

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 8296 OF 2019

Phalguni d/o Chandrashekhar Thakur ... Petitioner

Vs

1 State of Maharashtra & Ors. ... Respondents

Mr. R.K. Mendadkar with Mr. T.V. Jadhav and ms. Priyanka Shaw
for the Petitioner.

Mr. V.M. Mali, AGP, for the Respondent - State.

**CORAM : S.C. DHARMADHIKARI &
S.K. SHINDE , JJ.**

TUESDAY, 30TH JULY, 2019

P.C. :

1 We have heard both sides. We have perused the writ
petition and the annexures thereto.

2 The certificate of validity has been denied to the
petitioner by the impugned order of the Scrutiny Committee at
Nandurbar dated 19th July, 2019.

3 The contentions which were raised before the Committee and reiterated before us, *inter alia*, are that three certificates of validity were produced to support the case of the petitioner. The claim was towards Thakur Scheduled Tribe Entry No.44 of the Scheduled Tribe Control Order, 1950 as amended in 1976.

4 Shriram Sitaram Thakur is the cousin grandfather from the paternal side and that gentleman was granted a certificate of validity by an order of a Division Bench of this Court dated 7th April, 2011 in Civil Writ Petition No.3715 of 1994 (Aurangabad Bench). Vinod Laxman Thakur is an uncle from the paternal side and the certificate of validity was granted to Vinod Laxman Thakur by this Court in Writ Petition No. 3153 of 1996. The third is one Amar Laxman Thakur, again an uncle to whom certificate of validity was granted pursuant to the order passed by this Court in Writ Petition NO. 6709 of 2011 (Bench at Aurangabad of this Court).

5 Mr. Mendadkar complains that the Committee made a sweeping observation in the impugned order that all these

certificates have not been granted in accordance with the procedure prescribed by the Hon'ble Supreme Court in the case of *Kumari Madhuri Patil vs Addl Commissioner (1994) 6 SCC 241 = AIR 1995 SC 94*. Therefore, these certificates of validity have lost their probative value.

6 Mr. Mali, learned AGP appearing on behalf of the respondent supported the impugned order.

7 After having perused the petition and the annexures thereto, including the impugned order with the assistance of both sides, we find that the petitioner completed her twelfth standard HSC examination. She appeared for the National Eligibility-cum-Entrance Test (Undergraduate) 2019 and she was declared successful in the examination, results of which were declared on 5th June, 2019. She is anxious to get admission in Bachelor of Ayurvedic Medical Science or Bachelor of Homeopathic Medical Science degree course. She, therefore, applied for a certificate of validity as the concession and relaxation in education in the form of reservation of seats for the Scheduled Caste / Scheduled Tribe was sought to be availed of by the petitioner. For that she was

required to produce the certificate of validity before the cut-off date.

8 The petitioner complains in paragraphs 6 and 7 that a hurriedly held hearing resulted in voluminous documentary evidence being disregarded on flimsy grounds.

9 There is some substance in the contentions of Mr. Mendadkar and for the simple reason that we have found as a matter of habit, that this Scrutiny Committee at Nandurbar is brushing aside binding orders of this Court and the Hon'ble Supreme Court. When it is obliged to find out whether the claimant before it is Thakur Scheduled Tribe within the meaning of Entry 44, it does not carry out the task assigned to it by law in that manner. It charts a completely different course and reverts to the area restriction in the garb of finding out whether a person from other than the areas, where Thakur Scheduled Tribe were ordinarily residing and to be found, is indeed a Thakur. He must be possessed of some knowledge of the areas in which this Tribe was earlier residing and inhabiting. The claimant must, therefore, be aware of all such traits, characteristics, traditions,

practices, customs, usages in addition to his ancestors or forefathers residing in this area. This is the test and devised by the Committee, though it is aware that this approach of the Committee has been frowned upon, severely criticised and not upheld repeatedly by this Court.

10 In the instant case, on 7th April, 2011, in Civil Writ Petition No.3715 of 1994, Shriram Sitaram Thakur, cousin grandfather of the petitioner was granted the certificate of validity as Thakur Scheduled Tribe. Pertinently the Committee in the impugned order does not dispute that Shriram Sitaram Thakur is the cousin grandfather of the petitioner. Then in relation to Vinod Laxman Thakur once again the relationship is not disputed. However, the Committee refers to the case of one Sunil Murlidhar Thakur, Mansaram D. Thakur and finds that in these two cases though they are not blood relatives of the petitioners, but the Nashik Scrutiny Committee held that these two persons could not establish their socio-cultural affinity towards Thakur Scheduled Tribe. We fail to understand as to how some general and sweeping findings and conclusions by another Scrutiny Committee would have any bearing on the case of Vinod

Laxman Thakur who also instituted Civil Writ Petition No. 3153 of 1996 and succeeded in obtaining the certificate of validity. Now, the Committee feels that in the case of Amar Laxman Thakur also, the Scrutiny Committee at Nandurbar had invalidated the claim, but relying upon some other orders in Writ Petition No.6709 of 2011 this Court granted the relief to Amar Laxman Thakur and the certificate of validity was issued.

11 The Committee feels that no inquiry as contemplated by Maharashtra Act No.23 of 2001 as also following the principles in the case of *Madhuri Patil* (supra) was held in the case of Amar Laxman Thakur and Vinod Laxman Thakur.

12 To our mind, this can never be a reason to discard the certificates of validity. In cases such as these some conflicting entries are bound to be found. We are perplexed that some entries are referred in the impugned order without enlightening us as to how Dhudkya Malhari Bhaat the distant relative of the mother of the father of the present petitioner and the relatives from the mother's side including Dhudkya, Tushra, their surnames being Bhaat, the entries could never have been

Thakurs and because their surnames or in their names there is a reference to Bhaat that they were not Thakurs. The impugned order is thus full of conjectures and premises. It is totally unsustainable.

13 So long as none of the certificates of validity have been doubted or suspected and held to be vitiated by fraud or misrepresentation of facts, a show cause notice being issued to the certificate holders, a due inquiry as contemplated by law held and the certificates confiscated and cancelled, the same could not have been omitted from consideration or the same could not have been termed as having no probative value. This approach of the Committee in the instant case exhibits total perversity. The impugned order is vitiated by error of law apparent on the face of the record.

14 For the reasons aforestated, we allow this Writ Petition. We quash and set aside the impugned order and direct the certificate of validity to be issued to the petitioner, latest by 31st July, 2019 so as to enable the petitioner to meet the deadline for admissions. The deadline is stated to be 2nd August, 2019.

15 We direct all concerned to act on an authenticated copy of this order and proceed on the basis that our order validates the claim of the petitioner. A formal certificate of validity will have to be issued by the Scrutiny Committee now and that may be made available after some time. Should it not reach the office of the Common Entrance Test Admission Cell, then, our order would suffice for the purposes of granting admission to the petitioner if she is otherwise eligible.

16 There will be no order as to costs.

S.K. SHINDE, J.

S.C. DHARMADHIKARI, J.