IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4575 OF 2012

Poonam Omprakash Rathod,
Age: 32 years, Occ. Service,
R/o Thakur Provision, B-5,
Giriraj Housing Society,
Pandharpur Post- Vadgaon,
Aurangabd, Tq. & Dist. Aurangabad. ... **Petitioner**

Versus

1. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Division, Aurangabad
Through its Member Secretary.

2. Deputy Director of Education,
Aurangabad Region, Aurangabad
Railway Station Road, Aurangabad.

3. Saraswati Bhuwan Education Society,
College of Science, Aurangpura,
Aurangabad
Through its Principal. ... **Respondents**

Mr. Anandsingh Bayas, advocate for the petitioner.
Mr. A.R.Kale, AGP for respondent-state.
Mr. V.P. Golewar h/f. Mr. A.R. Joshi, advocate for respondent no.3

CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.
DATE : 24.07.2017

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. This petition under Article 226 of the Constitution of India, challenges the order passed by the Scrutiny Committee set up under the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short the "Maharashtra Act No. 23 of 2001") to verify the caste certificate.

3. The order passed on 14.05.2012, invalidates the tribe claim of the petitioner as belonging to Thakur Scheduled Tribe.

4. It is common ground that the petitioner applied on the strength of a caste certificate issued on 29.01.1993 (Annexure 'A') for appointment as as Assistant Teacher in the respondent nos. 3 and 4 institution.

5. The petitioner was initially appointed as a Shikshan Sevak which is the nomenclature carried by the said post prior an amendment

to the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977. The appointment order was issued on 24.11.2008, for a period of three years.

6. Since the appointment was against a reserved seat, the caste certificate was forwarded to the competent Scrutiny Committee.

7. The first respondent committee has taken on record as many as 34 documents, which the petitioner produced, so as to discharge the burden cast by Section 8 of the Act 23 of 2001.

8. The petitioner heavily relied upon a pre-constitutional document as also a certificate of validity issued to her paternal uncle by the same Scrutiny Committee. The Scrutiny Committee in invalidating the claim has held, firstly that the document which was produced in which the entry is Thakur, that document does not say whether Thakur means Thakur Scheduled Tribe or Thakur Simplicitor as a surname. As far as, the certificate of validity is concerned the finding is that, though, such certificate of validity may be tendered as proof of the claim and to discharge the burden under Section 8, still the candidate must establish and prove further that the certificate of validity issued to close relative from the paternal side was after a adjudication on merits. The

committee feels and we are sorry to say none of these committees are exceptions that mere production of certificate of validity issued to close relative on paternal side is not enough. In some cases, the files are called and the original files reveal that the certificate of validity is issued under the signature of the Scrutiny Committee Members. However, there is no detailed order according to the committee available in the file. Such a opinion is expressed, sometimes after a decade or more of the certificate of validity is issued. Though no finding is rendered on the competence of the Scrutiny Committee to issue the certificate of validity yet, or not able to trace a reasoned order, the conclusion invariably reached is there is no adjudication on merits. For all this, the certificate holder or the claimant relative relying on it is blamed. This suggests that a certificate of validity can be easily procured and no effort is taken in issuing it by the committee. If this is how the committees, proceed, according to the petitioner's counsel, then, it is not the petitioner who is at fault.

9. The argument of Mr. Bayas before us is that the petitioner has no control over the proceedings. In such cases, if the claims are decided on perusal of the entire record and if there is no doubt entertained by the Scrutiny Committee nor the contents of the

documents are ever questioned, then, straight away a certificate of validity is issued. The documents are carefully perused and their contents scrutinized. That does not mean that there is no adjudication on merits. If the applicant is obliged to discharge the burden under Section 8, then, how that burden is discharged in an individual case and how the committee has satisfied itself is not within the domain or control of the party or applicant. It is entirely for the committee how to comply with the procedural rules and if any deviation from the procedural rule is pointed out that does not mean that the order is necessarily vitiated in law. Similarly, when the committee had before it authentic documents in the form of the school records and of 1941 and the committee has applied its mind, then, whether in 1941 the tribe was known as Scheduled Tribe, for that concept came only when the Constitution of India was brought into effect, is not required in law. It is only in the Constitution of India and by Article 341, 342 and Article 366 (24 and 25) that these terms or words have been defined. Therefore, the words Scheduled Caste and Scheduled Tribe were employed only after the constitution came into force. This basic fallacy in the committee's order is enough to set aside and quash the impugned order is the final submission.

10. The learned A.G.P. appearing for the State supported the order and submitted that the committee must scrutinize each case on its merits for there are number of false claims detected particularly in relation to the Scheduled Tribes. If the committee is cautious and careful that does not mean that its order is vitiated by a error of law apparent on the face of record or perversity. In the circumstances, this Court should should proceed to dismiss the petition.

11. We have perused the writ petition and all the annexures thereto including the impugned order. The committee's order is at page 77 of the paper book Annexure 'O', copy of that order reveals that the petitioner was appointed in the S.B.E.S. Science College at Aurangapura, Aurangabad by an appointment order and which appointment order is also a condition that the appointment is subject to production of a caste/tribe validity certificate. That is how on 02.12.2008, a proposal was forwarded by the Management for the verification of the caste certificate.

12. In para 2 of the impugned order, the committee makes reference and serially to the documents produced. True it is that, in the original caste certificate of the petitioner herself, the tribe is mentioned

as Thakur Scheduled Tribe but this is a caste certificate issued on 29.01.1993. Then, there is a primary school admission register extract in respect of the applicant issued by the Headmaster of a primary School in Ahmednagar but there the petitioner's caste is mentioned as 'Hindu Rajput'. Then, there is an attested copy of a certificate in respect of petitioner issued by the very Headmaster of the Primary School who says that inadvertently and by mistake he mentioned the caste as Hindu Rajput instead of Hindu Thakur. Now, he has effected the correction because of birth certificate of the candidate issued by the Ahmednagar Municipal Corporation and the affidavit of the Omprakash Gulabchand Rathod shows that this a mistake. Then, there is another document styled as leaving certificate in respect of the petitioner's father issued on 14.06.1961. This is a document according to the committee which mentions his caste as Hindu Rathod. Then, there is an attested copy of the Primary School admission register extract, in respect of the petitioner's father which again carries the same nomenclature in the caste column, namely, Hindu Rathod. Then, the applicant's grand father, Gulabchand Kushalchand Rathod, was issued a caste certificate on 07.05.1967, there the tribe is mentioned as Thakur Scheduled Tribe, then, an attested copy of the school admission register extract in respect of Arunkumar Gulabchand Rathod (candidate's real uncle) issued by the

Headmaster of a school at Ahmednagar mentions the caste as Hindu Thakur, the date of admission is 09.06.1969. Then, a caste certificate is issued to Arunkumar Gulabchand Rathod by the Tahsildar and Executive Magistrate, Gangapur, District Aurangabad on 02.04.1984, wherein, the tribe is mentioned as Thakur Scheduled Tribe. It is, then, stated that there is a certificate issued in respect of Arunkumar Gulabchand Rathod by the Headmaster of the Sitaram Sarda Vidyalaya, Ahmednagar mentioning that the caste is recorded by mistake as Hindu Rathod instead of Hindu Thakur in school record.

13. Then, what we have are similar corrections but there is another caste certificate issued to Akshay Arunkumar Rathod who is the son of Arunkumar. Arunkumar is the brother of petitioner's father and, therefore, Akshay is her first/real cousin on the paternal side. In relation to Akshay the entry in the caste certificate is Thakur Scheduled Tribe which is dated 03.10.1994. Then, Akanksha Arun Rathod, the sister of Akshay and in her case the entry in the caste column of the school admission register is Hindu Thakur. Then, another certificate is issued styled as caste certificate to Akanksha but in which the Tribe is mentioned as Hindu Thakur Scheduled Tribe, which is dated 26.08.2008. There are similar such certificates issued to the distant cousins but in

them the entry is “Hindu Thakur”. In respect of Saurabh Shyamkumar Rathod, the petitioner's second cousin/cousin cousin, the certificate of validity was issued by the Scheduled Tribe Certificate Scrutiny Committee, Nashik Division, Nashik on 28.09.2005 with the tribe mentioned as Thakur Scheduled Tribe. Then, the genealogy is produced, even in respect of another uncle of the petitioner Shivnarayan Gulabchand Rathod, the caste certificate issued by the Competent Authority on 02.05.1978 certifies Shivnarayan as Thakur Scheduled Tribe. We have another document and produced in respect of one Rakhi Omprakash Rathod the relation is not mentioned, wherein, also the tribe is mentioned as Thakur Scheduled Tribe, a certificate of validity was also issued to Rakhi by the Scrutiny Committee at Nashik. Even, if we omit from consideration these documents where the relation is not mentioned what remains on record is a photocopy of the school admission register extract in respect of Ramnarayan Gulabchand Rathod, petitioner's real uncle, where the caste column carries the entry as Thakur and the date of admission is 30.08.1941. Then, we have a document which is styled as certificate of validity issued to Arunkumar Gulabchand Rathod by the very Aurangabad committee on 15.02.2011. Then, there is an original affidavit of Akshay Arunkumar Rathod before the notary, wherein, the paternal genealogy is mentioned and that is dated 16.02.2011. Then,

there is a attested copy of validity certificate in respect of Akshay, which is dated 15.02.2011.

14. In relation to all these documents, there are on record statements of the certificate holders. The committee still feels obliged to hold an inquiry through the vigilance cell and calls for a report. So far so good. The committee frames some points for consideration and in relation to the documents which we have made a brief reference and appearing at serial no. VIII, XIII, XV, XVI, XXII, XXVIII, XXIX and XXX are the school records of the candidates and paternal relatives, in that the caste is recorded as Hindu Thakur and Thakur. The committee holds that the entries do not mention specifically whether Hindu Thakur means Hindu Thakur Scheduled Tribe or Thakur Simplictor means Thakur Scheduled Tribe. Pertinently, some of the documents are pre-constitutional. In the sense, the school records maintained before the Constitution of India came into force and in that, namely, way back in the year 1941, prior to 1950 when the Constitution of India was brought into effect, the entries are Thakur. The concept of the term Scheduled Tribe was not in vogue at the relevant time, namely, in 1941. The committee has not referred to any legal provision by which it can arrive at a conclusion that in 1941 the authorities were obliged to record the caste

and tribes as Scheduled Caste and Scheduled Tribe. Hence, we would never find a reference in these documents and against the tribe/caste name as Scheduled Caste and Scheduled Tribe. This is a patent non-application of mind on the part of the committee.

15. Then, in discarding the certificate of validity issued to the petitioner's uncle from the paternal side, real uncle Arunkumar, a mechanical and stereotype reason is assigned, namely, that the certificate of validity has been issued without any adjudication on merits. We do not see how this reason can be assigned, as a matter of course, and in every matter. We do not think that the committees' can lightly brush aside such certificates of validity. These certificates of validity have been issued by Competent Scrutiny Committees, the certificate of validity was issued to close relatives from the paternal side and by the genealogy and the family tree, so also the affidavits, the relationship at least with Arunkumar was established and proved. The Aurangabad Committee may fault a Nashik Scrutiny Committee in not adjudicating the claim of the validity certificate holder on merits. However, when it itself issues a certificate of validity to Arunkumar then, discarding it, on the spacious ground that the claim of Arunkumar was not adjudicated on merits and, therefore, the certificate of validity has no evidentiary value, is without

any legal basis. Pertinently, Arunkumar was present before the Committee. Even one Laxminarayan Chotelal Rathod was present before the committee. They gave certain information, according to the committee, with regard to the characteristics, trails, rituals, ceremonies and practices prevalent in the community. The Scrutiny Committee opines that they do not tally or are not consistent with the rituals, trails and characteristics of Thakur Scheduled Tribe. It is expected that the certificates may have been issued recently but the holders of the same ought to be familiar and must establish complete affinity with the tribe. Even if one custom tradition, practice, ritual is not recited or is not referred in the statements orally made, then, the certificates lose their evidentiary value.

16. However, when other certificates of validity was produced, it is stated that the document produced by the candidate in para 2 at serial nos. 18, 24, 32 and 34 along with a necessary affidavit are the validity certificates in respect of Saurabh Shyamkumar Rathod, Rakhi Omprakash Rathod. We can omit safely from consideration Saurabh and Rakhi's certificates for there the relationship was not established is the finding. However, when Arunkumar and Akshay's certificate of validity were brought on record as authentic proof, the relationship was established.

The committee feels that they may be paternal blood relatives but in the case of the present candidate, namely, the petitioner during the course of the scrutiny she produced some other documents in respect of her paternal blood relatives in which the caste is clearly recorded as Hindu Rajput and Hindu Rathod. Therefore, Arunkumar and Akshay's certificates have no evidentiary value is the conclusion. Pertinently, the committee does not apply its mind to the position emerging from the record. We have carefully perused the order of the Scrutiny Committee. The committee has taken on record serially all the documents and by numbering them. Where the committee was confused is when it holds that the caste recorded in cases of some blood relatives is Hindu Rajput and Hindu Rathod. Those entries are not in the caste certificate. The entries to this effect are in the school admission registers. However, when these very persons applied for caste certificate and in terms of the Maharashtra Act No. 23 of 2001, then, the committee should have been aware that, the three provisions namely Sections 4, 5 and 6 of the Act 23 of 2001 obliged the Competent Authority to come to a definite satisfaction. As far as, the caste certificate, the Competent Authority may on an application made to it under Section 3, after satisfying itself about the genuineness of the claim and following the procedure as prescribed, issue a certificate within such time limit and in such form as may be

prescribed or reject the application for reasons to be recorded in writing [see Section 4(1)]. Now if a caste certificate is issued recording that the petitioner's relatives and close ones from paternal side are belonging to Thakur Scheduled Tribe, the constitutional notification entry is also reflected, then, we do not see how these documents can be discarded and reliance can be placed on the school admission registers or the purported corrections therein. This means that caste certificate was issued by the Competent Authority to these persons without application of mind. Surely, the committee was not sitting in appeal over a decision to issue the caste certificate to these close relatives on the paternal side. It is by this process, the validity certificates have been discarded. The validity certificates have been issued by the Competent Scrutiny Committees one of which includes the Aurangabad Committee. If they are so easily discarded and omitted from consideration, particularly without arriving at the satisfaction whether they are tainted or vitiated by fraud or misrepresentation, then, we are sorry to say that the Scrutiny Committee and its Members deliberately brush aside binding judgments of this Court. This Court has been consistently laying down the principle that it is not permissible to discard a certificate of validity, produced as proof by the applicants/claimants, unless the committee comes to a conclusion that they are not pertaining to close relatives from the

paternal side or that they have been obtained by fraud or misrepresentation. The specific words may not be employed and used but surely there must be an indication that the committees' have applied their minds on these lines and in the backdrop of settled legal tests. If there is no indication of this nature in the entire order, then, we are sorry to say that, we are not obliged to sustain the Scrutiny Committees findings and conclusions. If the Scrutiny Committees' have completely misdirected themselves and have coined a third principle, namely, though there is a certificate of validity produced but that is issued without any adjudication on merits and which is a ground routinely assigned to discard valid piece of evidence, then, we must step in our writ jurisdiction. Pertinently, the committee does not feel obliged to discard these certificates of validity for they have been issued much after the judgment of the Supreme Court in the case of in the case of **Madhuri Patil V/s. Additional Commissioner and Ors. r**eported in **AIR 1995 SC 894**. The judgment in the case of **Dharmendra Devrao Patil** was referred by the committee in the impugned order. It is dealing with a case where the certificate of validity was issued not only prior to **Madhuri Patil (Supra)**, but even prior to the Maharashtra Act No. 23 of 2001. However, if certificates of validity have been issued not only after the **Madhuri Patil** judgment but after the Maharashtra Act No. 23 of

2001 by competent Scrutiny Committees on due application of mind and consideration of relevant documents, then, the Scrutiny Committee cannot ignore them by a wholesale or a general finding that there has been no adjudication on merits. It should at least specify what does it mean by adjudication on merits. In the present case, we do not find any indication of this nature in the impugned order.

17. For all the above reasons and the discussion in detail, we proceed to quash and set aside the impugned order. The writ petition succeeds. Rule is made absolute accordingly. Once the impugned order is quashed and set aside, the Committee shall now proceed to issue the certificate of validity as expeditiously as possible and within a period of four weeks form today.

18. The other finding of the committee specifically on the point of area restriction and the impact of its removal is ex facie erroneous and legally unsustainable. A common order was passed by the Hon'ble Supreme Court of India in Civil Appeal No. 2336 of 2011, along with other Special Leave Petitions and Civil Appeals decided on 08.03.2017 in the case of **Jaywant Dilip Pawar V/s. State of Maharashtra and Ors.** That common order reads as under:

“ The short point raised by learned counsel for the appellants in these appeals is that after 'The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976' (Act No.108 of 1976) was published in the Gazette on 20.09.1976, the area restriction of Scheduled Tribes in the State of Maharashtra for the Thakur community has been deleted and all members of Thakur, Thakar, Ka Thakur, Ka Thakar, Ma Thakur and Ma Thakar community are treated to be Scheduled Tribes. The Scrutiny Committee has negated the claim of the appellants on the ground that the relatives of the appellants were not residents of the areas mentioned in the Presidential Order, 1956 and further they were not able to give any details of customs and traditions being observed by the said community.

In our considered opinion, that is wholly irrelevant. The appellants have only to establish that they belong to the community mentioned at Serial No.44 of Part IX of Second Schedule of Act No.108 of 1976.

The High Court has dismissed the Writ Petitions preferred by the appellants only on the ground that the Scrutiny Committee had given detailed reasons and the Court will not go into the merits of the matter afresh.

In our considered opinion, the approach of the High Court was totally erroneous. It ought to have considered the Act No.108 of 1976 and given its own reasoning.

We, therefore, set aside the impugned order passed by the High Court and remand the matter back to the High Court for expeditiously deciding the matter afresh in accordance with law.

The Civil Appeals as well as the Special Leave Petitions are disposed of in the above terms. ”

19. In view of the above common order, even the other ground assigned by the Committee does not survive. The certificate of validity could not have been denied on this ground.

20. Needles to clarify that in the light of the over-whelming documentary evidence, the claim of the petitioner stands proved and she need not undergo any affinity test.

21. The above additional reasons as well enable us to allow this writ petition and grant the relief as above. Civil application pending, if any, also stands disposed of.

[MANGESH S. PATIL, J.] **[S.C. DHARMADHIKARI, J.]**

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