any adverse order in the said proceeding, the petitioner shall not be entitled to claim any equities.

[f] Rule made absolute in above terms. No costs.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-