

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

36 WRIT PETITION NO.9714 OF 2018

KISHANSINGH SUDAMSINGH THAKUR ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. Sunil M. Vibhute, Advocate for the Petitioner.

Mr. P. S. Patil, AGP for Respondents-State.

Mr. Jayant R. Patil, Advocate for Respondent No.4.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 13th FEBRUARY, 2019.

PER COURT:-

1. Heard Mr. Vibhute, learned counsel for the petitioner and learned A.G.P.

2. The tribe claim of the petitioner as Thakur, Scheduled Tribe has been invalidated by the committee. Aggrieved thereby, the present writ petition.

3. Mr. Vibhute, learned counsel for the petitioner submits that the pre-constitutional documents of the petitioner's grandfather also records cast as Thakur. Consistently all the documents of the petitioner, his parents, relatives, uncle, grandfather record caste as Thakur. Even, the son and daughter of the real

uncle Dilipsing have been issued with the validity certificate of Thakur, Scheduled Tribe by the committee after considering the vigilance. According to the learned counsel, considering the consistent documentary evidence and validities issued in favour of real uncle's son and daughter, the petitioner ought to have been given the validity.

4. Mr. Patil, learned A.G.P. submits that in fact the validity given in favour of Vishalsing, son of real uncle of the petitioner Dilipsing was by fraud. The validity of one Rita daughter of Ramsing was relied. In fact in the file of Rita daughter of Ramsing the family of Dilipsing and Sudamsing is nowhere mentioned. This shows that the validity in favour of Vishalsing and Ku. Puja was obtained by fraud. When the validity in favour of real paternal cousins is obtained by fraud, the same cannot be relied. The petitioner has also failed in affinity test. The petitioner also does not come from the place which was notified for Thakur, Scheduled Tribe.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. The document in fact records the caste as Thakur. The petitioner has relied on the validity

certificate issued in favour of Vishalsing and Ku. Puja, son and daughter of Dilipsing real uncle of the petitioner. The validity certificate issued in favour of the real paternal cousins would be one of the relevant factor while considering the validity proceeding of the petitioner.

7. The validity certificate issued in favour of the real paternal cousins cannot be brushed aside, unless it is shown that validity certificate issued to them were obtained without following any procedure or that the same was obtained by fraud. The said finding was required to be arrived at by the scrutiny committee. More particularly, when the validity certificates of these persons were placed before the committee.

8. In light of the above, it would be appropriate to remit the matter back to the committee to re-consider the claim of the petitioner and validity certificate issued in favour of the Vishalsing and Ku. Puja, son and daughter of Dilipsing.

9. In light of the above, the impugned order is quashed and set aside. The committee shall decide the validation proceeding of the petitioner afresh and shall also consider the manner in which the validity is issued in favour of the Vishalsing and Ku. Puja, son and daughter of Dilipsing. It

may scan the record of the said validity holders and consider its relevancy. The petitioner shall appear before the committee on 27.02.2019. The committee shall thereafter, decide the said proceeding within a period of three months.

10. Till the proceedings are decided by the committee, the petitioner shall not avail the benefit of scheduled tribe category. The result of the petitioner shall be declared, however, the degree certificate shall not be issued to the petitioner till the scrutiny committee decides in favour of the petitioner. The petitioner if is otherwise eligible may be allowed to prosecute the internship, however, shall not be issued completion certificate of the internship, unless and until the petitioner produce the validity certificate.

(A. M. DHAVALA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE