

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.352 OF 2006
WITH
CIVIL APPLICATION NO.76/2016 IN WP/352/2006

MADHUKAR DIGAMBAR SURYAWANSHI.
-VERSUS-
THE STATE OF MAHARASHTRA AND OTHERS.

...
Advocate for Petitioner : Mr.A.S.Golegaonkar a/w Mr.M.A.Golegaonkar.
AGP for Respondents/ State : Mr.PS.Patil.
...

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

DATE :- 25th July, 2017

PC.:

1 Mr.Golegaonkar would submit that the issue raised in this Writ Petition is identical to Writ Petition No.4215/2009 (Dinesh Suresh Deore vs. The State of Maharashtra and others) decided by us today, but Mr.Patil would argue otherwise.

2 It is stated that the certificates of validity which were issued to Paresh Gulabrao Thakur, Jyoti Gulabrao Thakur and Komal Gulabrao Thakur, all of whom are close relatives of the Petitioner from paternal side, cannot be believed as in the case of Paresh, the Scrutiny Committee has not assigned any reason for issuing the certificate of validity. In these circumstances, when there is complete non application of mind, the

certificates of validity relied upon by the Petitioner are of no consequence.

3 We are unable to agree. First of all, the Scrutiny Committee insists that as a result of removal of area restriction for certain communities, many communities having similar nomenclature staying outside the tribal area and also the communities which belong to entirely different ethnic group, but having similarity of nomenclature, have claimed status of Scheduled Tribes. This status is claimed despite the Scheduled Tribe was confined to the original habitat in the tribal pockets. The Scrutiny Committee was influenced by this aspect of the matter to a great extent and primarily. Once the Honourable Supreme Court has not approved of this line of reasoning and has rather set aside the same in the order dated 08.03.2017 in Civil Appeal No.2336/2011 (Jaywant Dilip Pawar vs. State of Maharashtra and others) and connected Civil Appeals/Special Leave Petitions, we do not think that such contentions raised by Mr.Patil based on the impugned order, can be sustained.

4 Secondly, the certificates of validity in respect of Paresh, Jyoti and Komal, who are close relatives from the paternal side, are proved by the affidavit of Gulabrao Thakur. Gulabrao Thakur is the father of Paresh, Jyoti and Komal. Pertinently, the present Petitioner before us i.e. Madhukar Digambar Suryawanshi is the real younger brother of Gulabrao Thakur. Though the surname is Suryawanshi, the relationship has been established by the genealogy and family tree. The same is not questioned.

It is stated in the affidavit of Gulabrao Thakur, copy of which is at page 28 of the paper book dated 18.12.2003, that Madhukar Digambar Suryawanshi is the real brother of Gulabrao Thakur. The family tree is then annexed to this affidavit. It is stated that common ancestor is one Tirming. He had two sons Sampat and Ravaji. Sampat had three sons Shankar, Omkar and Digambar. Abhiman, Gulabrao and Madhukar are the sons of Digambar. Gulabrao's children are Paresh, Jyoti and Komal. In the impugned order, the Scrutiny Committee has not found this affidavit to be false, nor has it probed any of the statements or assertions therein. It has gone by it's own notion and would like everybody in the family to undergo affinity test. Despite such Committees issuing the certificates of validity to close relatives on the paternal side, an attempt is to force the Applicants/ Claimants within the same family seeking the certificates of validity, to undergo such an affinity test. We do not see any justification for this course. Pertinently, the certificates of validity are not doubted for their genuineness or lack of bonafides. There is no finding of fraud or misrepresentation. The genealogy and family tree is also not disputed.

5 In these circumstances, we do not think that any conclusion other than that one recorded in Writ Petition No.4215/2009 (supra) and Writ Petition No.4575/2012 (Poonam Omprakash Rathod vs. Scheduled Tribe Certificate Scrutiny Committee and others) decided on 24.07.2017, is possible. For the same reasons even this Writ Petition

succeeds. The order of the Scrutiny Committee impugned in this petition is also set aside. 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 from today. Rule is made absolute accordingly.

6 The pending Civil Application does not survive and is disposed of.

kps

(MANGESH S. PATIL, J.)

(S.C. DHARMADHIKARI, J.)