

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

WRIT PETITION NO. 5059 OF 2008

SONIYA ARUN THAKUR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

AND

WRIT PETITION NO. 4956 OF 2008

SAGAR ARUN THAKUR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. A S Golegaonkar

AGP for Respondents : Mr. S. B. Yawalkar

...

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

DATE : 28 AUGUST 2023

PER COURT :

- . Heard the learned Advocate for the petitioner and learned AGP
2. The petitioners who are siblings *inter-se*, are challenging the similar order passed on the same day by the respondent no.2/Scrutiny Committee, confiscating and cancelling their tribe certificates of Thakur scheduled tribe.
3. The learned Advocate for the petitioners submits that in fact the petitioners' grandfather was in the public employment and is issued with a validity certificate. This Court directed a certificate of validity to

be issued to the petitioners' paternal aunt Mandakini in Writ Petition No.231/1994 by the order dated 19.01.1994. He would submit that based on the validity of Mandakini, for the selfsame reason even the petitioners' father Arun, was also directed to be issued a certificate of validity by the order of this Court in Writ Petition No.4079/1995 dated 29.09.1995. In spite of such an order of this Court in the matter of father of the petitioner, the Committee has refused to consider it on the ground that it was open for it to undertake a fresh scrutiny in respect of even the petitioners' father's matter which it could not have unless it had taken a decision to apply for and get the orders of this Court reviewed. He submits that even the Committee has illegally applied area restriction and affinity test in spite of the fact that the area restriction was removed long back in the 1976 and the affinity test was not a litmus test. He would also submit that even that issue is no longer available to be argued in the light of **Maharashtra Adavasi Thakur Jamat Swarakshak Samiti Vs. State of Maharashtra & others**, 2023(2) Mh.L.J.785. He would therefore, submit that when the petitioners' father and paternal aunt both are the validity holders, the petitioners are entitled to the certificates of validity.

4. The learned AGP submits that the area restriction and the affinity test could not have been ignored, the matter was pending before the Supreme Court and that is the reason why even these matters were kept pending.

5. We have carefully considered the rival submissions and perused the papers. It is an admitted fact that the petitioners' father is the validity holder and this fact in itself is sufficient to grant the certificates of validity to the petitioners, apart from anything else.

6. Besides, when the certificate of validity was issued to the petitioners' paternal aunt Mandakini and their father Arun by the order of this Court, even if the Committee was intending to take a different view in the petitioners' matter, it could not have done so except by seeking review of the orders of this Court. One cannot comprehend the situation where, the father is to be recognized as a person belonging to Thakur scheduled tribe, but not the children.

7. Again in spite of removal of area restriction by virtue of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the Committee has again resorted to it. Suffice for the purpose to merely make a reference to the decision in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala**, reported in (1994) 1 SCC 359.

8. Though the affinity test cannot be said to be out-rightly discarded by the Supreme Court in the matter of Maharashtra Adavasi Thakur Jamat Swarakshak Samiti (supra), it has been held that it has a very limited scope. If the Committee was aware that the petitioners' father

was holder of certificate of validity, there was no occasion or reason for the Committee to resort to affinity test as well.

9. We allow the writ petitions partly, quash and set aside the impugned order/communication.

10. The Scrutiny Committee shall immediately issue certificates of validity to the petitioners as belonging to 'Thakur' scheduled tribe in the prescribed format without inserting anything. Those would be subject to the final outcome of the matters which the Committee intends to reopen. The petitioners shall not be entitled to claim equities.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]