

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11641 OF 2023

Ishwari D/o Pandurang Chavan,
Age – 19 years, Occ. Student,
R/o Prayag Niwas,
Shikshak Colony, Murshadpur,
Ashti, Tq. Ashti, Dist. Beed

.. Petitioner

Versus

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

2] The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad Division,
Aurangabad, Tq. And Dist. Aurangabad
Through its Member Secretary

.. Respondents

AND

WRIT PETITION NO. 13626 OF 2021

Sonali D/o Nandkumar Chavan,
Age 30 years, Occu : Housewife,
R/o A/p. Sangvi Patan, Tq. Ashti,
Dist. Beed

.. Petitioner

Versus

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

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

.. Respondents

...

Advocate for petitioners : Mr. Sushant C. Yeramwar
AGP for the respondent – State : Mr. S.B. Yawalkar

...

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

DATE : 20 SEPTEMBER 2023

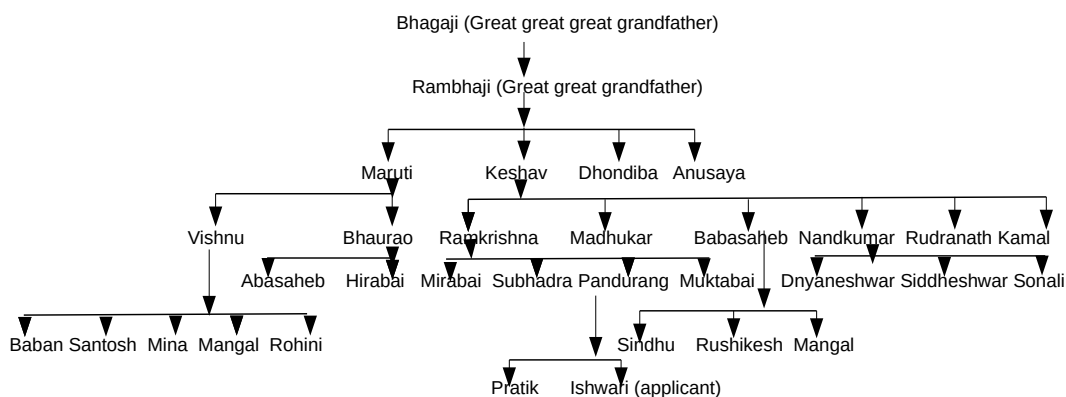
ORDER (MANGESH S. PATIL, J.) :

By way of these two separate writ petitions, the petitioners are challenging the orders passed by the respective scrutiny committees invalidating their certificates of Thakar scheduled tribe.

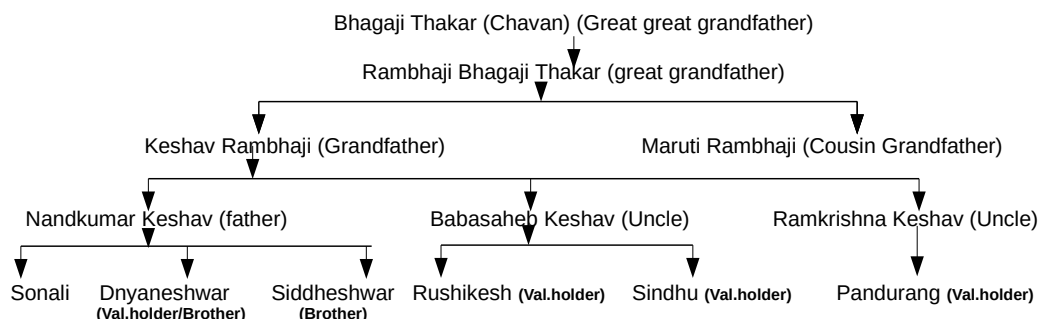
2. Though the impugned orders are separate, since there is no dispute about the genealogy and the petitioners being related by blood, we propose to decide these petitions by this common order.

3. With the consent of both the sides, the petitions are head finally.

4. The genealogy furnished by Ishwari in her matter is as under :-



The genealogy being relied on by the petitioner - Sonali is as under :-



5. Though there is some variance, the genealogies cannot be said to be incompatible. One Bhagaji is the common ancestor survived by son Rambhaji. Rambhaji left behind two sons – Maruti and Keshav. Both these genealogies further show that Keshav is the common ancestor as far as these petitioners are concerned who was survived by sons Ramkrishna, Babasaheb and Nandkumar. Petitioner – Ishwari is the granddaughter of Ramkrishna whereas Sonali is the daughter of Nandkumar.

6. As can be seen, Babasaheb Keshav's children Rushikesh and Sindhu, Ramkrishna's son Pandurang who happens to be petitioner – Ishwari's father and petitioner – Sonali's real brother – Dnyaneshwar are the validity holders. Apparently, they are relying upon the validities of each other's father and brother.

7. The committee has refused to extend the benefit of validities to the petitioners on the ground that the validity holders were

able to procure the validities by concealing the contrary record. Even principle of area restriction has been applied and it has also resorted to the affinity test. Attempt has been made to demonstrate as to how the petitioner's family did not originate from the area to which Thakar scheduled tribe belonged. It has also resorted to several entries which according to it are contrary ones. Though there is a revenue record in the form of Ka Patrak of 1348 Falsi corresponding to 1938 A.D., it has refused to rely upon it stating that there was no column in the format providing for recording the caste and on the ground that merely because in that document, petitioner's great grandfather Rambhaji Bhagaji Thakar is mentioned to be Thakar that would not constitute caste. Same is the reasoning adopted to discard this piece of evidence in both the matters.

8. We have gone through the original file in the matter of Ishwari wherein a photocopy of this revenue record Ka Patrak is available to be seen. Column no. 9 apparently is meant to record the name, caste and place of residence of the possessor of the land. When this column expressly mentions and provides that together with the name and place even the caste is to be recorded, the observation of the committee that there was no column in this format for providing name of the caste, as the reason to discard this record, is clearly perverse and arbitrary. If the title of the column is carefully looked into, it negates the conclusion of the committee. If such is the state-of-

affairs, when the petitioner's great grandfather Rambhaji Bhagaji Thakar apart from being referred to as Thakar mentions in this column of being Thakar this being the pre-constitutional record would carry greatest probative value as has been held in the matter of **Anand Dhananjay Nalawade Vs. State of Maharashtra; 2014 (4) Mh.L.J. 77.**

9. There being no contrary record of prior period, in our considered view, this would be a decisive piece of evidence to substantiate the petitioner's claim of being Thakar scheduled tribe. If this is the case, the conduct of the committee in applying the area restriction and affinity test would be clearly inconsistent with the directions of the Supreme Court in the matter of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others; 2023 SCC Online SC 326.**

10. Hence, the following order :-

I) The writ petitions are allowed. The impugned orders are quashed and set aside. The respondent - committee shall immediately issue tribe validity certificates to the petitioners as belonging to 'Thakar' scheduled tribe in the prescribed format without adding anything.

II) Considering the fact that today is the last date for submitting certificate of validity and since the matter is being heard and

decided urgently, we request the learned AGP to communicate this order to the Committee immediately, since the law officer of the Committee is present in this Court.

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

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/