

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6175 OF 2021

Pallavi D/o Hanumant Suryawanshi

.. Applicant

Versus

- 1] The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32.
Through its Secretary
- 2] The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Division, Aurangabad
Through its Member Secretary
- 3] The Principal,
College of Engineering, Pune (COEP),
Shivaji Nagar, Pune – 411 005
Tq. & Dist. Pune
- 4] Savitribai Phule Pune University,
Ganeshkhind Road, Ganeshkhind,
Pune – 411 007
Through its Registrar

.. Respondents

AND

WRIT PETITION NO. 6165 OF 2021

Saurabh S/o Hanumant Suryawanshi

Versus

- 1] The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai – 32.
- 2] The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Division, Aurangabad
Through its Member Secretary
- 3] The Principal,
Rajarshi Shahu Mahavidyalaya (Autonomous),
Opp. Central Bus Stand, Chandra Nagar,
Latur, Tq. & Dist. Latur

.. Respondents

AND
WRIT PETITION NO. 6171 OF 2021

Onkar S/o Shriram Suryawanshi

.. Petitioner

Versus

1] The State of Maharashtra
Department of Tribal Development,
Mantralayam, Mumbai – 32.
Through its Secretary

2] The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Division, Aurangabad
Through its Member Secretary

.. Respondents

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Advocate for petitioner in all WPs : Mr. S.C. Yeramwar
AGP for the respondent – State : Mr. A.S. Shinde
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**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : 4 NOVEMBER 2023

ORDER (MANGESH S. PATIL, J.) :

Rule. Rule is made returnable forthwith. At the joint request of the parties, the matters are heard finally at the stage of admission.

2. By of these separate writ petitions, the petitioners are challenging the common order passed by the respondent - scrutiny committee in a proceeding under section 7 of the Maharashtra Act No. XXIII of 2001 thereby confiscating and cancelling their Thakur scheduled tribe certificates.

3. The learned advocate for the petitioners submits that the petitioners Pallavi and Saurabh are siblings whereas petitioner Onkar is their distant paternal side cousin. Pallavi and Saurabh's real paternal uncle Ganpati Shivaji Suryawanshi possesses certificate of validity. He was issued with the validity by following due process of law. There was consistent school record of the petitioners and their paternal side relatives describing them to be Thkaur. The oldest school record is of Ganpati Shivaji Suryawanshi of the year 1975. Besides, there was old revenue record of khasra pahani patrak wherein petitioners' ancestors were described as Thakur *albeit* by their surnames. There was no sufficient and cogent reason for the committee to discard it.

4. Learned advocate would submit that at the time of Ganpati Shivaji Suryawanshi vigilance cell enquiry was conducted and certificate of validity was issued. Even if the petitioners have not relied upon, the committee on its own has also traced a certificate of validity possessed by one Mohan Suryakant Suryawanshi. The petitioners admit that he is their blood relative from the paternal side and his name can be traced even in the genealogy prepared during the vigilance enquiry and that was available to the committee. Even if the committee has now entertained a doubt about the validity holders having obtained validity certificates by resorting to fraud till the time those are not

confiscated and cancelled, the petitioners would be entitled to derive its benefits. Lastly, he would submit that the committee ought not to have applied the area restriction and the affinity test and still it has done so. The order is perverse, arbitrary and capricious and be quashed and set aside.

5. The learned AGP supports the order. He submits that this Court cannot sit in appeal. The scrutiny committee has objectively considered the material that was available to it in the proper perspective. And has taken a plausible view which cannot be interfered with while exercising the powers under Article 226 of the Constitution of India.

6. The learned AGP would also submit that fraud vitiates everything. The committee has for the reasons recorded in the impugned order has formed an opinion about the validity holder relied upon by the petitioner as well as the validity holder - Mohan Suryakant Surywanshi who have obtained certificates of validity by resorting to fraud and has decided to undertake a fresh scrutiny of their matters.

7. There is no dispute about the genealogy. There is also no dispute that there are two validity holders in the immediate blood relation. Irrespective of the view being expressed by the committee in the impugned order about the manner in which those two validity holders had obtained the certificates of validity, till the time those are

not confiscated and cancelled by following due process of law and particularly when it is not the stand of the committee that no process as contemplated in law was followed while granting the certificate of validity to those two validity holders, the petitioners cannot be deprived of having the benefit. If they are ready to suffer the consequences as contemplated in the matter of ***Shweta Balaji Isankar Vs. State of Maharashtra and others*** (writ petition no. 6320 of 2017).

8. We do not intend to make any comment on the powers of the committee to undertake a review and the facts which according to the committee constitute fraud or misrepresentation. We are doing so for two reasons; firstly the validity holders are not before us and we do not intend to cause any prejudice to them by making observations in this matter behind their back and secondly, any observation made by us could have a bearing on the matters which the committee has decided to re-open.

9. Pertinently, there are no contrary entries except the school record of Shriram Vyankat Thakur, Mahadev Raghunath Thakur, Mohan Suryakant Thakur, Maruti Rangnath Thakar and Ranjana Suryakant Thakur, wherein in the caste column they have been described as Hindu. Hindu being not a caste but a religion, it could not have been treated as an adverse entry.

10. Again, the committee has referred to the caste of some of the blood relations recorded in the Census of 1951, however, in view of section 15 of the Census Act of 1958 that record is inadmissible in evidence.

11. In the light of above, the impugned order is clearly perverse, arbitrary and capricious and deserves to be interfered with and reversed.

12. In the result, the following order:-

I) The Writ Petitions are partly allowed. The impugned order is quashed and set aside. The respondent – committee shall immediately issue tribe validity certificate to the petitioners as belonging to 'Thakur' Scheduled Tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matters which the committee has decided to re-open.

II) Learned AGP to communicate this order immediately to the concerned Committee.

III) The petitioners shall not be entitled to claim equities.

IV) Rule is made absolute accordingly.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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