

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

WRIT PETITION NO. 636 OF 2011

Vishwadeep s/o Subhash Thakur,
Age 20 years, Occ. Student,
R/o. Plot No. 7, 'Aai' Tulshiramnagar,
Sector-B, Near Jagannathnagar Deopur,
Dhule, District Dhule.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya Mumbai-32.
- 2) The Committee for Scrutiny and
Verification of Tribe Claims,
Through its Dy. Director (Research)
Nadurbar, Division Nandurbar.
- 3) The Maharashtra University of
Health Sciences, through its
Registrar Nashik, District Nashik.
- 4) The Dean,
Nair Hospital and Dental College,
Dr. A.L. Nair Road, Mumbai-40008.

... **Respondents.**

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Advocate for the Petitioner : Mr. M.A. Golegaonkar
A.G.P. for the Respondent Nos. 1 & 2 : Mr. S.G. Sangale
Advocate for Respondent No. 3 : Mr. K.M. Suryawanshi

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 21.09.2023

PER COURT :

Heard both the sides.

2. The petitioner is challenging the order of the respondent-scrutiny committee whereby it has confiscated and cancelled his certificate of 'Thakur' scheduled tribe.

3. The learned advocate for the petitioner at the outset submits that the petitioner's father possesses a certificate of validity which has been issued by following due process of law till the time it is not confiscated and cancelled, the petitioner is entitled to derive the benefit of the validity. He would submit that the committee has refused to extend the benefit of father's validity to the petitioner by referring to the fact that in view of the decision in the matter of **Shilpa Vishnu Thakur Vs. State of Maharashtra and other; 2009 (3) Mh.L.J. 995** affinity test which ought to have been applied was not applied when petitioner's father's matter was decided. He would submit that in the light of the decision in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326*** such reasoning would not be sustainable in law. The learned advocate would then submit that the other ground being relied upon by the committee for not extending the benefit of the father's validity is the observation of the Supreme Court in the matter of **Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and ors; 2009(1) Mh.L.J. SC 1.** However, the learned advocate would submit that though the committee has resorted to such a reasoning, it has not pointed out as to what was the error for the then scrutiny committee in issuing certificate of validity to petitioner's father. He would submit that this is abdication of the jurisdiction.

4. The learned advocate for the petitioner would submit that the committee has even not assigned proper and sound reasons for discarding the favourable documentary evidence, by applying the principal of area restriction which is not sustainable in law in the light of the decision in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samikti and Anr. Vs. State of Kerala and Anr (1994) 1 SCC 359.**

5. Lastly, the learned advocate for the petitioner would submit that the petitioner's real cousins Anant Sanjay Suryawanshi, Mrunmay Sanjay Suryawanshi and their father Sanjay have all been granted certificate of validity in the year 2019 and 2020 and the petitioner is entitled to derive even the benefit of such validities issued to the blood relatives during pendency of this petition.

6. The learned A.G.P would support the impugned order.

7. We have carefully considered the rival submissions and perused the papers. Suffice for the purpose to observe at the outset that though this petition was filed way back in the year 2011, it seems to be pending because the issue regarding applicability of the affinity test and even the area restriction was under consideration of the Supreme Court. As far as affinity test is concerned, in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326* the supreme Court has put at rest the issue by observing that it has a very limited scope. Even the issue regarding area restriction has been set at naught in the matter of **Palaghat (supra)**.

8. Apparently, the scrutiny committee has refused to give benefit of the favourable record wherein the petitioner's ancestors have been shown to be Thakur by applying the principle of area restriction and not on the ground that those are not believable. Having found that the committee could not have applied the area restriction, even the reasoning resorted to by it to discard this favourable record will not be sustainable.

9. Again, even if in the light of the decision in the matter of **Raju Ramsing Vasave (supra)** the committee can undertake an independent scrutiny, it has merely reproduced the observations of the Supreme Court without making any endeavour so as to point out which is such vital evidence which was not available to the committee which decided to grant certificate of validity to the petitioner's father.

10. Again, when it is not the observation of the committee that the procedure as prescribed by the Rules was not followed when petitioner's father was granted certificate of validity, following the decision in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*, the petitioner would be entitled to derive the benefit of father's validity.

11. Besides, even during pendency of this petition, the petitioner's paternal uncle Sanjay and his two sons Mrunmay and Anant have been granted certificates of validity. If such is the state of affairs, the observation and conclusion of the committee discarding the favourable record and refusing to extend the benefit of validity issued to the petitioner's father is clearly perverse, arbitrary and capricious.

12. The Writ Petition is allowed.

13. The impugned order is quashed and set aside. The respondent-scrutiny committee shall immediately issue certificate of validity to the petitioner of 'Thakur' scheduled tribe.

14. Rule is made absolute in above terms.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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