

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

**WRIT PETITION NO. 1730 OF 2009
WITH CA/10901/2014 IN WP/1730/2009
WITH CA/10902/2014 IN WP/1730/2009**

Shri. Mayur s/o Iccharam Wankhede,
Age 19 years, Occ. Student,
R/o. 18-B, Satsang Colony, behind
ITI, Near Laxminagar, Deopur, Dhule
Dist. Dhule.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra,
Department of Tribal Development,
Mantralaya, Mumbai-32.
Through its Secretary.
- 2) The Scheduled Tribe Caste Verification
Committee, Nandurbar Division,
Nandurbar, Through its Member
Secretary.
- 3) The Director of Technical Education,
Maharashtra State 3, Mahapalika Marg,
P.Box 1967, Mumbai-400001.
- 4) College of Engineering,
(An Autonomous Institute of Government
of Maharashtra) (Formerly Government
College of Engineering), Shivajinagar
Pune, Through its Principal.
- 5) The District Magistrate
Dhule, District Dhule.

... **Respondents.**

...

Advocate for the Petitioner : Mr. M.A. Golegaonkar h/f Mr. A.S. Golegaonkar
A.G.P. for the Respondents/State : Mr. S.G. Sangale.

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 passed by the respondent-scrutiny committee confiscating and cancelling his certificate of 'Thakur' scheduled tribe.

3. Rule was granted on 25.03.2009.

4. The learned advocate for the petitioner would vehemently submit that there were several favourable entries substantiating petitioner's claim. There was oldest birth register record in respect of the petitioner's grand father of 1928 wherein his caste was recorded as 'Thakur'. Petitioner's first degree cousin Sonal Ramchandra Thakur was issued with a certificate of validity. The committee has not considered this pre-constitutional record in the proper perspective and has discarded it without recording sound reasons. He would also submit that even the committee has not assigned any reason as to why benefit of the validity possessed by the petitioner's cousin Sonal could not inure to his benefit.

5. The learned advocate would further submit that the committee has applied test of area restriction in spite of the concept having been set at naught by passing of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. He would submit that even the committee has resorted to affinity test which is not regarded as litmus test in view of the decision in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors; (2012) 1 SCC 113** and ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326.***

6. The learned A.G.P would support the order. He would submit that the impugned order was passed in the year 2009. The committee had given reasons for applying the principal of area restriction and has even correctly resorted to the affinity test.

7. We have carefully considered the rival submissions and perused the

papers. It is apparent that the petitioner has been heavily relying upon the birth record of his grand father from register No. 51 of village Mandal Tq. Amalner District East Khandesh of the year 1928 which is issued by Tahsildar Amalner wherein his caste was mentioned as 'Thakur'. Though this document finds place at Sr. No. 25 in the impugned order, the committee has not recorded any reason much less sufficient as to why it was not inclined to accept this pre constitutional record. It seems that all such favourable record including this birth record of 1928 has been discarded by the committee by applying the principal of area restriction, holding that there was no evidence led demonstrating that the petitioner's ancestors had originally belong to the native place of 'Thakur' scheduled tribe community. Even the committee has been bold enough to discard the observations in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samikti and Anr. Vs. State of Kerala and Anr (1994) 1 SCC 359**. Obviously, the approach of the committee is clearly not sustainable in view of removal of area restriction by virtue of the Act of 1976 and in the light of the decision in the matter of **Palaghat (supra)**.

8. It is not the observation of the committee that this birth record of 1928 of petitioner's grand father is not a genuine document. If that be so when this is the pre constitutional record which substantiates the petitioner's claim, the committee ought not to have discarded it lightly that too by resorting to the concept of area restriction.

9. As is pointed out herein above, even the committee has not assigned any reason as to why the petitioner is not entitled to derive the benefit of the certificate of validity possessed by his first degree cousin Sonal. It has not assigned any reason at all much less by making any observation that the validity certificate was granted to her without following due process. If that is so, in view of the observations of the scrutiny committee in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)** the petitioner being the blood relative of Sonal from the paternal side is entitled

to derive the benefit of her validity.

10. The conclusion drawn by the scrutiny committee refusing to rely upon the birth record of 1928 of the petitioner's grand father and refusing to extend the benefit of validity possessed by his cousin Sonal is clearly perverse, arbitrary and not sustainable in law.

11. The Writ petition is allowed.

12. The impugned order is quashed and aside. The respondent-committee shall immediately issue certificate of validity of 'Thakur' Scheduled Tribe to the petitioner.

13. Rule is made absolute in above terms.

14. Pending Civil Applications are disposed of.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-