

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

WRIT PETITION NO. 8794 OF 2019

SHITAL RAMESH DALVE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

AND

WRIT PETITION NO. 5113 OF 2020

HARSHADA SURESH DALVE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner in both WPs : Mr. M.A.Golegaonkar and
A.S.Golegaonkar

AGP for Respondent/state : Mr. S.G.Sangale

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

DATE : 06 SEPTEMBER 2023

PER COURT : (*PER : SHAILESH P. BRAHME, J*) :

1. Heard learned counsel for the respective parties finally at the admission stage.

2. A common judgment and order is under challenge in both the petitions. We have called for the papers. Both the petitions are considered for final disposal. We are referring to the papers of Writ Petition No. 8794 of 2019 of Shital. Petitioners are cousin sisters and they were issued with validity certificate of 'Thakur' Scheduled Tribe.

By common judgment and order dated 18.06.2019, their tribe certificates were invalidated and confiscated. They are relying upon the validity certificates issued to their respective fathers Ramesh and Suresh.

3. The learned AGP supports impugned judgment and order. According to him, the Scrutiny Committee is justified in finding that the school record of the relatives of the petitioners is incompatible with the tribe claim. The place of residence of the forefathers of the petitioners does not match with the normal place of residence of tribe. He would submit that the validity certificates of Vyanktesh and Suresh were procured by suppression of material facts and are not reliable. The Scrutiny Committee has proposed re-verification of the validity holders. He would urge to dismiss the petition.

4. The learned AGP has placed on record the original papers of the petitioners as well as one of the validity holders Suresh.

5. We have considered the submissions of both the sides. The learned counsel for the petitioners have pointed out the entries in the school record. There is consistency in the entries, though of recent origin, indicating caste as 'Thakur'. The Scrutiny Committee also did not refer any contrary entry or manipulation in the school record. These aspect lends support to the claim of the petitioners.

6. The petitioners are relying upon the validity certificate of Suresh Shankar Dalve. The relationship is not disputed. There is a

vigilance enquiry which is followed by speaking order. We find that the validity certificate of Suresh is reliable. The committee arbitrarily discarded the validity certificate.

7. The learned AGP would point out that there is no evidence of migration and affinity test is also against the petitioners. We find that area restrictions are removed and parameters of place of residence have become redundant. The finding in this regard is unsustainable. It is settled position of law that affinity test is not a litmus test. Under this circumstances, we find that the impugned judgment and order is unsustainable.

8. It is informed that the Scrutiny Committee is intending to reopen the matters of validity holders. Unless earlier validity certificates are revoked, the petitioners cannot be deprived of a legitimate benefit of social status. They are entitled to validity certificates on certain conditions.

9. For the reasons stated above, we pass following order.

ORDER

- i. The Writ Petition is partly allowed.
- ii. The impugned judgment and order dated 18.06.2019, passed by the Scrutiny Committee, is quashed and set aside.

iii. The Committee shall immediately issue tribe validity certificates to the petitioners as belonging to '*Thakur*' scheduled tribe, which shall be subject to the decision to be taken by the Committee in the matters which it intends to reopen in respect of the validity holders.

iv. The certificates of validity shall be issued in the prescribed format without incorporating any other conditions/additions.

v. The petitioners shall not be entitled to claim equities.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

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