

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

WRIT PETITION NO.10137 OF 2023

Kunal Rajendra Thakur

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through its Secretary
Tribal Development Department
Mantralaya Mumbai – 32
2. The Scheduled Tribe Certificate Scrutiny
Committee, Dhule Division, Dhule,
through its Member Secretary
3. Sub-Divisional Officer,
Shripur

... **RESPONDENTS**

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Advocate for Petitioner : Mr. A.S. Golegaonkar h/f. Mr. Madhur Golegaonkar
Addl.G.P for respondent/State : Mr. PS. Patil

...

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

DATE : 18.08.2023

ORDER (MANGESH S. PATIL, J.) :

Heard both the sides finally at the stage of admission.

2. The petitioner is challenging the invalidation of his claim as belonging to 'Thakur' scheduled tribe.

3. The learned advocate for the petitioner would submit that the petitioner's tribe claim has been illegally turned down by the Committee by referring to some inadmissible evidence. Contrary entries of individuals who are not related to the petitioner by blood have been taken shelter of to entertain a doubt about his claim. Though there are several entries of the

pre-constitutional order right from the year 1931 in respect of the great great grandfather Pahadsingh Mansingh, record of some individuals who are not related by blood has been relied upon. The old record itself was sufficient to substantiate petitioner's claim and still the Committee has ignored it.

4. Mr. Golegaonkar would further submit that ignoring the well settled law the Committee has resorted to principle of area restriction and has even applied affinity test.

5. Lastly, Mr. Golegaonkar would submit that the petitioner's distant blood relation by name Aditya Ranjitsing Thakur has been granted certificate of validity pursuant to the order of this Court in Writ Petition No.889/2020 after a thorough scrutiny. That certificate was produced before the Committee along with the affidavit of Aditya and still the committee has ignored it.

6. The learned AGP strongly opposes the petition. He submits that though there are entries in the school and other record of the blood relations wherein they had been described as 'Thakur', that could not have been taken as a favourable entry since those did not describe 'Thakur' as a scheduled tribe. He would therefore submit that since there was no concrete documentary evidence, the Committee has rightly resorted to the principle of area restriction to point out that there was no evidence about the petitioner's ancestors having migrated to the present place which is a non-tribal area from the tribal area where persons from 'Thakur' tribe originally

belonged in Sahyadri mountain ranges of western Maharashtra. He would submit that even the Committee was right in resorting to affinity test which the petitioner miserably failed to clear. He would submit that the record of the blood relations of the petitioner clearly indicates that they belong to upper caste Thakur, performing rituals which is not compatible with the claim of being tribals.

7. Learned AGP would then submit that the certificate of validity of Aditya and his affidavit was not produce before the Committee and it has been produce for the first time in this petition. Only a statement was made before the Committee at the fag end about Aditya having been granted validity certificate by the order of this Court. The Committee was therefore unable to scrutinize his file. He would submit that in case this Court extends the benefit of Aditya's validity to the petitioner, the Committee may be permitted to take a call as to if it should seek review of the order passed by this Court in Aditya's matter.

8. We have considered the rival submission and perused the papers. The Committee has observed that the birth record of some individuals, daughter of Jamsing Ramsing and daughter of Zipru Lalasing described them as Bhat in the year 1917 which are contrary entries. However, in the reply to the vigilance cell report, the petitioner had expressly denied any relationship with these two individuals and there is no independent record and none has been referred to by the Committee to substantiate its inference that it is a birth record of those two girls who are

related to the petitioner by blood from the paternal side. As regards the other entries which the Committee treats as contrary entries showing the individuals as Bhat or Brahmbhat, the Committee itself has expressly mentioned therein that all these individuals are the relations of the wife of Ranjitsingh Thakur by name Sangeeta. Obviously, since these individuals are not related to the petitioner by blood from the paternal side, these entries could not have been resorted to by the Committee by treating them as adverse entries. Incidentally this Ranjitsingh Thakur referred to by the Committee is none other than father of Aditya who has been granted certificate of validity by the order of this Court. The observation of the Committee to treat this record as contrary is clearly perverse and arbitrary.

9. As far as the approach of the Committee in resorting to area restriction and affinity test, the former is clearly unsustainable in the light of **Palaghat Jila Thandan Samuday Sanrakshan Samiti and Anr. Vs. State of Kerala and Anr.; (1994) 1 SCC 359**. As regards the affinity test even that is regarded as not being the litmus test, in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.; (2012) 1 SCC 113** and has little scope in the light of observations in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.; 2023 SCC Online SC 326**. It is only if the documents on the record are not sufficient and reliable to inspire confidence that the affinity test is to be resorted to. In the matter in hand there was enough record before the Committee of a pre-constitutional period, wherein, the petitioner's blood

relations were described as 'Thakur'. In similar set of facts, in the matter of Aditya Ranjitsing Thakur, this Court has considered all these aspects and directed a certificate of validity to be issued to him, even when the record referred to and relied upon by him described the individuals as Thakur.

10. True it is that the order of this Court in the matter of Aditya Ranjitsing Thakur was brought to the notice of the Committee at the eleventh hour when the matter was being heard finally and the Committee could not get opportunity to examine his record. However, since in the impugned order the Committee has referred to Aditya's father Ranjitsing as cousin brother of the petitioner, there cannot be any dispute as regards the relationship. Besides, the learned AGP fairly concedes after going through the original files of the Scrutiny Committee that in the genealogy name of Aditya as well as his father Ranjitsing and the petitioner's immediate family find place.

11. True it is that there appears to be some difference in the signature of Aditya purportedly appearing in the affidavit filed in the writ petition (page No.86) dated 26.07.2023 and the one sworn by him before the Executive Magistrate Sindkheda of the even date (page No.88). However, when there is an order passed by this Court in the matter of Aditya Ranjitsing Thakur and the Committee has described his father Ranjitsing as distant cousin uncle of the petitioner, the petitioner is entitled to derive the benefit of even the validity granted to Aditya.

12. Needless to state, if at all the Committee now forms some

objective opinion to apply for review of the order of this Court and if it is permissible to do so in law it may resort to it. However, the benefit of Aditya's validity cannot be denied to the petitioner.

13. The writ petition is partly allowed. The impugned order is quashed and set aside. The Committee shall immediately issue tribe validity certificate to the petitioner of 'Thakur' scheduled tribe strictly in the requisite format without incorporating any condition. Such validity shall be subject to the review, if any, to be preferred by the Committee in the matter of Aditya Ranjitsing Thakur.

14. The Petitioner shall not be entitled to claim any equities.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)