

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7791 OF 2009

Kum. Punam D/o Amrut Sisodiya

.. Petitioner

Versus

1] The State of Maharashtra
Through the Secretary
Tribal Development Department
Mantralaya, Mumbai

2] The Scheduled Tribe Caste
Certificate Verification Committee,
Through its Chairman / Director,
Nasik Division, Nasik

3] The Taluka Executive Magistrate,
Tahsil Office, Sindkheda
Tq. Sindkheda, Dist. Dhule

4] BSD Trust's Ayurved Mahavidalaya,
Wagholi [Pune]
Through its Principal

5] Maharashtra University of Health Sciences
Gangapur Road, Anandwalli, Nasik
Through its Registrar

.. Respondents

...
Advocate for the petitioner : Mr. M.A. Golegaonkar h/f. Mr. A.S. Golegaonkar
AGP for the respondent – State : Mr. S.G. Sangale
...

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

DATE : 29 SEPTEMBER 2023

JUDGMENT (MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith. Learned
AGP waives service for the respondents nos. 1 to 3. At the joint

request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is challenging the order passed by the respondent no. 2 - scrutiny committee constituted under the Maharashtra Act No. XXIII of 2001 whereby her tribe certificate of Thakur scheduled tribe has been confiscated and cancelled.

3. The learned advocate for the petitioner submits that the petitioner was *inter alia* relying upon the school record of her grandfather Tulshiram Bhika Thakur of 01.12.1917 wherein in the caste column it was mentioned that he was 'Thakur'. He would submit that the committee has not entertained any doubt about the genuineness of this piece of evidence but has attempted to take exception to it by applying the principle of area restriction and the affinity test by observing that even some Thakurs belong to the upper caste. It has not independently given due weightage to this pre-presidential order entry having the greatest probative value.

4. The learned advocate Mr. Golegaonkar would further submit that apart from the above state-of-affairs, petitioner's real sister - Prasanna possesses certificate of validity. Her first degree cousin Prasad Ramesh Shishode was also granted certificate of validity pursuant to the order of this Court in writ petition no. 9380 of 2005

dated 18.12.2006 (Principal seat). A similar reasoning as is assigned by the committee in the impugned order wherein it has observed that the validity holders were granted the certificates of validity because of the legal position prevailing during that period was one of the submission made before this Court in the matter of Prasad and was dispelled. The learned advocate, therefore, submits that the impugned order is clearly perverse, arbitrary and capricious.

5. The learned AGP supports the order.

6. We have carefully considered the rival submissions and gone through the papers.

7. Admittedly, petitioner's real sister - Prasanna possesses a certificate of validity. Similarly her first degree cousin Prasad possesses certificate of validity issued pursuant to the order of this Court. The committee has not observed that Prasanna and Prasad were issued the certificates of validity without following due process of law. There is also no dispute about they being the real sister and first degree cousin. If this is so, in view of the observations of the Supreme Court in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326***, the petitioner deserves to be granted the benefit of the validities possessed by her sister and first degree cousin.

8. Independently, there is a pre-presidential school record of petitioner's grandfather of the year 1917 wherein his caste was recorded as Thakur. The committee has expressly referred to it at serial no. 13 in the list reproduced by it in paragraph no. 2 of the impugned order.

9. It is not the observation of the committee entertaining any doubt about the genuineness of this school record. If this is so, in the light of the decision in the matter of **Anand Dhananjay Nalawade Vs. State of Maharashtra; 2014 (4) Mh.L.J. 77**, this piece of evidence will have a greatest probative value. Once accepted this would be a clinching piece of evidence in favour of the petitioner.

10. The committee has refused to consider this by observing that mere mention of caste Thakur in the caste column would not be sufficient to reach to a conclusion that what was meant was Thakur scheduled tribe, as Thakurs could be found even in forward communities. It has also applied the principle of area restriction and has resorted to affinity test.

11. Suffice for the purpose to observe that in the light 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 principle of area restriction which stands abolished by

virtue of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 cannot be legally resorted to.

12. In view of this decision in the matter of **Anand Nalawade** (supra) and **Maharashtra Adiwasi Jamat** (supra), affinity test also has a limited scope and cannot be resorted to as litmus test.

13. When the school record of the petitioner's grandfather of 1917 regarding which there is no dispute about its genuineness clearly recorded in the caste column that he was Thakur, the impugned order refusing to consider it that too by applying the principle of area restriction and affinity test is clearly perverse, arbitrary and capricious.

14. In the result, the following order :-

I) The writ petition is allowed.

II) The impugned order is quashed and set aside. The respondent - committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Thakur' scheduled tribe in the prescribed format without adding anything.

III) Rule is made absolute accordingly.

[SHAILESH P. BRAHME]

JUDGE

arp/

[MANGESH S. PATIL]

JUDGE