IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11606 OF 2023

Sanik D/o Narendra Salunke,
Age : 18 years, Occu.: Education
Through natural guardian i. e.
Mother :-
Kavita D/o Bhanudas Nikam,
Age : 46 years, Occu. : Nil,
R/o Wanegaon, Tq. Phulambari,
Dist. Aurangabad
At Present R/o Dube Nagar,
Hudkeshwar Road, Nagpur,
Dist. Nagpur. .. Petitioner

Versus

Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Dist. Aurangabad
through its Member Secretary. .. Respondent

Shri Sagar S. Phatale, Advocate for the Petitioner.
Shri A. A. Jagatkar, A.G.P. for the Respondent sole.

CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 15 SEPTEMBER 2023.

<u>FINAL ORDER</u> (Per Shailesh P. Brahme, J.) :-

. Heard learned counsel for the respective sides finally at the admission stage.

2. The petitioner is challenging the judgment and order dated 12.09.2023 passed by the Scrutiny Committee invalidating her

tribe certificate of ‘Thakur’ (Scheduled Tribe) and confiscating the same.

3. The petitioner is relying upon old revenue record as well as the school record of paternal side. The learned counsel for the petitioner submits that the petitioner is minor and in the custody of her mother Kavita. There is dissolution of marriage of her parents by judicial pronouncement dated 30 August 2014. Since before the decision, she is staying with her mother. Her both parents belong to Thakur (Scheduled Tribe). It is submitted that the record of her maternal side as well as paternal side was produced before the Scrutiny Committee.

4. The learned counsel for the petitioner would submit that he would prefer to rely upon the paternal side record comprising of school entries and revenue record. The reliance is placed upon the school record of Subhash Vishnu Salunke of 1977, Shivaji vishnu Salunke of 1972, Nirmala Vishnu Salunke of 1981. The revenue record of Khasara Patrak of 1954-55 appearing in the name of Laxman Ganpat Thakur, Ganpat Lahnu Thakur and Baba Hari Thakur is also relied on. Besides that the 7/12 extract in the name of Yashwant Laxman Thakur, Laxman Ganpat Thakur and Gayabai Ganpat Thakur are sought to be relied.

5. The learned counsel submits that the Scrutiny Committee rejected the caste claim only on the basis of few contrary entries in the school record of Nirmala Vishnu Salunke, Sanju Yashwantrao Salunke and Deelip Vishnu Salunke indicating

caste as Thakur-Bhatke. According to the petitioner the old revenue entries of 1954 would prevail over the alleged contrary record. The reliance is placed upon the **judgment dated 07.12.2017** passed by this Court in the matter of **Aishwarya Umesh Rathod Vs. The State of Maharashtra and others** in ***Writ Petition No. 4285 of 2014***, which is placed on record.

6. Per contra, the learned Assistant Government Pleader would support the impugned judgment and order. He would submit that there is no cogent evidence on record like validity certificate issued to the paternal side relatives of the petitioner to support her claim. The Committee is justified in rejecting the claim in view of contrary entries which are of the year 1981 and 1984. The parameters of area restriction are rightly made applicable. The revenue record which is sought to be relied by the petitioner does not reflect caste. He has raised strong objection for validity certificates of the maternal side relatives. He has produced on record the original file to point out contrary entries.

7. The petitioner has produced on record the genealogy which is useful for appreciating the school and revenue record. Admittedly, there is dissolution of marriage of her parents. Normally social status of a person is determined on the basis of paternal side record. Though the petitioner has produced record of paternal as well as maternal side, the record of paternal side is preferred.

8. The revenue entries which are of 1954 in the name of Laxman Ganpat Thakur, Ganpat Lahanu Thakur and Bala Hari Thakur are discarded by the Committee that no caste is mentioned. To ascertain this, we have gone through the photo copies produced by the petitioner along with the petition as well as original record. It revealed that there is clear cut mention of caste Thakur. The record has greater probative value. The scrutiny committee has committed perversity in holding that the caste is not mentioned in the revenue record.

9. Another set of revenue record in the form of 7/12 extracts do not indicate the caste, which can be ignored. The claim of the petitioner is further corroborated by the school record of Subhash Vishnu Salunke, Nirmala Vishnu Salunke, Sanju Yashwanta Salunke, Devidas Yashwanta Salunke, Shivaji Vishnu Salunke. It can be ascertained from the genealogy that these are the paternal side relatives of the petitioners.

10. The learned A. G. P. has drawn our attention to the contrary entries indicating caste as Thakur-Bhatke. The contrary entries are of later period. The old revenue record referred above would prevail. We find that the Scrutiny Committee has committed patent illegality in rejecting the caste claim of the petitioner.

11. The parameters of area restriction is no more applicable in view of the removal of area restrictions by the amendment Act of 1976 and as per the law laid down by the Supreme Court in the

matter of **<u>Jaywant Deelip Pawar Vs. The State of Maharashtra</u>** reported in ***2018 (5) All M.R. 975***.

12. We find that the impugned judgment and order is unsustainable. We therefore allow this writ petition by passing following order.

ORDER

i. The Writ Petition is allowed.

ii. The impugned judgment and order dated 12.09.2023, passed by the Scrutiny Committee, is quashed and set aside.

iii. The Committee shall immediately issue tribe validity certificate to the petitioner as belonging to 'Thakur' scheduled tribe.

iv. Considering the urgency in the matter, we request learned AGP to communicate this order to the Committee immediately, since the Law Officer of the Committee is present in this Court.

v. Accordingly, Writ Petition is disposed of.

[SHAILESH P. BRAHME, J.] **[MANGESH S. PATIL, J.]**

bsb/Sept. 23