

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

WRIT PETITION NO. 710 OF 2018

VAIBHAV VIJAYKUMAR THAKUR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

AND
WRIT PETITION NO. 706 OF 2018

ARPITA VIJAYKUMAR THAKUR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

AND
WRIT PETITION NO. 4377 OF 2018

VIJAYKUMAR SHIVDAS THAKUR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioner : Mr. S.C. Yeramwar
Addl. GP for Respondents : Mr. S.B. Yawalkar

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

DATE : 13 SEPTEMBER 2023

PER COURT (PER : SHAILESH P. BRAHME, J) :

1. Heard both the sides finally at the admission stage.
2. Petitioners Vaibhav and Arpita are real siblings of petitioner Vijaykumar Shivdas Thakur. Their tribe certificate was invalidated by common order dated 08.12.2017. Whereas, tribe certificate of Vijaykumar is invalidated by order dated 05.04.2018. Being aggrieved, they have preferred present petitions. For the sake of convenience, the

papers of Writ Petition No. 710 of 2018 are referred to. As the record is common, we propose to dispose of petitions by this common order.

3. Learned counsel for the petitioners has referred the genealogy which is at page no. 88. There is no dispute about the relationship amongst the persons figured in the genealogy. The petitioners have relied upon the validity certificates issued to Anita Shivdas Thakur, Rupali Chandrakant Thakur, Pramod Namdeo Thakur, Sanjay Shivdas Thakur, Sangita Shivdas Thakur. Their validity certificates are produced on record. Further reliance is placed upon the same record which was considered while granting validity certificates to them. It is emphasized that the pre-constitutional record of Shivdas Namdeo Thakur and Bhaurao Namdeo Thakur, is clinching. It is submitted that there is other documentary evidence to support the claim of the petitioner.

4. Per contra, learned AGP supports impugned judgment and orders. According to him, the evidence on record is not compatible with the tribe claim of the petitioners. Though, apparently the record is indicative of Thakur, that is not scheduled tribe Thakur. Learned AGP would submit that a detail analysis is made by Scrutiny Committee providing the data of the scheduled tribe in various part of the State. The tendency of taking disadvantage by similarity of nomenclature of caste name is noticed as well as repercussion of the area restrictions are also considered.

5. Learned AGP would submit that affinity test is recorded against the petitioner. The validity certificates are rightly discarded considering the affinity test. He would urge to dismiss the petition as no case is made out.

6. We have considered rival submissions of the parties. It is apparent that there are validity certificates issued to the paternal side relatives of the petitioners. The self same record was considered for issuing the validity certificates. The successive Scrutiny Committee has no jurisdiction to arrive at contrary finding when already self same record is scrutinized for granting validity certificates. Nothing is placed on record or pointed out by learned AGP to deviate from relying upon the certificates. We find that Scrutiny Committee committed perversity in discarding the validity certificates.

7. Pertinently, we find that the validity certificate of Anita and Rupali are issued in pursuance of orders passed by High Court. This position is not disputed by learned AGP. If this is the position then their validity certificates are reliable and need to be followed. In that view of the matter, we hold that petitioners are entitled to validity certificates.

8. We have noticed that there is old record of Shivdas Namdeo Thakur of 1935 and Bhaurao Namdeo Thakur of 1937. The record is of pre-constitutional period and clinching as per law laid down by the Supreme Court in the matter of *Anand Katole Versus Committee for*

Scrutiny and Verification of Tribe Claims & Others, 2011 (6) Mh. L.J.

919. It has greater probative value. The petitioners have made out a case for issuing validity certificate. We find that impugned judgments and orders are unsustainable and liable to be quashed. We, therefore, pass following order :

ORDER

- i. The Writ Petitions are allowed.
- ii. The impugned judgments and orders passed by the Scrutiny Committee, are quashed and set aside.
- iii. The Committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Thakur' scheduled tribe.
- iv. The Writ Petitions are accordingly disposed of.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]