

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8096 OF 2013**

Smt.Lalita D/o Rajaram Thakur	}	Petitioner
Vs.		
The State of Maharashtra,	}	
Department of Tribal Development	}	
and Ors.	}	Respondents

Mr.Anil S. Golegaonkar for the Petitioner.

Mr.S.S.Panchpor, AGP for State

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

DATE :- FEBRUARY 21, 2019

P.C. :-

1. Heard both sides.
2. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.
3. By this writ petition under Article 226 of the Constitution of India, the petitioner challenges the order of the Caste Scrutiny Committee invalidating the claim of the petitioner towards 'Thakur' Scheduled Tribe.
4. The petitioner claims to be residing at village Dabhadi, Taluka Malegaon, District Nashik. She says that she belongs to 'Thakur' Scheduled Tribe listed at serial number 44 to the Presidential Notification.

5. The third respondent is the competent authority who issued a Caste Certificate on 7th June, 2002.

6. Since the petitioner was studying in 12th standard and 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, 2001 (For short, “the Maharashtra Act No.XXIII of 2001) had come into force, her claim towards the Scheduled Tribe was referred for verification to the Scheduled Tribe Certificate Scrutiny Committee, Nashik.

7. That proposal was forwarded on 17th January, 2004, but the matter came to be disposed of at the initial stage on 16th March, 2012 without the claim being verified in accordance with law.

8. This order came to be set aside by this Court on 10th December, 2012 and the matter was sent back to the Committee.

9. After it was sent back, the impugned order on 17th May, 2013 has been passed.

10. The committee has held that the petitioner/applicant and her forefathers have not demonstrated that they have migrated to Village Dabhadi, Taluka Malegaon, District Nashik from Talukas

of Ahmednagar District or from any of the Talukas of Nashik District where the tribe was predominantly found. The Tribe was restricted to Ahmednagar District and some Talukas therein, Kolaba District and some Talukas therein, Poona District and some Talukas therein and Thana District and some Talukas therein. As far as Nashik District is concerned, Igatpuri and Sinnar were the only Talukas inhabited by “Thakur” Scheduled Tribe. The petitioner having not been able to demonstrate that initially she resided in these Talukas together with her forefathers or her family belongs to these Talukas and have migrated to village Dabhadi, Taluka Malegaon, her claim cannot be accepted.

11. It is conceded that this is the only point on which the claim is negatived. Thus, the removal of area restriction was the point specifically raised by the petitioner/applicant, but the Committee opined that despite such contention, the area restriction is not an issue which can be entirely brushed aside. In the garb of finding out whether the claimant belongs to “Thakur” Scheduled Tribe, the Committee invariably, in its order, traces the residence of forefathers. While tracing the residence, it essentially applies the principle as to whether applicant’s forefathers resided in the concerned Talukas of Nashik District. Thus, by a back-door

method, the area restriction is introduced. This is unmindful of the fact that by Act No.108 of 1976 styled as Scheduled Tribes Orders (Amendment Act), 1976 published on 18th September, 1976, these restrictions of area have been removed. Still that is reintroduced is the argument of Mr.Golegaonkar.

12. Mr.Panchpor, learned AGP, while supporting the impugned order, submits that there is no attempt to apply the principle of area restriction by a back-door method.

13. In several decisions of this Court rendered by Division Benches, one of which was presided over by one of us (S.C.Dharmadhikari, J.), this Court extensively referred to the principle of area restriction, its removal and its impact on the verification and scrutiny of the claims of this nature. In that process, it also referred to a recent order of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court holds that the inquiry should now be restricted to finding out whether the claimant/applicant belongs to 'Thakur' Scheduled Tribe as listed at Entry No.44 in the Presidential Notification. Beyond that, nothing should be introduced, much less by a back-door method.

14. Once this authoritative pronouncement is in the field, then, we cannot sustain the impugned order. It has to be quashed and set aside. It is accordingly quashed and set aside.

15. Rule in this petition is made absolute in terms of prayer clause (A). It is also made absolute in terms of prayer clause (B) because the petitioner relies upon the Caste Validity Certificate issued by this very Committee to Archana Dinkar Ahire and Subhash Jagannath Ahire. It is claimed that copies of these Caste Validity Certificates and affidavits of the concerned holders together with the proof of relationship have also been placed on record. Thus, those are the cousins from the paternal side (real brothers of the petitioner's father). In the circumstances, all the more, the impugned order cannot be sustained.

16. While making the Rule absolute in terms of prayer clause (B), we direct that a certificate of validity shall be issued to the petitioner as expeditiously as possible and within a period of four weeks from today.

17. The writ petition, accordingly, stands disposed of. There will be no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)