

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10562 OF 2018

1] Ku. Divya D/o Rajendra Ambure,
Age : 23 years, Occu : Student,
through her father
Rajendra S/o Sahebrao Ambure,
Age : 47 years, R/o Vivekanandpuram,
Opposite Parimal High School,
Latur, Taluka and District Latur

2] Rushikesh S/o Rajendra Ambure,
Age : 18 years, Occu : Student,
through his father
Rajendra S/o Sahebrao Ambure,
Age : 47 years, R/o Vivekanandpuram,
Opposite Parimal High School,
Latur, Taluka and District Latur

.. Petitioners

Versus

1] The State of Maharashtra
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.

2] The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Division, Aurangabad
through its Member Secretary

3] Jayawantrao Sawant College of
Engineering, S.No. 58, Handewadi Road,
Hadapsar, Pune run by Jayawant
Shikshan Prasarak Mandal,
Through its Principal

4] Savitribai Phule Pune University
Ganesh Khind, Pune
Through its Registrar

5] Bharati Vidyapeeth's Jawaharlal Nehru
Institute of Technology (Polytechnic),
Katraj, Dhanakwadi, Pune
Through its Principal

6] Maharashtra State Board of Technical
Education, Mumbai
Through its Secretary

.. Respondents

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Advocate for petitioners : Mr. Sushant C. Yeramwar
Addl. GP for the respondents no. 1 and 2 : Mr. S.B. Yawalkar
...

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

DATE : 19 OCTOBER 2023

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondents 1 and 2. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioners who are siblings *inter se* are challenging the common order whereby their Thakur scheduled tribe certificates have been confiscated and cancelled.

3. The learned advocate for the petitioners would submit that the observations of the committee treating entry in the school record of 'Harijan' could not have been treated as a contrary entry. Only a couple of entries in the school record of paternal aunt and cousin brother of the petitioner of 1963 wherein they have been described as 'Maratha' are being relied on by the committee to disbelieve their claims and the committee has illegally resorted to the affinity test as well as area restriction which it could not have legally done. There is old revenue record of Khasra Pahani Patrak wherein petitioners'

ancestor was described as 'Thakur'. The committee could not have discarded such favourable evidence by applying area restriction. He would then submit that petitioners' father possesses a certificate of validity and so does petitioners' second degree cousin Laxman and Laxman's son Pramod as well as one Bhagwan Namdev who is a distant blood relation possesses certificate of validity. The committee could not have refused to extend the benefit of these validities in the family and the petitioners be granted certificates of validity subject to the final outcome of the matters of the validity holders which the committee has decided to reopen.

4. The learned AGP supports the order.

5. Admittedly, there are several validities in the family including the petitioners' father Rajendra. Though the committee now observes that these persons had obtained certificates of validity by resorting to misrepresentation and concealment of contrary record and has decided to issue them show cause notices, till the time their certificates of validity are not confiscated and cancelled, the petitioners cannot be denied the benefit of having similar validity.

6. We do not intend to make any comment on the aspect of powers of the committee to undertake a review and the facts which according to the committee constitute fraud or misrepresentation. We are doing so for two reasons; firstly the validity holders are not before

us and we do not intend to cause any prejudice to them by making observations in this matter behind their back and secondly, any observation made by us could have a bearing on the matters which the committee has decided to re-open.

7. Pertinently, it is not the observation of the committee that these validity holders were granted certificates of validity without following due process of law rather it observes that even the vigilance enquiry was conducted in the matter of petitioners' father. If that is so, if one follows the directions in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326***, the petitioners are entitled to derive the benefit of the validities in the family.

8. Independently, though the revenue record is not supposed to be and does not contain a column of caste, one cannot lose sight of the fact that Khasra Pahani Patrak of the petitioners' great grandfather Arjunrao Bhagwanrao describes him to be Thakur. Though it may not be a conclusive piece of evidence, it would carry some degree of relevance. The committee has committed an error in appreciating this oldest revenue record of the year 1954-55.

9. In the circumstances, in our considered view, the petition deserves to be allowed partly and the petitioner deserves to be granted

certificate of validity subject to the final outcome of the matters which the committee has decided to reopen.

10. In the result, the following order :-

I) The writ petition is partly allowed.

II) The impugned judgment and order dated 29.08.2018 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 other conditions / additions.

V) The petitioners shall not be entitled to claim equities.

VI) Rule is made absolute accordingly.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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