

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

**WRIT PETITION NO.10615 OF 2023
WITH
CA/11334/2023 IN WP/10615/2023
(Intervention application)**

1. Venkatesh s/o Vijaysing Thakur
2. Yogini d/o Vijaysing Thakur ... **PETITIONERS**

VERSUS

1. The State of Maharashtra
Department of Tribal Development
Mantralaya, Mumbai – 32
through its Secretary
2. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Tq. & Dist. Aurangabad
through its Member Secretary ... **RESPONDENTS**

...

Advocate for Petitioner : Mr. Vivek V. Jadhav
A.G.P for respondent/State : Mr. A.S. Shinde

...

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

DATE : 08.09.2023

ORDER (MANGESH S. PATIL, J.) :

The petitioners are challenging the order of the Scrutiny Committee, confiscating and cancelling their certificates of 'Thakur' Scheduled Tribe under Section 7 (1) of the Maharashtra Act XXIII of 2001.

2. Considering the urgency, inasmuch as the petitioners are seeking admission in the current ongoing process, we have taken up the matter for final disposal at admission stage.

3. The petitioners are siblings *inter se*. Their learned advocate submits that there are several validities in the family. Their distant cousin Nitesh has been granted certificate of validity in the year 2005 after conducting vigilance inquiry. Even another distant cousin Swapnil is also a validity holder and the petitioners are entitled to derive the benefit of these validities. He submits that the present committee has refused to extend the benefit of these validities by observing that Mukesh had obtained validity from a committee comprising of one B.V. Shirurkar who was not eligible to be appointed on the committee, full-fledged vigilance inquiry was not conducted at the time of Nitesh and Swapnil and has recorded vague observation about all these three persons having obtained validity by resorting to fraud. The petitioners are ready to run the risk of facing the consequences if and when the committee undertakes reconsideration of the cases of these validity holders but till that time, the petitioners cannot be deprived of the benefit.

4. The learned advocate would further submit that except couple of contrary entries which are stray and of a later period, the committee could not find any contrary entry or record which has been consistently showing petitioners' family members to be 'Thakur'. He would therefore submit that the order is perverse, arbitrary and capricious and may be reversed.

5. Learned AGP would support the order. He would submit that the committee has entertained a serious doubt about the validity holders

having obtained certificates of validity by resorting to fraud and has expressed its intention to undertake a fresh scrutiny. He would then submit that some contrary entries in the school record of petitioners' father, paternal uncle and cousin uncles were revealed in the vigilance inquiry which were sufficient for the committee to reach a plausible conclusion about falsity of the petitioners' claim.

6. We have considered the rival submissions and perused the papers. Obviously, there are certain contrary entries reproduced by the committee in the impugned order, wherein, petitioners' father, paternal uncle and cousin paternal uncles have been referred to as Bhat (Thakur), Thakur Pardeshi, Pardeshi Thakur, Pardeshi, Pardeshi Thakur (Hindu), Bhat and Bhat Thakur. These are the entries between the years 1960 and 1981. However, simultaneously the impugned order also demonstrates school record of the petitioners' ancestors right from the year 1953 showing them to be Thakur. The Committee has not assigned any reason as to why it was not ready to accept the oldest record which is available but has been relying upon the latter record. Going by the principles regarding appreciation of these old record laid down in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Ors.; (2012) 1 SCC 113** the oldest record will carry a greater probative value. However, the approach of the committees is contrary to this principle. Certainly, this would be a matter of perversity and arbitrariness.

7. As far as the validity certificates being relied upon by the

petitioners are concerned, the committee has observed that they had obtained certificates of validity by concealment and deceptively. Being the observations harboring fraud, we cannot undertake any objective scrutiny of all these observations, since the persons against whom those have been levelled are not before us. If the committee now intends to reopen their validities, it will have to undertake a full fledged inquiry, giving an opportunity to all of them of being heard. Since the issue would be directly and substantially in issue in those matters, we cannot undertake its objective scrutiny in the present matter behind the back of the validity holders.

8. We are merely concerned with the fact that the committee has not made any observation that the certificates of validity were issued to these three persons without following due process or contrary to the rules. These being the parameters laid down in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Ors.; 2023 SCC Online SC 326** the petitioners cannot be denied the benefit of having similar validities based on these validity holders. Pertinently, the committee has not made any observation doubting the genealogy being relied upon by the petitioners to show as to how they are related to these validity holders. Consequently, the order is not sustainable in law, being perverse and arbitrary, and is liable to be quashed and set aside.

9. The writ petition is partly allowed. The impugned order is quashed and set aside. The respondent - committee shall immediately issue tribe validity certificates to the petitioners as belonging to 'Thakur'

scheduled tribe in the prescribed format without adding anything. The validity shall be subject to the final outcome of the matters which the committee has decided to re-open.

10. The petitioners shall not be entitled to claim equities.
11. Pending civil application is disposed of.

(SHAILESH P BRAHME, J.)

(MANGESH S. PATIL, J.)