

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

WRIT PETITION NO. 10730 OF 2023

1] Chetan Bhagwan Thakur
2] Prerna D/o Bhagwan 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, Dhule Division, Dhule,
Tq. & Dist. Dhule
Through its Member Secretary ... Respondents

AND

WRIT PETITION NO. 9768 OF 2019

Yash S/o Bhagwan Thakur ... Petitioner

VERSUS

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

2] The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division, Nandurbar
Through its Member Secretary

3] State Common Entrance Test Cell,
Maharashtra State, 8th Floor,
New Excelsior Building, A.K. Nayak Road,
Fort, Mumbai – 400 001
Through its Commissioner & Competent
Authority ... Respondents

...

Advocate for the Petitioners in both WPs : Mr. S.C. Yeramwar
A.G.P. for the Respondents/State : Mr. A.A. Jagatkar
Advocate for respondent no. 3 in WP/9786/2019 : Mr. S.G. Karlekar

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

DATE : 04.09.2023

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matters are heard finally at the stage of admission.

3. The petitioners are siblings and are challenging the two orders passed by the scrutiny committee confiscating and cancelling their tribe certificates of Thakur scheduled tribe. In the matter of petitioner - Yash, the order was passed in the year 2019 whereas in respect of the petitioners - Chetan and Prerna, it has been passed in the last month. Since it is a matter of social status and all of them have been relying upon the same set of facts and evidence, we propose to decide both these petitions by this common judgment in order to avoid the rigmarole.

4. The learned advocate for the petitioners would submit that the scrutiny committee is doubting the school record of the petitioners' great great grandfather and his brother of 1912 and 1915 because of the stand being taken now that this school record of the great great grandfather's was in fact not traceable in the school records in view of the statement of the headmaster and the committee having now verified the fact of absence of such school record of Hari Tanaji Thakur and Onkar Tanaji Thakur, there is another pre-presidential order school record of another cousin great great grandfather Gulabrao Hari Chavan dated 15-01-1941 mentioning that he was Hindu Thakur. He would submit that

even this entry of 1941 should have been accepted by the committee to validate the petitioners' claims. He would submit that the contrary record referred to by the committee in the matter of Chetan and Prerna is in fact the record of the relatives from the maternal side which could not have been legally treated as contrary entries.

5. Mr. Yeramwar would then submit that it is true that the petitioners have been relying upon the validity of one Jitendra Suresh Thakur stated to be their cousin paternal uncle. However, because of the family feud Jitendra has not come forward to support petitioners' claims. Still undisputed school record of 1941 should have been sufficient for the committee to validate the petitioners' claims. He would then submit that the committee has resorted to the principle of area restriction which it could not have legally done and has also applied the affinity test which is not a litmus test.

6. Per contra, the learned AGP would oppose the petitions. He would submit that the petitioners have resorted to fraud inasmuch as in spite of a specific statement of the headmaster of the concerned school expressly mentioning that the school record did not contain names of Hari Tanaji Thakur and Onkar Tanaji Thakur to have been admitted in that school on 02-03-2012 and 03-04-2015, respectively, they have been able to obtain a forged certified copies. This fact in itself justifies the inference of the committee. He would then submit that even the petitioners have been unable to substantiate genealogy showing the validity holder

Jitendra as belonging to their family. No fault can be found with the committee in refusing to extend the benefit of that validity.

7. We have carefully considered the rival submissions and perused the papers.

8. There cannot be any dispute about the fact that some *prima facie* manipulated and forged school record of the great great grandfathers Hari Tanaji and Onkar Tanaji was procured and tried to be used to substantiate the claims. Pertinently, as can be seen from the *roznama* in the matter of Chetan and Prerna, the headmaster of the school together with the original 14 registers was called by the committee. The headmaster expressly stated absence of any entry in the name of Hari Tanaji and Onkar Tanaji in any of these 14 registers and even the committee members themselves verified the school record. If at all the petitioners were intending to controvert such a stand of the headmaster, when he was present before the committee at the time of hearing, the petitioners could have sought to cross-examine the headmaster and could have sought inspection of the school record as well. That having not been done, we find no hesitation in concurring with the observations of the committee that an attempt has been made by the petitioners to substantiate their claims by resorting to forgery.

9. As regards genealogy vis-a-vis the validity holder Jitendra is concerned, admittedly, he has not come forward to support the petitioners' claims. Independently, there is no record to prove that he

belongs to the same family and stands in blood relation with the petitioners from the paternal side. Consequently, even we do not find any error is committed by the committee in refusing to extend the benefit of the validity of Jitendra to the petitioners.

10. However, the contrary entries being relied upon by the committee reproduced in table no. 2 while discussing issue no. 1 *ex facie* are of the relations of the petitioners from the maternal side and could not have been treated and used as contrary record.

11. As against this, there are favourable entries from serial nos. 4 to 19 in table no. 1 in the reasons furnished for issue no. 1 starting from 1941. Petitioners' cousin great great grandfather Gulabrao Hari Chavan has been shown in the school record to be Hindu Thakur. School record of another cousin great great grandfather Sukhdeo Hari Chavan of 1952 also reads Hindu Thakur and so does that of Suresh Hari Thakur of 1954. Even the committee in clause 7 of reasons for the issue no.1 in the order passed in the matter of Chetan and Prerna expressly observes and admits such record of 1941, 1952 and 1954 favouring the petitioners' claims, however, it has refused to rely upon it and extend its benefit for the sole reason that petitioners had made an attempt to deceive the committee by leading forged school record.

12. In our considered view, such an approach of the committee is not acceptable. Merely because, may be in their over-enthusiasm, the petitioners have indulged in some kind of manipulation that in itself cannot

be the ground for refuting their claims more so when independent of such dubious piece of evidence they are able to produce pre-constitutional record to substantiate their claims. The approach of the committee, in our considered view, is clearly perverse and arbitrary. It is to be borne in mind that this is not an adversarial litigation and the claimants make an attempt to prove their social status to derive the benefits. The facts are to be proved by preponderance of probabilities and a strict proof is not required.

13. Again, the committee could not have resorted to area restriction and could not have applied affinity test in the teeth of the pre-constitutional and old record discussed herein-above.

14. Hence the following order :-

- I) The writ petitions are allowed.
- II) The impugned orders are quashed and set aside.
- III) 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.
- IV) Rule is made absolute.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

arp/-