

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****Writ Petition No. 2114 / 2017****With****Civil Application No.8359 / 2020****in****Writ Petition No. 2114 / 2017**

Hrishikesh s/o Girish Visave,
Age 21, Occu. Education,
R/o Dak Bunglow No.2,
Quarter No.5, Behind Mahesh Talkies,
Ahmednagar, Tq. & Dist. Ahmednagar.

...Petitioner**Versus**

1. The State of Maharashtra,
Through it's Secretary
General Administration Department,
Mantralaya, Mumbai.
2. The Sub Divisional Officer,
Bhusawal, Division, Bhusawal,
Dist. Jalgaon.
3. The Scheduled Tribe Caste Certificate
Scrutiny Committee, through its
Joint Commissioner @ Vice President,
Having its office at Nandurbar,
Sakri Road, Near R.T.O. Office,
Nandurbar, Dist. Nandurbar.
4. The Principal,
Bhartiya Vidya Bhavan's
Sardar Patel College of Engineering,
Andheri (West) Mumbai.

...Respondents**AND**

Writ Petition No. 2115 / 2017

Shubham s/o Girish Visave,
 Age 22 Years, Occu. Education,
 R/o Dak Bunglow No.2,
 Quarter No.5, Behind Mahesh Talkies,
 Ahmednagar, Tq. & Dist. Ahmednagar.

...Petitioner**Versus**

1. The State of Maharashtra,
 Through it's Secretary
 General Administration Department,
 Mantralaya, Mumbai.
2. The Sub Divisional Officer,
 Bhusawal, Division, Bhusawal,
 Dist. Jalgaon.
3. The Scheduled Tribe Caste Certificate
 Scrutiny Committee, through its
 Joint Commissioner @ Vice President,
 Having its office at Nandurbar,
 Sakri Road, Near R.T.O. Office,
 Nandurbar, Dist. Nandurbar.
4. The Principal,
 All India Shri Shivaji Memorial Society's
 College of Engineering, 1 Kennedy Road,
 Near R.T.O. Office, Pune.

...Respondents

Mr. S.C. Yeramwar, Advocate for the Petitioners in both petitions.

Mr. S.G. Sangale, AGP for respondent nos. 1 to 3/State.

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

DATE : 24 JULY 2023.

FINAL ORDER [PER : SHAILESH P. BRAHME, J.] :

. Heard both the sides and the matter is taken for final adjudication considering the urgency.

1. Both the petitioners are real brothers and assailing common judgment and order dated 10.03.2016 passed by the respondent no.3/Scrutiny Committee, invaliding their caste claim and confiscating tribe certificates. They claim to be members of Thakur scheduled tribe. They are relying upon the voluminousness documentary evidence, which was produced before the Scrutiny Committee comprising of school record affidavits, old entries of birth extract and service book, validity certificates of uncle and aunt etc. In view of validation of the caste claim of their uncle Rajendra Sitaram Visave and aunt Urmila Sitaram Visave, they are claiming validity certificates on the ground of parity.

2. The Scrutiny Committee found that the entries in the school record of the blood relatives of the petitioners referred caste as Hindu Thakur, which according to it is distinct from Thakur scheduled tribe. It is incomprehensible that the forefathers of the petitioners had a school record when the concerned scheduled tribe was not brought in the main stream of the education. It was further held that the place of residence of the petitioners and their forefathers was inconsistent with the normal place of residence of the concerned scheduled tribe.

3. The documentary evidence produced on record of the relatives of the petitioners was found to be not reliable because there was no entry of caste in the record. The validity certificates produced in

support of the petitioners were discarded because affinity test was not conducted and relevant information was suppressed by them before securing the validity certificate. The affinity test was recorded against the petitioners.

4. The learned AGP would submit that there is no illegality or perversity in the impugned judgment and order. The birth extract of Dhararam Devchand which is at page no.69 and birth extract at page no.101 bearing name Siddrami Dharma Devchand are suspicious, if read alongwith affidavits at page no.70 and 98.

5. The learned AGP on instructions submits that considering the documents referred above, a proposal is submitted to Commissioner of Tribal Welfare seeking permission for re-verification of the validity certificates of the uncle and aunt. The Scrutiny Committee is awaiting for the permission in that regard.

6. We have considered rival submissions carefully. The validity certificates were already issued to uncle Rajendra Sitaram Visave and aunt Urmila Sitaram Visave. Due procedure of law was followed while issuing validity certificates. The relevant record was considered and the validity certificates were issued. We also noticed pre-independence record which is at page no.65 in case of Dhararam Devchand Thakur which refers to caste as Thakur. The same has a probative value. Unless and until the validity certificates are revoked after following due procedure of law, the petitioners are entitled to rely upon the same.

7. The submission of learned AGP that certain documents are suspicious and therefore the petitioners are not entitled to validity, cannot be countenanced. The Scrutiny Committee has not dealt with that aspect of the matter which is being argued by the learned AGP. It is open for the Scrutiny Committee to consider the record which is against the petitioners during the re-verification. However the petitioners cannot be deprived of validity certificates on certain conditions.

8. The petitioners are relying upon the order passed in Writ Petition No.326/2019 dated 05.07.2023. In that matter also, validity certificates of father and real brother were relied upon. We adopt the same course in the present matter.

9. In that view of the matter, we find that the impugned judgment and order is unsustainable in law. We, therefore, pass following order.

ORDER

(i) The judgment and order dated 10.03.2016 passed by the Scrutiny Committee is quashed and set aside.

(ii) The Scrutiny Committee shall issue tribe validity certificate to the petitioners for 'Thakur scheduled tribe' within a period of two weeks which shall be subject to the conditions that;

[a] the validity certificates shall be subject to the outcome of re-verification of the validity certificates as proposed by the Scrutiny Committee.

[b] the petitioners shall not claim any equity.

(iii) Both the Writ Petitions with Civil Application are disposed of.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]