

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

WRIT PETITION NO. 10507 OF 2010

Leena d/o Ramesh Thakur
Age: 22 years, Occu. Nil,
Through her father Ramesh s/o Dayaram
Thakur (Wagh), Age: 50 years, Occu. Agriculture,
R/o Village Satrasen, Taluka Chopda,
District Jalgaon **... PETITIONER**

VERSUS

1. The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai
2. The Committee for Scrutiny and
Verification of Tribe Claims,
Nandurbar Region, Nandurbar
3. Brihan Mumbai Mahanagar Palika
through its Deputy Chief Security
Officer, at Mumbai **... RESPONDENTS**

....
Mr. S. R. Barlinge, Advocate for Patitioner
Mr. P. S. Patil, AGP for Respondent Nos. 1 and 2
....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 28.11.2023

ORAL JUDGMENT (Per:- Ravindra V. Ghuge, J.) :-

1. Rule. Rule is made returnable forthwith and heard
finally by the consent of the parties.

2. The Petitioner has put forth prayer clauses (B), (C), (D) and (E) as under:-

“(B) By a writ of certiorari, or any other appropriate writ or order or directions in the like nature, the impugned judgment and order dated 25.08.2010, passed by the respondent No.2 Committee (annexed at Exhibit-E) may kindly be quashed and set aside.

(C) By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature, the respondents be directed to consider the petitioner as belonging to Thakur Scheduled Tribe and the respondent No.2 Committee be directed to issue caste/tribe validity certificate to the petitioner as belonging to Thakur Scheduled Tribe.

(D) Pending hearing and final disposal of this writ petition, the operation and execution of the impugned judgment and order dated 25.08.2010, passed by the respondent No.2 Committee (annexed at Exhibit-E), may kindly be stayed.

(E) Pending hearing and final disposal of this writ petition, the respondent no.3 be directed to continue the petitioner in service and pay her salary regularly, and not to take any adverse action against the petitioner on the basis of the impugned judgment and order dated 25.08.2010, passed by the respondent No.2 Committee.”

3. By the first order passed on 26.11.2010, this Court protected the Petitioner against coercive steps on the ground of the invalidity of her caste claim of belonging to the Thakur Scheduled Tribe category.

4. The learned AGP informs us that considering the order passed by this Court on 27.10.2023, more specifically paragraph Nos.2 and 3, a proposal is to be moved for seeking permission from the Department of Law and Judiciary, to prefer a review application in the case of ***Durgesh Vishwas Thakur***. The father of Durgesh, namely, Vishwas Dayaram Thakur, is the biological brother of Ramesh Thakur, who is the biological father of the present Petitioner.

5. In paragraph 2 and 3 of our order dated 27.10.2023, we have observed as under:-

“2. The learned AGP submits today on instructions that when Durgesh was granted a validity certificate by a Coordinate Bench of this Court on 26.11.2021 in Writ Petition No.6965/2021, it was not brought to the notice of the Court and also to the committee earlier, that Leena D/o Ramesh Thakur who is the biological first cousin sister of Durgesh, has suffered invalidation of her claim by the judgment of the committee dated 25.06.2010. The pendency of this petition was also not brought to the notice of the Court. He further submits that the department intends to file a Review Application in the said case.

3. The learned AGP further submits that a procedure has to be followed for seeking approval of the Department of Law and Justice in order to file a review and the matter may be posted on 28.11.2023.”

6. It is in the above backdrop, that we have taken up this Petition for a final hearing.

7. We have considered the law laid down by the Hon'ble Supreme Court in ***Maharashtra Adivasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others*** (decided on 24.03.2023), - (2023) SCC OnLine SC 326. Paragraph Nos. 22, 23 and 24, read as under:-

“22. We can also contemplate one more scenario which is found in many cases. These are the cases where the applicant relies upon caste validity certificates issued to his blood relatives. Obviously, such a validity certificate has to be issued either by the Scrutiny Committee constituted in terms of the directions issued in Kumari Madhuri Patil’s case¹ or constituted under the Rules framed under the 2000 Act. In such a case, firstly, the Scrutiny Committee must ascertain whether the certificate is genuine. Secondly, the Scrutiny Committee will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him has been issued is his blood relative. For that purpose, the applicant must establish his precise and exact relationship with the person to whom the validity certificate has been granted. Moreover, an enquiry will have to be made by the Scrutiny Committee whether the validity certificate has been granted to the blood relative of the applicant by the concerned Scrutiny Committee after holding due enquiry and following due procedure. Therefore, if the Scrutiny Committee has issued a validity certificate contemplated in terms of the decision in the case of Kumari Madhuri Patil¹, the examination will be whether the enquiry contemplated by the said decision has been held. If the certificate relied upon is issued after coming into force of the 2000 Act, the Scrutiny Committee will have to ascertain whether the concerned Scrutiny Committee had followed the procedure laid down therein as well as in the ST Rules or the

SC Rules, as the case may be. For this verification, the Scrutiny Committee can exercise powers conferred on it by Section 9(d) by requisitioning the record of the concerned Caste Scrutiny Committee, which has issued the validity certificate to the blood relative of the applicant. If the record has been destroyed, the Scrutiny Committee can ascertain whether a due enquiry has been held on the basis of the decision of the Caste Scrutiny Committee by which caste validity has been granted to the blood relative of the applicant. If it is established that the validity certificate has been granted without holding a proper inquiry or without recording reasons, obviously, the caste scrutiny committee cannot validate the caste certificate only on the basis of such validity certificate of the blood relative.

23. *In a given case, the Scrutiny Committee may be satisfied that the caste validity certificate relied upon by the applicant has been issued after making a lawful enquiry. But if the Scrutiny Committee is of the view that the applicant has not clearly established that the person to whom caste validity certificate produced on record has been granted is his blood relative, in terms of subrule (2) of Rule 12 of the ST Rules, the Caste Scrutiny Committee will have to refer the case for conducting an enquiry through Vigilance Cell. In such a case, the Vigilance Cell can be directed by the Scrutiny Committee to conduct an enquiry limited to the relationship claimed by the applicant with the person in whose favour the caste validity certificate has been issued. If, on the basis of the report of the Vigilance Cell, the Scrutiny Committee is satisfied that the person in whose favour caste validity certificate has been issued is a blood relative of the applicant and lawful enquiry has been conducted before issuing the validity certificate, the Scrutiny Committee will have to issue validity certificate even if the applicant does not satisfy the affinity test. For example, if it is established that the father or grandfather of the applicant has been given a caste validity certificate after holding a lawful enquiry in accordance with law, the Caste Scrutiny Committee*

cannot hold that the grandfather or father of the applicant, as the case may be, belongs to Scheduled Tribe but the applicant does not belong to Scheduled Tribe. Only if the relationship as pleaded by the applicant is not established, the other evidence produced by the applicant and the result of the affinity test can be taken into consideration by the Scrutiny Committee.

24. *As provided in subrule (7) of Rule 12 of the ST Rules, the Vigilance Cell's report is not conclusive. If on the basis of the report of the Vigilance Cell and other evidence on record, the Scrutiny Committee comes to a conclusion that the caste claim is genuine, a caste validity certificate can be issued. Only on the ground that the report of vigilance cell is in favour of the applicant, validity certificate cannot be mechanically granted without application of mind. If the report of the Vigilance Cell is against the applicant, his caste claim cannot be rejected only on the basis of the report of the Vigilance Cell without providing a copy of the report to the applicant and without giving him an opportunity of being heard on the report. After giving an opportunity to the applicant to make submissions on the report, the Scrutiny Committee may reject the caste claim. In a given case, the Scrutiny Committee can also record a finding that the caste claim is genuine. It all depends on the facts of each case."*

8. The learned AGP has strenuously opposed this Petition contending that Durgesh succeeded before this Court vide judgment dated 26.11.2021 in his Writ Petition No. 6965 of 2021, by suppressing the fact that the claim of the present Petitioner Leena D/o Ramesh Thakur, was invalidated by the impugned judgment of the Committee, dated 25.06.2010.

9. We have considered the submissions of the learned Advocates in the light of the law laid down in *Pandurang Rangnath Chavan Vs. The State of Maharashtra - 1998 (2) Mh.L.J. 806*, *State of Maharashtra Vs. Raviprakash Warma* and the judgment of the learned Full Bench of this Court in *Shilpa Vishnu Thakur Vs. The State of Maharashtra and others - 2009 (3) Mh.L.J. 995*.

10. In the case of Durgesh, a coordinate Bench of this Court has made certain observations, which cannot be ignored in the light of the fact that the documents relied upon by Durgesh in support of his claim, pertain to the years 1915, 1920, 1921 and 1936. It would be apposite to refer to paragraph Nos. 2 to 10 of the judgment dated 26.11.2021 in the case of Durgesh (supra), hereunder:-

“2. The tribe claim of the Petitioner belonging to Thakur, Scheduled Tribe is invalidated.

3. The learned Counsel submits that there are consistent entries in the school record of the Petitioner’s grandfather, cousin grandfather of Thakur. There is only one contra entry in case of cousin grandfather of the Petitioner. The said entry is of the year-1920. However, the entry in the case of the another cousin grandfather of the petitioner recording tribe as Thakur is of they year-1915. According to the learned Counsel, there are consistent entries of Thakur, Scheduled Tribe right since the year-1915.

4. *The learned Counsel submits that the affinity test is not the litmus test as held by the Hon'ble Apex Court in case of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others reported in (2012) 1 SCC 113.*

5. *The learned A.G.P. submits that the cousin cousin grandfather of the Petitioner namely Amrut Vithoba Thakur's school record records caste as Marathe, wherein the date of birth of his cousin cousin grandfather is shown as 12.07.2020. The learned A.G.P. submits that the Petitioner has failed in the affinity test. The Petitioner does not belonging to the place where the Thakur, Scheduled Tribe normally resides.*

6. *We have considered the submissions canvassed by the learned Counsel for respective parties.*

7. *Except one contra entry, all entries from the year-1915 of the school record of the Petitioner's grandfather, cousin grandfather, father records tribe as Thakur. The entry of the year-1915 in case of the cousin grandfather Sada Rupsing Thakur is of the year-1915. The entry in the school record of the Petitioner's grandfather Dayaram Rupsing Rathod is of the year-1921 regarding tribe as Thakur. The entry in case of cousin cousin grandfather of the Petitioner, namely Shankar Vithoba Thakur of the year-1936 records tribe as Thakur. The another entry of Gaon Namuna No. 14 of the grandfather records tribe as Thakur. The same is also an old entry. The father's school record also records tribe as Hindu Thakur. The other entries of the year 1966 and 1968 in the school records of his cousin uncles records tribe as Thakur.*

8. *The Hon'ble Apex Court in case of Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others reported in (2012) 1 SCC 113 held that affinity test is not the litmus test.*

9. *In view of the consistent entries of the tribe recorded as Thakur in the pre-constitutional documents, we pass the following order.*

10. The impugned order is quashed and set aside. The Committee shall issue Validity Certificate to the Petitioner of Thakur, Scheduled Tribe.”

11. There is no dispute that the father of the present Petitioner and the father of Durgesh, are biological brothers. The statutory record pertains to the years 1915, 1920, 1921 and 1936 with regard to the present Petitioner’s grandfather, cousin grandfather, second cousin grandfather as well as the entries pertaining to the father of Durgesh, namely Vishwas, who is the biological brother of the father of the father of the present Petitioner. Consistently, the entries indicate the entry ‘Thakur’. As has been held in ***Maharashtra Adivasi Thakur Jamat*** (supra), the affinity test cannot be considered to be a litmus test. All attending circumstances and more importantly, the statutory records which are more than a century old and which are neither controverted nor declared to be bogus entries, have a high probative value and cannot be bypassed or ignored by the Court.

12. The records which have stood in aid of Durgesh, are of an equal assistance in the case of the present Petitioner considering the blood relations of the present Petitioner and Durgesh (supra) from

the paternal side. This aspect is covered by paragraphs 22 and 23 of Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra).

13. In view of the above, **this Petition is partly allowed**. The impugned order of the Committee is quashed and set aside. We direct the Committee to issue the validity certificate of Thakur Scheduled Tribe to the Petitioner, within a period of sixty 60 days from today.

14. Keeping in view the law laid down in *Shweta Balaji Isankar Vs. State of Maharashtra and others - MANU/MH/4098/2018*, if the State prefers a review petition as regards the order of this Court dated 26.11.2021 in the case of Durgesh (supra), and in the event Durgesh ultimately suffers invalidation of his claim in the proceedings before this Court or any other proceedings, the consequences attracted in his case would befall upon the present Petitioner who would also suffer similar consequences.

15. Rule is made partly absolute in the above terms.

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]