

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

WRIT PETITION NO. 5520 OF 2022

Nilesh Krushnanath Thakur

...Petitioner

Versus

1. The State of Maharashtra,
Department of Tribal Development,
Through its Secretary, Mumbai.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar,
Through its Member Secretary.
3. The Deputy Director,
Directorate of Municipal Administration,
Government Transport Services Building,
3rd Floor, Sir Pochkhanwala Marg,
Worli, Mumbai.

...Respondents

...

Advocate for Petitioner : Mr. Sushant C. Yeramwar

AGP for Respondent/State : Mr. S.G. Sangle

...

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

DATE : 19 AUGUST 2023

FINAL ORDER (Shailesh P. Brahme, J.) :

. Heard both the sides finally at the admission stage.

2. The petitioner is challenging the judgment and order dated 19.04.2022 passed by the respondent no.2/Scrutiny Committee, invalidating his tribe claim as belonging to Thakur scheduled tribe. The

petitioner is relying upon the school record comprising of voluminous old entries. According to him, the record was duly verified by the vigilance cell and reliable. He would submit that in view of the law laid down by the Supreme Court in the matter of **Anand Versus Committee for Scrutiny and Verification of Tribe Claims and Others**, reported in (2012) 1 SCC 113, he is entitled to validity certificate without incorporating any condition.

3. The learned AGP supports impugned judgment and order. According to him, there are contrary entries which would indicate that the tribe of the petitioner was Thakur which is non-tribal. He would submit that the affinity test was rightly recorded against the petitioner. He would further submit that the validity certificates of Bharat Bhushan and Nilesh Kumar are not reliable because they are not in the relatives of the petitioner.

4. We have considered the rival submissions of the parties. The petitioner is relying upon the school record of his blood relatives. A vigilance enquiry to that effect was conducted and the report is produced on record. The school record was verified in the vigilance enquiry. The existence of the school record is not doubtful. We have noticed that as many as 13 documents are produced by the petitioner comprising of not only old record but record of pre-constitutional period. Those documents are mentioned in the table referred in paragraph no.3 of the impugned judgment of page no.108. There is

nothing on the record to suspect the relationship of the petitioner with the persons mentioned in the old record. We find that the old record bears a greater probative value. We are bound to follow the judgment in view of the law laid down by the by the Supreme Court in the matter of Anand (supra).

5. The petitioner has produced on record the judgment passed y this Court in Writ Petition No.8668/2019 in the matter of Dipak Vasant Thakur Vs. State of Maharashtra and Others dated 21.07.2023 to buttress the submission that even if few subsequent record shows contrary entries, the old previous entries would prevail. We, therefore, do not accept the submissions of the learned AGP about contrary entries.

6. We find that the Scrutiny Committee did not appreciate the voluminous documentary evidence produced on record in correct perspective which is perversity. The affinity test is not a litmus test. When clinching evidence is available, petitioner is entitled to get validity certificate.

7. For the reasons stated above, we hold that the impugned judgment and order is unsustainable. We, therefore, pass the following order.

ORDER

- i) The writ petition is allowed.

- ii) The impugned order is quashed and set aside.
- iii) The respondent no.2/Scrutiny Committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Thakur' (Scheduled Tribe) in the prescribed format without adding anything.
- iv) The learned A.G.P and the law officer who is present in the court shall communicate this order to the Scrutiny Committee immediately.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

Najeab.