

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1030 WRIT PETITION NO. 10964 OF 2022

- 1] Anuraj S/o Ashok Jadhav
2] Amruta D/o Ashok Jadhav

.. Petitioners

Versus

- 1] The State of Maharashtra
Through Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32
- 2] Scheduled Tribe Certificate
Verification Committee, Aurangabad
Through its Deputy Director (Research)
and Member Secretary
Near Saint Lawrence High School,
Town Centre, CIDCO, Aurangabad,
Dist. Aurangabad
- 3] Sinhgad Technical Education Society's
Sinhgad Institute of Management
S.No. 37/1, 37/2, at Post. Kondhapuri,
Tq. Shirur, Dist. Pune – 412 208
Through its Director

.. Respondents

...
Advocate for Petitioners : Mr. C.R. Thorat
AGP for the respondent – State : Mr. A.A. Jagatkar
Advocate for respondent no. 3 : Mr. Anand P. Bhandari
...

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

DATE : 02 AUGUST 2023

ORDER (MANGESH S. PATIL, J.) :

Heard the matter finally at the admission stage in view of
the urgency being demonstrated.

2. The petitioners who are real brother and sister are challenging the order passed by the committee in a proceeding under section 6 of the Maharashtra Act No. XXIII of 2001 (**Act**) thereby confiscating and cancelling their tribe certificate of Thakar scheduled tribe by invoking the powers under section 7(1) of the Act.

3. We have heard the learned advocate for the petitioners and the learned AGP extensively.

4. The learned advocate for the petitioners submits that though the petitioners have been relying upon the old revenue record of their great grandfather Ramu Daula Thakar in the form of Khasra Patrak of land survey no. 113 (आ) which describes him as Thakar. This record is of the year 1953-54 and though it is of a post-constitutional period, it is the oldest one and effected soon after the Constitution came into force. He would submit that there was no reason for the committee to discard this clinching piece of evidence. The reasoning assigned is incorrect being illegal. Though the revenue record is not supposed to contain caste, the committee has decided to discard this evidence which conclusion is clearly perverse, arbitrary and capricious.

5. The learned advocate would then submit that though the petitioners were not relying upon few validities of individuals who are not in proximate relationship and are beyond 6-7 degrees apart, they

have been considered by the committee. The petitioners do not deny that these are the distant relatives but they are unable to establish the exact relationship because of the remoteness. He would submit that still the committee has resorted to examine correctness, legality and sustainability of those validities. He would submit that the petitioners are not relying upon those validities and the matter may be considered independently based on the evidence available before the scrutiny committee and on its own merits.

6. The learned advocate would, therefore, submit that the committee has been relying upon certain entries which according to it are inconsistent with the petitioners' claims of being *Thakar* scheduled tribe. However, the oldest entry of great grandfather – Ramu Daula Thakar supports the petitioners' claim and there is no valid and justifiable reason to discard it.

7. The learned AGP would point out that the stand of the learned advocate for the petitioners to not to rely upon the validity holders is an improvisation inasmuch as the petitioners themselves in support of their claims have produced number of documents including validity certificate of one of those validity holders, Sham Prabhakar Jadhav. Therefore, the committee cannot be faulted with if it has considered as to if the benefit of that validity can be extended to the petitioners.

8. The learned AGP would further submit that the revenue record is not supposed to contain any caste column and merely because petitioners' great grandfather has been discarded as Thakar, no weight can be attached to it much less to draw an inference that the family belongs to Thakar scheduled tribe.

9. The learned AGP would further point out that the revenue record is of one Ramu Daula Thakar and petitioner's great grandfather's name is Ramchandra Daulatrao.

10. The learned AGP would then submit that the committee has minutely scrutinized the evidence collected in the vigilance enquiry and has reached a plausible conclusion which cannot be interfered with in exercise of the power under Article 226 of the Constitution of India.

11. He would submit that even the petitioners could not get through the affinity test and the petition be dismissed.

12. We have carefully considered the rival submissions and perused the papers.

13. It does appear that at least in respect of one validity holder Sham Prabhakar Jadhav, petitioners themselves had produced his validity certificate and obviously made an attempt to derive some benefit. However, as is being submitted by the learned advocate for

the petitioners, the name of that validity holder does not find place in any of the genealogies either produced by the petitioners or prepared by the vigilance during the course of the enquiry. We, therefore, find that the petitioners' stand that since those validity holders are merely distinctly related appears to be reasonable.

14. It is important to note that a statement is being made across the bar on behalf of the petitioners that they will not be claiming any benefit of the validities issued to the three individuals referred to in the impugned order, namely, Sham Prabhakar Jadhav, Smt. Suvarna Shriram Jadhav and Shri Suchita Shriram Jadhav.

15. This leaves us with the rest of the record that was available to the committee to consider the petitioners' claim on its own merits.

16. The committee has been relying upon several documents in the form of school records and revenue record of the petitioners' blood relations and has precisely noted that there are inconsistent entries showing some of them as Thakar, Bhaat, Hindu, Thakur. However, pertinently, all those entries are of the period of 1953 onwards whereas the Khasra Patrak of land survey no. 113 (आ) in the name of Ramu Daula Thakar describes the petitioners' great grandfather as Thakar. The committee does not dispute that he is the

great grandfather as can be seen in paragraph 6 where the committee discusses the documentary evidence.

17. For this reason alone, we discard the statement of the learned AGP when he makes an attempt to create a doubt about the identity by referring to the fact that the revenue record is of one Ramu Daula Thakar whereas the petitioners' great grandfather's name is Ramchandra Daulatrao. The committee has not entertained this doubt.

18. True it is that revenue record may not contain a column for describing the caste. However, it is quite important to note that the fact that the petitioners' great grandfather has been described by using the word 'Thakar' in the place of his surname immediately after the first name and the middle name that too way back in the year 1953-54. In our considered view, when there is no doubt about the genuineness of this revenue record which has been maintained in the ordinary course of business, it would carry the greatest probative value. Merely because this entry is of the period immediately after the coming into force of the Constitution, one cannot discard it out-rightly. The committee refuses to accept this piece of evidence only on the ground that the revenue record need not contain column of caste. According to us such a reasoning is clearly arbitrary and capricious. If that be so, the petitioners' claim of belonging to Thakar scheduled tribe ought to have been accepted by the committee based on this clinching piece of

evidence having the greatest probative value as compared to the latter contrary entries. The approach of the committee, in our considered view, is perverse and arbitrary.

19. The committee has then went on to apply the area restriction and even affinity test. Suffice for the purpose to state that in view of the decision in the matter of ***Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.;*(1994) 1 SCC 359**, the issue of area restriction cannot be raked up and in view of the decision in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326***, the affinity test will have a limited scope and can be resorted to only if there is no document supporting the claim.

20. When we have demonstrated that there is the old document genuineness of which has not been doubted describing the petitioners' grandfather Ramu Daula as Thakar, in our considered view, the committee ought not to have resorted to even the affinity test.

21. Hence, the following order :

I) The writ petition is allowed.

- II) The impugned order is quashed and set aside.
- III) The committee shall immediately issue tribe validity certificates to the petitioners as belonging to “*Thakar*” Scheduled Tribe.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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