

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7023 of 2010

Aparna D/o Padmakar Raje,
Age 21 years, Occ. Education,
R/o. Jalgaon, Tq. & Dist. Jalgaon. ... **Petitioner**

VERSUS

- 1) Scheduled Tribe Certificate,
Scrutiny Committee, Nashik
Through its Member Secretary.
- 2) The Government Dental College
and Hospital Mumbai
Through its Dean
St. George's Hospital Compound,
PD. Mello Road, Mumbai.
- 3) The Maharashtra University for
Health Science, Nashik Division,
Nashik Vani Road, Mhasrul,
Nashik, Dist. Nashik,
Through its Registrar. ... **Respondents**

...

Advocate for the Petitioner : Mr. Sagar S. Phatale
A.G.P. for the Respondents/State : Mr. S.G. Sangale

AND

WRIT PETITION NO. 7041 OF 2010

Abhishek s/o Padmakar Raje,
Age 19 years, Occ. Education,
R/o. Jalgaon, Tq.& Dist.
Jalgaon. ... **Petitioner**

VERSUS

- 1) Scheduled Tribe Certificate
Scrutiny Committee, Nashik
Through its Member Secretary.

2) Veer Mata Jijabai Technical Institute
Matunga (East) Mumbai-400019
Through its Principal/Director

... Respondents

...

Advocate for the Petitioner : Mr. Sagar S. Phatale
A.G.P. for the Respondents/State : Mr. S.G. Sangale

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

DATE : **20.10.2023**

PER COURT :

Heard. Rule. Rule is made returnable forthwith. Learned A.G.P. waives service for the respondents/State in both these petitions. At the joint request of the parties the matter is heard finally at the stage of admission.

2. By way of these separate petitions, the petitioners who are siblings are challenging the orders passed by the scrutiny committee in proceedings under Section 7 of the Maharashtra Act XXIII of 2001, thereby confiscating and cancelling their Thakur scheduled tribe certificates. Since it is a matter of verification of the tribe claims, though the orders under challenge are separate, the evidence being relied upon by the petitioners is obviously the same and has been considered and refuted by the committee by resorting to same reasoning. We are, therefore, disposing of these petitions by this common order.

3. The learned advocate for the petitioners would point that even pre-Presidential Order record, genuineness of which has not been disputed by the committee, has been overlooked by applying the principle of area restriction and affinity test. If the petitioners' ancestor was described in the school record as 'Thakur' in the year 1946, there was no reason to discard this entry. Similarly, even there was a registered sale-deed executed by the petitioners great grandfather of 1949 wherein he was described as 'Thakur'.

In the absence of any observation touching the genuineness of these two old entries, the committee could not have discarded it legally by resorting to area restriction.

4. He would refer to the decision in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samikti and Anr. Vs. State of Kerala and Anr (1994) 1 SCC 359** and the observations of the Supreme Court in the matter of **Jaywant Dilip Pawar Vs. State of Maharashtra and others; 2018(5) All.M.R. 975**, wherein it has been held that in view of passing of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the issue regarding area restriction of scheduled tribes in the State of Maharashtra for the Thakur community has become irrelevant. A similar order rejecting the tribe claim was set aside by observing that by virtue of passing of the Amendment Act, 1976, the issue had become wholly irrelevant and it was suffice for the claimants to establish that they belong to 'Thakur' scheduled tribe. The order of the scrutiny committee was held to be erroneous. Therefore, the approach of the committee in resorting to area restriction is clearly illegal. Even in the matter of **Ravindra Pralhadrao Khare Vs. The State of Maharashtra and others; in Writ Petition No. 6224 of 2015 decided on 26.07.2019** a coordinate bench at the Principal Seat had considered the law in depth and has even passed strictures on the approach of the committee holding that it had failed to abide by the precedents holding the field.

5. Per contra, the learned A.G.P would support the order. He would also advert our attention to the full bench decision in the matter of **Yogita Anil Sonawane vs. State of Maharashtra & Ors., 2017 (1) Mh.L.J. 643**

6. We have considered the rival submissions and perused the record. At the outset, it is necessary to note that the petitioners have been banking upon the school record of their grandfather Sahebrao Lala Raje of Municipal Marathi Prathamik Shala No. 1 Malegaon wherein in Register No. 267, Book

No. 21, in the caste column, he was described as 'Hindu Thakur' and the date of admission was 15.06.1946. They have been relying upon the sale-deed dated 07.11.1949 wherein their great grandfather was described as 'Thakur' may be as a surname. Besides these two records there is a record of petitioners' father Padmakar of 20.06.1966 to substantiate their claim. The committee has not disputed genuineness of this record and we have no reason to discard it which *prima facie* substantiates the petitioners' claim of belonging to 'Thakur' scheduled tribe.

7. The committee has applied the principle of area restriction and has laboured to point out as to how it was imperative for the petitioners to establish that they had migrated to the present place from the area which was a native place of the tribe. Suffice for the purpose to observe that in the light of the decisions in the matters of **Palaghat Jila Thandan Samuday Sanrakshan Samikti** and **Jaywant Dilip Pawar** (supra), the approach of the committee to resort to area restriction to discard the favourable pre-Presidential Order entries is clearly contrary and not sustainable in law. The issue has also been dealt with by the coordinate benches repeatedly in several matters :

- (1) **Ravindra Pralhadrao Khare Vs. The State of Maharashtra and others; in Writ Petition No. 6224 of 2015.**
- (2) **Shubham S. Suryawanshi Vs. State of Maharashtra; 2021(3) Mh.L.J.289.**
- (3) **Nikhil Anil Thakur Vs. State of Maharashtra and ors; 2021(6) Bom.C.R. 146.**

In the light of the decision in the matter of **Palaghat Jila Thandan Samuday Sanrakshan Samikti** and **Jaywant Dilip Pawar** (supra), the orders of the committee again resorting to the principle of area restriction cannot be countenanced and would not stand the scrutiny of law.

8. To repeat, since there is old record which clearly substantiates the

petitioners claim of belonging to 'Thakur' scheduled tribe and the genuineness of which record has not been disputed, the impugned orders holding otherwise would not be sustainable.

9. The Writ Petition is allowed. The impugned order is quashed and set aside. The respondent-scrutiny committee shall immediately issue tribe validity certificate to the petitioners as belonging to '*Thakur*' scheduled tribe in the prescribed format without adding anything.

10. Rule is made absolute.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-