

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

926 WRIT PETITION NO.9490 OF 2019

Puja d/o Vijay Thakur
Age: Minor, Occu.: Student,
U/g of her father, viz.,
Vijay s/o. Rangnath Thakur
Age: 44 years, Occu.: Service,
R/o. Plot No.8, Onkar Nagar,
Near Filter Plant, Chopda,
Tq.Chopda, Dist.Jalgaon. ..Petitioner

VERSUS

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32.
Through its Secretary.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division,
Nandurbar, Through its Member
Secretary ..Respondents

...
Advocate for Petitioner : Mr.Sagar Phatale h/f.
Mr.Sushant C.Yeramwar
AGP for Respondents No.1 & 2 : Mr.S.B.Yawalkar
...

**CORAM : SUNIL P DESHMUKH &
M.G.SEWLIKAR, JJ.**

DATE: 5th November, 2020

ORAL JUDGMENT (Per Sunil P. Deshmukh, J.) :-

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for parties finally, by consent.

2. Petitioner is before this Court questioning legality, validity and sustainability of order dated 16-07-2019 passed by respondent No.2 - The Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Division, Nandurbar (committee), invalidating tribe claim of petitioner to be belonging to '*Thakur*' scheduled tribe.

3. Mr.Sagar Phatale, learned counsel holding for Mr.S.C.Yeramwar, learned counsel for petitioner submits that pre-constitutional record of persons from whom family originates as well as genealogy submitted by petitioner has not received its due. According to him, the committee has passed hypothetical order, referring to matters which are not germane for consideration while considering tribe claim of petitioner. He submits that impugned order is challenged since, it has been considered that '*Thakurs*' and surname '*Thakur*' is an appellation borne by higher class people also. He submits that may be the surname is pervasive, however, what is to be considered is whether petitioner has lineage of '*Thakur*', who are not from higher class. While it shows petitioner does not come from higher class of '*Thakur*' and there is pre-constitutional record depicting the same, it has not been given any credence, rather same has been discarded by the committee.

4. According to learned counsel for petitioner, lot of discussion has taken place over area restrictions and has been relied on, which has been covered and dealt with by The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 removing the area restrictions. He submits that committee also records that if petitioner is to be considered as '*Thakur*', benefit of some other '*Thakur*' would be affected. He contends that all this discussion by committee in its order dated 16-07-2019 is absolutely irrelevant, while genealogy has not been disputed and his great grand cousin and cousin have been issued with validity certificates.

5. He submits that excessive emphasis is given to word '*Bramhabhat*' shown in the case of his grandfather Rangnath Daulat Bramhabhat appellation, as surname has been long back rectified as the same was proving to be impediment in proper consideration of tribe claim. However, no regard is given to the same.

6. He contends that committee does not doubt relationship of petitioner with the persons to whom validity certificates have been granted by the very committee. On the contrary, a

reference has been made in respect of one of such validity holders while the committee had rejected claim of said validity holder in the very year in which petitioner's claim has been decided and negated. He further refers to that the committee has also observed that there are lot of documents recording tribe '*Thakur*', however, same have not been relied upon considering that that is only paper evidence and, thus, the committee has dealt with area restrictions which is absolutely unwarranted.

7. He submits that the documents relied on by petitioner; the oldest one is of 1924 of one Ratan Nathu Bagul, who is great great grandfather and the same shows him to be Hindu '*Thakur*', whereas in respect of his brother, it has been considered that relationship could not be proved. All these observations are contrary to genealogy which has not been doubted. He submits that while it has been considered that invalidation of cousin uncle from lineage has been suppressed, the very cousin uncle has been directed to be issued validity certificate by Division Bench of this Court.

8. He places reliance on decision dated 04-11-2019 in Writ Petition No. 5840 of 2019 in the case of *Shubham Santhosh Bagul Vs. State of Maharashtra and Another*. He refers to that one of the grounds of rejection of claim is affinity had not been

proved which is not determinative. He, therefore, submits that decision rendered by the committee is deficient as there is improper appreciation of matter with a view to negate the claim of the petitioner.

9. Learned Assistant Government Pleader submits that while petitioner's father's surname had been recorded as '*Bramhabhat*', would show that petitioner comes from higher class and same has been got deleted with a view to facilitate tribe claim of petitioner. He further refers to that petitioner could not prove affinity test and also looking at that petitioner does not come from where '*Thakur*' scheduled tribe, committee has properly negated the claim.

10. While aforesaid are submissions made on behalf of parties, it appears that in case of *Shubham Santhosh Bagul (supra)*, the Division Bench has taken into account documents relied on behalf of petitioner therein including pre-constitutional documents, which also refer to name of petitioner's grandfather Rangnath Daulat Bramhabhat bearing surname '*Bramhabhat*'. With reference to documents, list of which has been produced in order dated 04-11-2019 in paragraph No. 5 at Serial No. 6, petitioner's grandfather figures in referring him to be Hindu '*Thakur*' and Division Bench has considered all the documents

recording tribe as '*Thakur*'. Considering documents and validity issued to father of said petitioner and son of real uncle of petitioner, the Division Bench had been pleased to direct to issue validity certificate to said petitioner of being '*Thakur*' scheduled tribe. The Division Bench has also considered that relationship had not been disputed and real uncle as well as his father have been issued with validity certificate.

11. In present case, it appears that the committee had considered that while Shubham Santhosh Bagul's claim has been invalidated on 08-04-2019 by the same committee, it has been kept back in an affidavit which had been rendered incorrect. It is not disputed that the very order dated 08-04-2019 in case of Shubham Santhosh Bagul had been set aside under order dated 04-11-2019 passed by Division Bench of this Court in Writ Petition No. 5840 of 2019 and while relationship of said Shubham Santhosh Bagul and genealogy has not been disputed and few persons, originating from other castes have been validated.

12. This court in similar circumstances in writ petition No. 5641 of 2020 (*Kum. Maseera Parvin d/o Mohd. Asfaque Shaikh and another vs. the State of Maharashtra and others*), while it had been

contended on behalf of the State that proposal has been moved for reopening of the proceedings against the family members of petitioners, who are granted validity certificates by the committee, directions have been issued to committee to issue validity certificates to petitioners therein and in case of review of judgment/s in the petition/s, it was kept open for respondents to proceed against petitioners in accordance with law.

13. In the decision in writ petition No. 9056 of 2019 (*Ganesh s/o Sudhakar Bodhgire vs. The State of Maharashtra*) dated 21st August, 2019, wherein taking into account the decision of division bench of this court in the case of *Apporva Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others*, reported in 2010(6) *Mh.L.J.* 401, which was based upon the Supreme Court judgment in the case of *Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar and others*, reported in (2008) 9 SCC 54, the division bench has considered it expedient to follow the suit of the same and directed to issue tribe validity certificate to the petitioner therein forthwith. The decision further refers to that if the proceedings for cancellation of caste validity holders are answered against such certificate holders, it would be open for the committee to issue show cause notice to petitioner, as to why validity certificate granted to him should not be cancelled

and keeping it open for the committee to take those proceedings to its logical end. The decision further particularly refers to that certificate issued to the petitioner, would be subject to the outcome of proceedings for cancellation of validity issued in favour of his blood relatives.

14. Having regard to decisions and facts and circumstances in foregoing discussion, we deem it appropriate to follow course of order dated 04-11-2019 passed in Writ Petition No. 5840 of 2019 and aforesaid decision. As such, impugned order dated 16-07-2019 passed by respondent No. 2 to the extent of petitioner is quashed and set aside. The committee shall issue validity certificate as '*Thakur*' scheduled tribe to the petitioner, subject to decision, if any case of a validity holder is re-opened.

15. Rule is made absolute accordingly. Writ petition is disposed of.

(M.G.SEWLIKAR)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

SPT