

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

WRIT PETITION NO.2357 OF 2017

Ku. Rakshanda Prakash Pawar
Age : 22 years, Occu : Student,
R/o. Plot No. 20, Chintamani Morya Nagar,
Dharangaon Tq. Dharangaon, Dist. Jalgaon .. Petitioner

Versus

1. The State of Maharashtra
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division, Nandurbar,
Through its Member Secretary.
3. The Deputy Collector Land Acquisition
(MIW), Jalgaon .. Respondents

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Advocate for Petitioner : Mr. A. S. Golegaonkar
AGP for Respondent / State : Mr. S. G. Sangle

...

**CORAM : MANGESH S. PATIL
AND
NEERAJ P DHOTE, JJ.**

DATE : NOVEMBER 04, 2023

PER COURT :

. Heard.

2. Rule. Rule is made returnable forthwith. Learned AGP
waives notice on behalf of the respondent / State. At the joint request

of the parties, heard finally at the admission stage.

3. By invoking the powers of this Court under Article 226 of the Constitution of India read with Section 7 of the Maharashtra Act No.XXIII of 2001 (for short, 'Act'), the petitioner is challenging the order passed by the Scrutiny Committee under Section 7 of the Act whereby her claim of belonging to Thakur (44) Scheduled Tribe has been turned down and her tribe certificate has been confiscated and cancelled.

4. Learned advocate for the petitioner submits that there is pre-constitutional school record of the grandfather of the petitioner of the year 1939 and its genuineness has not been disputed by the Scrutiny Committee. It expressly recorded petitioner's great grandfathers caste as 'Thakur' in the caste column. The committee has overlooked this entry therefore the decision is perverse and arbitrary.

5. The learned advocate for the petitioner would further submit that admittedly the petitioner's real paternal side uncle Ulhas possesses the certificate of validity issued to him way back in the year

2000. Even two sons of Ulhas have subsequently been granted certificates of validity. There is no dispute about the genealogy, still the committee has refused to extend its benefit simply by resorting to the principle of area restriction and by applying affinity test, which is contrary to the decision in the matter of **Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Anr vs State of Kerala and Anr**, (1994) 1 SCC 359 and the decision in the matter of **Anand vs. Committee for Scrutiny and Others**, (2012) 1 SCC 113 as well as decision in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and Ors.**, 2023 SCC Online SC 326. The order being illegal be quashed and set aside and reversed.

6. The learned AGP admits the fact that there is no dispute about the genealogy. However, submits that Ulhas was granted certificate of validity based on validity of maternal side relation, which the then committee could not have legally done. He would further submit that there is no illegality in applying area restriction and affinity test for the reasons recorded by the committee and the petition be dismissed.

7. At the outset, it is necessary to note that there is no dispute about the genealogy and the fact that the petitioner's first degree paternal uncle possesses a certificate of validity by conducting necessary enquiry. We have also gone through the order passed in the matter of Ulhas. The school record of his grandfather of 1939 which is produced even in the present matter, was produced before that committee and though simultaneously he had relied upon the validity of his maternal side cousin, even this pre-constitutional entry was the basis relying upon which he was granted certificate of validity. The impugned order nowhere observes that no due process of law was followed when he was granted the certificate of validity.

8. If this is the state of affairs, following decision in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (*supra*) since Ulhas was issued certificate of validity by following due process of law, even the petitioner being the first degree niece is entitled to derive the benefit. Needless to state that application of area restriction would be clearly in violation of law laid down by the Supreme Court in the matters of **Palghat Jilla Thandan Samudhaya Samrakshna Samithi** (*supra*) and **Jaywant Dilip Pawar vs State of**

Maharashtra and Ors., 2018 (5) All MR 975. Similarly, application of affinity test without disputing genuineness of 1939 school record of the great grandfather would be contrary to the principle laid down in the matter of **Anand** (*supra*) and **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti** (*supra*).

9. In the light of above, the impugned order is not sustainable in law and is liable to be quashed and set aside. Hence, we proceed to pass the following order.

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned Judgment and Order dated 10.11.2016 passed by the Scrutiny Committee, is quashed and set aside.
- (iii) The Scrutiny Committee shall immediately issue certificate of tribe validity to the petitioner of 'Thakur - Scheduled Tribe'.
- (iv) Rule is made absolute in above terms.

[NEERAJ P. DHOTE, J.]

[MANGESH S. PATIL, J.]

GGP