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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6972/2014

Prakash Hiralal Bhamare.

...Petitioner..

Versus

The State of Maharashtra & others.

...Respondents...

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WRIT PETITION NO.6974/2014

Suvarnalata Gulab Thakur.

...Petitioner..

Versus

The State of Maharashtra & others.

...Respondents...

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WRIT PETITION NO.6981/2014

Shashank Prakash Bhamare.

...Petitioner..

Versus

The State of Maharashtra & others.

...Respondents...

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Shri Sushant C. Yeramwar, Advocate for petitioners.

Shri A.R. Kale, AGP for respondent nos.1 to 4.

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**CORAM: S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE: 27.07.2017

ORDER :

1] Today itself we have passed order in Writ Petition No.786/2011 setting aside the order of the scrutiny committee and not upholding its view that certificates of validity issued to real brothers, sisters or close relatives on the paternal side can be discarded or brushed aside simply because the scrutiny committee while issuing them had an understanding of the position in law, which is not accurate.

2] In the present matters, the petitioners relied upon the certificates of validity in respect of daughter and son issued to them by the very scrutiny committee, which passed the impugned orders. There are other relatives and close ones from the paternal side who have also been issued the certificates of validity.

3] We are of the firm view that the scrutiny committee feels that certificates of validity can be obtained and procured. It is denigrating itself by making such observations. When it says that no

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adjudication on merits has taken place, it means, the scrutiny committee mechanically issues certificates of validity and does not apply mind. The third understanding, which also deserves to be deprecated equally, is that the orders of this Court resulted in issuance of certificates of validity. However, when the certificates of validity were issued, the committee understood the judgment of the Hon'ble Supreme Court in the case of *Palghat Jilla Thandan Samudhaya Samrakshan Samithi & another v. State of Kerala & another* (1994) 1 SCC 359, in a particular manner. Therefore, the committee feels that it can criticize the orders of this Court and bypass them by giving sermons to this Court as to how law is to be read and interpreted. We have had enough of this in matters after matters and particularly in relation to Thakur scheduled tribe.

4] This is one more instance where the scrutiny committee is going beyond its brief and surpassing its powers and jurisdiction in refusing certificates of validity to members of the same family. It appears that they have targeted families for such treatment. The moment a scheduled caste or a scheduled tribe person

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approaches the committee for certificate of validity and relies upon certificates issued to the near relatives or close ones from the paternal side, promptly the committee feels obliged to discard them. The committee does not discover or discern any fraud or mis-representation, but goes about sermonizing its members as to how certificates of validity have to be issued and what is the enquiry needed for that purpose. All this has been done in the past and in cases after cases and in majority of the matters, such view, observations, findings and conclusion of the scrutiny committee, have not been upheld by this Court and its orders have been set aside.

5] In the present matters as well, when the petitioners relied upon the certificates of validity issued to daughter and son, the committee observes as under:-

1. The applicants in their common reply have contended that, they have submitted copies of appeal orders passed by scrutiny committee Nashik, Hon'ble High Court's orders passed in case of Mrudula Prakash Bhamre (Applicant No.1's daughter), Kamini Kantilal Bhamre and Jagannath Diwan Bhamre and validity certificates issued in favour of applicant No.1 and 3's daughter, son

and other paternal side relatives.

The S.D.O. Dhule vide his order dated 15-08-1999 has repeatedly rejected the application of applicant No.1 seeking caste certificates for his daughter and son. Against the both these orders he has filed appeals towards the scrutiny committee Nashik which came to be partly allowed wherein by way of remanding the matters to S.D.O. Dhule. The committee has directed him to reconsider the matter. Meanwhile the applicant No.1 has approached to the Hon'ble High Court and while deciding this petition the Hon'ble High Court has remanded the matter to the scrutiny committee and has directed to dispose of the appeal within one month. The High Court has not declared her as Thakur S.T. In Kamini Kantilal Bhamre's case the Hon'ble High Court has remanded the matter to the scrutiny committee and has directed to consider the matter in view of the judgment of Hon'ble High Court in case of Pandurang Rangnath Chavan (1998 (2) Mh.L.J.806). In this case also the High Court has not declared her as Thakur S.T. Regarding the case of Jagannath Diwan Bhamre, the Hon'ble High Court has declared him as Thakur S.T. in view of the judgment of the Hon'ble Apex Court in case of Palghat Jilla Thandan reported in 1994 (1) SCC 359.

2. Regarding the validity certificates-

After perusing these validity certificates it is found that these certificates have been issued by way of giving the ratio of orders of Hon'ble High Court in W.P.No. 2746/1998, 5454/1998, 856/1998, 4123/199 and the judgment of Hon'ble High Court in case of Pandurang Rangnath Chavan (1998 (2) Mh.L.J.806).

In the above judgments gross reliance was placed on the law laid down by Honorable Supreme Court in the case of Palghat Jilla Thandan Samudhaya Samrakshana and Anr. Vs. State of Kerala and Anr. reported in 1994 (1) SCC 359 and Milind Kataware. The judgments of the Apex Court in the above cases are always being interpreted in a converse manner in order to benefit the claimants who are not otherwise eligible to the status of certain communities. The same observations have been given by the Hon'ble High Court in the following judgment.

3. The Hon'ble High Court of Judicature at Bombay Civil Appellate jurisdiction in W.P.No.1953 of 2007 of Dipika Subhash More Vs. State of Maharashtra has judicially observed as under:-

"11..... Much was sought to be made in respect of the caste validity certificate

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issued in favour of the petitioner's sister Vibha Subhash More. It appears that the Scrutiny Committee issued the said certificate of validity to the petitioner's sister in view of the observations made by this court in the Writ Petition No. 2746 of 1998 and 5454 of 1998 and 356 of 1998 and the law as enunciated by this court at that time. This court while deciding the said petition had followed the ratio of the decision of the Apex Court in the case of Palghat Jilla Thandan Samudhaya Samrakshana Samithi and Anr. Vs. State of Kerala and Anr. reported in 1994 (1) SCC 359. However, in another case while deciding the case of one Sunil Murlidhar Thakur, the Apex Court observed that the view taken by this court was not right in disposing of the said petition by referring to the decision of the Apex Court in Palghat Jilla Thandan Samudhya Samrakshan Samithi (supra). The committee, therefore, rightly came to the conclusion that the grant of validity certificate to the petitioner's sister would be of no consequence. We therefore, do not find any merit in the submission of the petitioner that since the petitioner's sister was granted the validity certificate the same should follow

in the case of the petitioner also."

And the Hon'ble Supreme Court in case of Sunil Murlidhar Thakur has observed that, the question which was arose for consideration in Palghat Jilla Thandan Samudhaya Samrakshna Samithi & Anr. was whether the State Government or the Court can enquire into or let in evidence about the correctness of the entry of Scheduled Caste in the Scheduled Castes Order which has to be applied as it stands until the same is amended by appropriate legislation. Such a question clearly did not arise in the case at hand. The question that arose for consideration, as already noticed above, was whether the respondents belong to Thakur Scheduled Tribes, which is one of the enumerated entries in the Scheduled Tribes Order. It means the committee can conduct inquiry whether the claimant belongs to his claimed tribe or not. The observation of Hon'ble Supreme Court are as follows-

4. The Hon'ble Apex Court in case of State of Maharashtra and Others Vs. Sunil Murlidhar Thakur Civil Appeal No. 4088 of 1999 which passing its order on 21-1-2014 has judicially observed that -

**"The question that arose for consideration
in Palghat Jilla Thandan Samudhaya**

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Samrakshna Samithi & Anr. (Supra) was whether the State Government or the Court can enquire into or let in evidence about the correctness of entry of Scheduled Caste in the Scheduled Castes Order which has to be applied as it stands until the same is amended by appropriate legislation. Such a question clearly did not arise in the case at hand. The question that arose for consideration, as already noticed above, was whether the respondents belong to Thakur Scheduled Tribes, which is one of the enumerated entries in the Scheduled Tribes Order. This being the position, the High Court, in our view, was not right and justified in disposing of the writ petition by merely referring to the decision of this Court in Palghat Jilla Thandan Samudhaya Samrakshna Samithi & Anr. (Supra). Without expressing one way or the other on the merits of the respective contentions, we set aside the order and remit the writ petition to the High Court for disposal afresh in accordance with law."

5. In the above judgment the Hon'ble Supreme Court has made it clear that the scrutiny committee can conduct enquiry into the question whether the claimant applicant belongs to his

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claimed tribe or not and for that purpose the committee can rely on affinity test. Now the law is settled on the issue of affinity test. The test of socio-cultural affinity has become sine-qua-non in view of the judgment of Hon'ble Apex Court in the case of State of Maharashtra V/s Raviprakash Babulalsing Parmar and two ors. (Civil appeal No.5146) [AIR 2007 SC 295] and in view of the judgment of Hon'ble full bench in case of Shilpa Vishnu Thakur V/s State of Maharashtra and other related matters reported in 2009 (3) MhLJ 995.

6. Thus the grounds on which basis the Validity Certificates were issued is disputed one. Hence, in view of above legal observation it can not be said that these Validity Certificates are issued on merits, hence the ratio of these Validity Certificates and above mentioned Hon'ble High Court's orders cannot be given to the applicants."

6] When we called upon the learned AGP to justify how such a conclusion can be recorded in law, he was unable to point out any principle which can be culled out from all the decisions that have been referred. To say the least, we find that the judgments of the Supreme Court, as read by the scrutiny committee, and to convey a

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meaning that they are being mis-interpreted, is not as to how a binding precedent should be read and applied, it is rather a lesson as to how not to read, discard or brush aside a binding precedent. It cannot be ignored in the manner and fashion in which the scrutiny committee has stated it. If this is how it shows respect and regards for orders and binding directions of not only of this Court, but of the Hon'ble Supreme Court, then we do not see how the committees, which are set up under the Act No.23 of 2001 are holding the object and purpose of the same.

7] While allowing these petitions, we quash and set aside the impugned orders of the scrutiny committee and direct issuance of certificates of validity to the petitioners within four weeks from the date of receipt of this order, we also forward a copy of this order to none other than the Principal Secretary in the Department of Tribal Development. We sincerely feel that it is time to educate the members of the scrutiny committee as they are not legally trained, well versed in basic and fundamental principles, but exhibit lack of common sense as well. We do not think that such committees would subserve the

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purpose of the legislation and at the earliest they deserve to be wound up.

8] The writ petitions are disposed of accordingly.

No costs.

(MANGESH S. PATIL, J.) (S.C. DHARMADHIKARI, J.)