

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

WRIT PETITION NO. 9998 OF 2023

Payal Bhausahab Bhamare
Age 19 years, Occ. Student
R/o. Purushottam Nagar, Shahada
Tq. Shahada, Dist. Nandurbar.

... **Petitioner**

VERSUS

1) The State of Maharashtra,
Department of Tribal Development
Mantralaya, Mumbai-32
Through its Secretary.

2) The Scheduled Tribe Certificate
Scrutiny Committee, Dhule
Division Dhule,
Through its Member Secretary

... **Respondents**

...

Advocate for the Petitioner : Mr. Yeramwar Sushant C.
A.G.P. for the Respondents/State : Mr. S.B. Yawalkar

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

DATE : 28.08.2023

PER COURT :

Heard both the sides finally, at their joint request.

2. The petitioner is challenging the order passed by the respondent No. 2-scrutiny committee constituted under Section 6 of the Maharashtra Act XXIII of 2001 confiscating and cancelling her tribe certificate of 'Thakur' scheduled tribe.

3. The learned advocate Mr. Yeramwar for the petitioner submits that the

petitioner had produced the school record since the year 1920 and birth record since the year 1916 of her paternal side relatives. Even a certificate of validity issued to her cousin Ishwarsingh Padamsingh Thakur with his affidavit was produced. Even Ishwarsingh's daughter Jagruti is a validity holder. The matter was referred for vigilance enquiry. A report was submitted. It was responded by the petitioner by filing say. She pointed out that the vigilance officer had collected record pertaining to the persons who were not related to her from the paternal side and even the genealogy prepared by the vigilance officer was refuted. The committee again directed further vigilance enquiry but the error was repeated. The persons who were not related to the petitioner were referred to as her blood relations from the paternal side which was duly replied. He would submit that the genealogy prepared during the second vigilance enquiry on the basis of the statement of the petitioner's mother is acceptable to the petitioner and no other record collected by the vigilance officer and relied upon by the committee of the persons who are not related to the petitioner could have been resorted to by the committee for invalidating the petitioner's claim.

4. Mr. Yeramwar further submits that during pendency of the petitioner's proposal a notice was issued to Ishwarsingh on the ground that he had obtained the certificate of validity by practising fraud. An enquiry was conducted and the committee has confiscated and cancelled his tribe validity certificate. Therefore, the petitioner is not presently relying upon his validity even if he now choose to challenge the order of the committee. He submits that independently the petitioner has discharged the burden by relying upon the cogent and oldest record to substantiate her claim which has been illegally refuted by the committee by referring to the contrary entries of the persons who are not related to the petitioner.

5. She is not referring to and relying upon the validity certificate of Prakash Hiralal Bhamare which has been commented upon by the committee. Even if the statement of the committee that he is related to the

petitioner is to be accepted, the petitioner would stand on a better footing inasmuch as this Court has directed certificate of validities to be issued to several individuals from his branch in Writ Petition No. 13310/2022 (Janhavi d/o Shashank Bhamare and Yogita d/o Nitin Thakur Vs. The State of Maharashtra and another and connected writ petitions). If the committee could draw an adverse inference by referring to the record of the individuals who are the members of the branch of which Prakash Hiralal Bhamare belongs, then in similar set of facts, circumstance and evidence this Court has directed certificates of validity to be issued to several persons from that branch and the petitioner should be allowed to derive the benefit.

5. Per contra, the learned A.G.P. strongly opposes the petition. He supports the order and submits that the committee has been able to procure through vigilance enquiry several contrary entries right from the year 1878 wherein the petitioner's ancestors have been described as Bhat, Thakur (Brahman), Thakur Rajput, Brahma Bhat, Hindu Thakur Rajput, Bra Bhat, Hindu (Brahmabhat) Hindu etc. The petitioner cannot be allowed to conveniently take a stand that these individuals do not belong to her family.

6. The learned A.G.P. would advert our attention to the report of the vigilance enquiry to point out that the family members have been conveniently submitting different genealogies in their respective matters which are not compatible. Prakash Harilal Bhamare was the first validity holder. However, the committee has found that he had procured the certificate of validity by concealing the contrary entries. The committee has now decided to reopen all those validities since those were procured by suppressing material facts and by practising fraud.

7. We have carefully considered the rival submissions and perused the papers. Taking into account the peculiar state of of affairs, we propose to proceed on both the lines, accepting the petitioner's version that the genealogy prepared by the vigilance and being relied upon by the committee

to rely upon the contrary record of several individuals which according to her do not belong to her family and are not her blood relatives from the paternal side and secondly assuming that all those persons are related to her by blood.

8. In the latter case, assuming that the branch of which Prakash Hiralal Bhamare is a member is a branch related to the petitioner by blood, admittedly, several individuals of that branch have been granted certificates of validity subject to the final outcome of the matters which the committee has decided to reopen. In the matters of Janhavi Shashank Bhamare and another (supra) it has been specifically observed in the order dated 04.07.2023 that there were seven validity holders who were specifically named in paragraph No. 17 of that order and in addition there are 17 blood relations from the paternal side who were issued certificates of validity by various committees, Nashik, Pune, Thane and Nandurbar. Pertinently, the seven validity holders referred to therein were granted such validity certificates by the order of this Court starting from Jagannath Diwan Bhamare in Writ Petition No. 2702/1998. If such is the state of affairs, the petitioner deserves to be granted certificate of validity subject to the final outcome or the decision to be taken by the committee in the matters which it has decided to reopen.

9. In the former case, assuming that the petitioner does not belong to the family of the branch of which Prakash Hiralal Bhamare and others (supra) are the members, since Ishwarsingh and Jagruti's certificates of validity have been confiscated and cancelled, the petitioner is not relying upon that validity.

10. As a result, we will have to ignore the documentary evidence collected by the vigilance and reproduced by the committee in table No. 1 while discussing issue No. 1. So far as the second table is concerned, the vigilance officer has expressly mentioned about having verified this record of village

Panchayat and the school starting from that of Pandit Kalu stated to be the petitioner's grand father of 1916 describing him to be 'Thakur'. Then there are school records of Ramsing Kalu Thakur, Ragho Kalu Thakur, cousin grand fathers of the year 1920 and 1921 respectively again describing them to be Thakur. There is school record of one more cousin grand father Pundlik Kalu of 1924 describing him to be Thakur. Similarly, there is village record of cousin uncle Kashiram Ragho Kalu and aunt Kokila Pandit Kalu of the year 1945 and 1949 respectively mentioning them to be 'Thakur'. It is not the version of the vigilance officer or the committee about there being any manipulation or forgery in all these entries. The table No. 3 and 4 referred to by the committee while discussing issue No. 1 are of the individuals who are from the branch of Prakash Hiralal Bhamare. Besides, those are of the individuals who are related to Prakash Hiralal Bhamare from the maternal side. What remains as a result of the above discussion is that in case Prakash Hiralal Bhamare and his branch is to be treated as not related to the petitioner by blood from the paternal side, the aforementioned village record and the school record described in table No. 2 clearly supports the petitioner's claim that her family members have been treated for more than a century as 'Thakur'

11. Thus, in case assuming that Prakash Hiralal Bhamare and his branch is related to the petitioner by blood in which case she would be entitled to derive the benefit of numerous validities in the family. Even if it is assumed that he does not belong to the family of which the petitioner is a member she has the old reliable record to substantiate her case.

12. The Writ Petition is partly allowed.

13. The impugned order dated 30.01.2023 passed by the respondent no. 2-scrutiny committee is quashed and set aside. The scrutiny committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Thakur' scheduled tribe.

14. It shall be subject to the decision/outcome in the matters to be reopened by the Committee of the validity holders.

15. The certificate of validity shall be issued in the prescribed format without incorporating other conditions/additions.

16. Considering the fact that tomorrow is the last date for submitting certificate of validity and since the matter is being heard and decided urgently, we request the learned A.G.P to communicate this order to the Committee immediately, since the law officer of the Committee is present in this Court.

17. The petitioner shall not be entitled to claim equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-